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January 31, 1989

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

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3. The important elements of typical Federal Register documents.
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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.

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 630

### Absence and Leave; Voluntary Leave Transfer Program

**AGENCY:** Office of Personnel Management.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Personnel Management is establishing a 5-year voluntary leave transfer program that permits Federal employees to donate annual leave for the use of other Federal employees in medical or family medical emergency situations. This rule sets forth procedures under which a potential leave recipient may submit an application to his or her employing agency and establishes rules for agencies to administer the program. This program was authorized by Pub. L. 100–566, the "Federal Employees Leave Sharing Act of 1988," and will terminate on October 31, 1993.

**DATES:** This interim rule becomes effective on January 31, 1989 and will expire on October 31, 1993; comments must be received on or before April 3, 1989.

**ADDRESS:** Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance Management, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 7H28, 1900 E Street, NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Martha Hoehn, (202) 632–5056.

**SUPPLEMENTARY INFORMATION:** Public Law 100–566, the "Federal Employees Leave Sharing Act of 1988," directs the Office of Personnel Management (OPM) to establish by regulation a 5-year experimental program under which the unused accrued annual leave of officers or employees of the Federal Government may be transferred for use by other officers or employees who need such leave because of a medical emergency. This authority will terminate on October 31, 1993. The program established by these regulations will replace the temporary leave transfer program established under Pub. L.'s 100–202 and 100–440.

These interim regulations incorporate some of the suggestions made in comments OPM received on the interim regulations governing the fiscal year 1988 temporary leave transfer program (53 FR 7325, March 8, 1988, and 53 FR 14775, April 26, 1988). The major differences between the voluntary leave transfer program authorized by Pub. L. 100–566 and the temporary leave transfer program authorized by Pub. L.'s 100–202 and 100–440 are the following:

*Definition of "medical emergency."* Under the new law and interim regulations, an employee experiencing a "medical emergency" (including a medical condition of a family member) is eligible to become a leave recipient under the voluntary leave transfer program. In addition, the interim regulations define the term "family member." Previously, an employee experiencing a "personal emergency" was eligible to participate in the temporary leave transfer program, and the term "family member" was not defined. (See §§ 630.901(a) and 630.902.)

*Agency response time for applications to become a leave recipient.* The new law and interim regulations now require an agency to make a determination on an application to become a leave recipient and provide written notice to the applicant of its determination within 10 days (excluding Saturdays, Sundays, and legal public holidays). Previously, the response time for agencies was 30 days. (See § 630.905 (d) and (e).)

*Interagency leave transfer.* The interim regulations now require the employing agency of the leave recipient to accept the transfer of annual leave from a donor employed in another agency if (1) the leave donor is a "family member" of the leave recipient; (2) the leave recipient's employing agency determines that the amount of annual leave donated within the agency may not be sufficient to meet the needs of the leave recipient; or (3) in the judgment of the leave recipient's employing agency, acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program. Previously, interagency transfer of leave was at the discretion of the leave recipient's employing agency and was permitted only when the leave recipient's employing agency determined that the amount of annual leave donated within the agency may not be sufficient to meet the needs of the leave recipient. (See § 630.906(f).)

*Accrual of annual and sick leave.* The new law and interim regulations limit the amount of annual and sick leave a leave recipient may accrue while using transferred leave to 5 days of annual and 5 days of sick leave, for use *after* the medical emergency terminates. Previously, there was no limit on the accrual of leave by a leave recipient. (See § 630.907.)

*Waiver of limitations on donation of annual leave.* The new law and interim regulations permit a waiver of the limitations on the amount of annual leave an employee may donate to a leave recipient in a given leave year. The interim regulations require each agency to establish written criteria for waiving these limitations in unusual circumstances. Previously, these limitations could not be waived. (See § 630.908(c).)

*Options for restoration of leave.* Under the new law and interim regulations, leave donors may elect to have unused donated annual leave restored during the current leave year or during the following leave year. In addition, leave donors may elect to donate restored leave in whole or part to another leave recipient. (See § 630.911(e).)

Finally, the new law and interim regulations require agencies to implement the new voluntary leave transfer program by April 30, 1989. Until an agency implements its new program, the current temporary leave transfer program authorized by Pub. L.'s 100–202 and 100–440 remains in effect. (See §§ 630.903 and 630.914.)

Pursuant to section 553(b)(3)(B) and (d)(3) of title 5, United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking and for making this amendment effective in less than 30 days. The notice and the 30-day delay in the effective date are being waived because of the need to facilitate the

implementation of the voluntary leave transfer program by Federal agencies.

**E.O. 12291, Federal Regulation**

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

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

**List of Subjects in 5 CFR Part 630**

Government employees.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

Accordingly, OPM is amending Part 630 of Title 5 of the Code of Federal Regulations as follows:

## PART 630—ABSENCE AND LEAVE

1. The authority citation for Part 630 is revised to read as set forth below:

**Authority:** 5 U.S.C. 6311; § 630.303 also issued under 5 U.S.C. 6133(a); § 630.501 and Subpart F also issued under E.O. 11228; Subpart G also issued under 5 U.S.C. 6305; Subpart H issued under 5 U.S.C. 6326; Subpart I also issued under 5 U.S.C. 6332 and Pub. L. 100–566.

2. In Part 630, Subpart I is revised to read as follows:

* * * * *

### Subpart I—Voluntary Leave Transfer Program

Sec.



### Subpart I—Voluntary Leave Transfer Program

#### § 630.901 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to set forth procedures and requirements for a voluntary leave transfer program under which the unused accrued annual leave of one agency officer or employee may be transferred for use by another agency officer or employee who needs such leave because of a medical emergency.

(b) *Applicability.* This subpart applies to officers and employees to whom subchapter I of chapter 63 of title 5, United States Code, applies.

#### § 630.902 Definitions.

"Agency" means—

(a) An "Executive agency," as defined in 5 U.S.C. 105;

(b) A "military department," as defined in 5 U.S.C. 102; or

(c) Any other entity of the Federal Government that employs officers or employees to whom subchapter I of chapter 63 of title 5, United States Code, applies. "Agency" does not include the Central Intelligence Agency; the Defense Intelligence Agency; the National Security Agency; the Federal Bureau of Investigation; or any other Executive agency or unit thereof, as determined by the President, whose principal function is the conduct of foreign intelligence or counterintelligence activities.

"Employee" has the meaning given that term in 5 U.S.C. 6301(2), excluding an individual employed by the government of the District of Columbia.

"Family member" means the following relatives of the employee:

(a) Spouse, and parents thereof;

(b) Children, including adopted children, and spouses thereof;

(c) Parents;

(d) Brothers and sisters, and spouses thereof; and

(e) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

"Leave donor" means an employee whose voluntary written request for transfer of annual leave to the annual leave account of a leave recipient is approved by his or her own employing agency.

"Leave recipient" means a current employee for whom the employing agency has approved an application to receive annual leave from the annual leave accounts of one or more leave donors.

"Medical emergency" means a medical condition of an employee or a family member of such employee that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

"Paid leave status under subchapter I" means the administrative status of an employee while the employee is using annual or sick leave accrued or accumulated under subchapter I of chapter 63 of title 5, United States Code.

"Transferred leave status" means the administrative status of an employee while the employee is using transferred leave under this subpart.

#### § 630.903 Administrative procedures.

Each Federal agency shall establish procedures to administer the voluntary leave transfer program established by the Office of Personnel Management under Public Law 100–566 and this subpart by April 30, 1989.

#### § 630.904 Application to become a leave recipient.

(a) An employee may make written application to his or her employing agency to become a leave recipient. If an employee is not capable of making application on his or her own behalf, a personal representative of the potential leave recipient may make written application on his or her behalf.

(b) Each application shall be accompanied by the following information concerning each potential leave recipient:

(1) The name, position title, and grade or pay level of the potential leave recipient;

(2) The reasons why transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency affecting the potential leave recipient;

(3) Certification from one or more physicians, or other appropriate experts, with respect to the medical emergency, if the potential leave recipient's employing agency so requires; and

(4) Any additional information that may be required by the potential leave recipient's employing agency.

(c) If the potential leave recipient's employing agency requires that a potential leave recipient obtain certification from two or more sources under paragraph (b)(3) of this section, the potential leave recipient's employing agency shall ensure, either by direct payment to the expert involved or by reimbursement, that the potential leave recipient is not required to pay for the expenses associated with obtaining certification from more than one source.

#### § 630.905 Approval of application to become a leave recipient.

(a) The potential leave recipient's employing agency shall review an application to become a leave recipient under procedures established by the employing agency for the purpose of determining that the potential leave

recipient is or has been affected by a "medical emergency," as defined in § 630.902 of this part.

(b) Before approving an application to become a leave recipient, the potential leave recipient's employing agency shall determine that the absence from duty without available paid leave because of the medical emergency is (or is expected to be) at least 80 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's biweekly scheduled tour of duty).

(c) In making a determination as to whether a "medical emergency" is likely to result in a substantial loss of income, an agency shall not consider factors other than whether the absence from duty without available paid leave is (or is expected to be) at least 80 hours.

(d) If the application is approved, the employing agency shall notify the leave recipient (or the personal representative who made application on behalf of the leave recipient), within 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date the employing agency established its administrative procedures, if that date is later), that—

(1) The application has been approved; and

(2) Other employees of the leave recipient's employing agency may request the transfer of annual leave to the account of the leave recipient.

(e) If the application is not approved, the employing agency shall notify the applicant (or the personal representative who made application on behalf of the potential leave recipient), within 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date the application was received (or the date the employing agency established its administrative procedures, if that date is later)—

(1) That the application has not been approved; and

(2) Of the reasons for its disapproval.

**§ 630.906 Transfer of annual leave.**

(a) An employee may submit a voluntary written request to his or her own employing agency that a specified number of hours of his or her accrued annual leave be transferred from his or her annual leave account to the annual leave account of a specified leave recipient. Except as provided in paragraph (f) of this section, annual leave may be transferred only to a leave recipient employed by the leave donor's employing agency.

(b) Except as provided in paragraph (d) of this section and subject to the limitations on the amount of annual leave that may be donated by a leave donor under § 630.908 of this part, all or any portion of the annual leave requested under paragraph (a) of this section may be transferred to the annual leave account of the specified leave recipient under procedures established by the leave recipient's employing agency.

(c) An agency having employees who earn and use annual leave on the basis of an uncommon tour of duty shall establish procedures for administering the transfer of annual leave to or from such employees under this subpart.

(d) A leave recipient's employing agency shall not transfer annual leave to a leave donor's immediate supervisor.

(e) Annual leave transferred under this section may be substituted retroactively for periods of leave without pay (LWOP) or used to liquidate an indebtedness for advanced annual or sick leave granted on or after a date fixed by the leave recipient's employing agency as the beginning of the period of medical emergency for which LWOP or advanced annual or sick leave was granted.

(f) A leave recipient's employing agency shall accept the transfer of annual leave from leave donors employed by one or more other agencies when—

(1) A family member of a leave recipient is employed by another agency and requests the transfer of annual leave to the leave recipient;

(2) In the judgment of the leave recipient's employing agency, the amount of annual leave transferred from leave donors employed by the leave recipient's employing agency may not be sufficient to meet the needs of the leave recipient; or

(3) In the judgment of the leave recipient's employing agency, acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program.

(g) The employing agency of a leave donor who wishes to donate annual leave to a leave recipient in another agency shall verify the availability of annual leave in the leave donor's annual leave account, determine that the amount of annual leave to be donated does not exceed the limitations under § 630.908 of this part, and ascertain that the leave recipient's employing agency has made any determination that may be required under paragraph (f) of this section. Upon satisfying these requirements, the leave donor's employing agency shall—

(1) Reduce the amount of annual leave credited to the leave donor's annual leave account, as appropriate; and

(2) Notify the leave recipient's employing agency in writing of the amount of annual leave to be credited to the leave recipient's annual leave account.

**§ 630.907 Accrual of annual and sick leave.**

(a) Except as otherwise provided in this section, while an employee is in a transferred leave status, annual and sick leave shall accrue to the credit of the employee at the same rate as if the employee were then in a paid leave status under subchapter I of chapter 63 of title 5, United States Code, except that—

(1) The maximum amount of annual leave that may be accrued by an employee while in a transferred leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty); and

(2) The maximum amount of sick leave that may be accrued by an employee while in a transferred leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty).

(b) Any annual or sick leave accrued by an employee under this section—

(1) Shall be credited to annual or sick leave account, as appropriate, separate from any leave account of the employee under subchapter I of chapter 63 of title 5, United States Code; and

(2) Shall not become available for use by the employee, and may not otherwise be taken into account under subchapter I of chapter 63 of title 5, United States Code, until, under paragraph (c) of this section, it is transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code.

(c) Any annual or sick leave accrued by an employee under this section shall be transferred to the appropriate leave account of the employee under subchapter I of chapter 63 of title 5, United States Code, effective as of the beginning of the first applicable pay period beginning after the date on which the employee's medical emergency

terminates as described in § 630.910(a)(2) and (3) of this part.

(d) If the employee's medical emergency terminates as described in § 630.910(a)(1) of this part, no leave shall be credited to the employee under this section.

**§ 630.908 Limitations on donation of annual leave.**

(a) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made.

(b) In the case of a leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year under 5 U.S.C. 6304(a), the maximum amount of annual leave that may be donated during the leave year shall be the lesser of—

(1) One-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made; or

(2) The number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

(c) Each agency shall establish written criteria for waiving the limitations on donating annual leave under paragraphs (a) and (b) of this section is unusual circumstances. Any such waiver shall be documented in writing.

**§ 630.909 Use of transferred annual leave.**

(a) A leave recipient may use annual leave transferred to his or her annual leave account under § 630.906 of this part in the same manner and for the same purposes as if he or she had accrued the annual leave under 5 U.S.C. 6303, except that any annual or sick leave accrued or accumulated (prior to the date the application to become a leave recipient was approved) and available for use during the medical emergency must be exhausted before any transferred annual leave may be used.

(b) The approval and use of transferred annual leave shall be subject to all of the conditions and requirements imposed by chapter 63 of title 5, United States Code, Part 630 of this chapter, and the employing agency on the approval and use of annual leave accrued under 5 U.S.C. 6303, except that transferred annual leave may accumulate without regard to the limitation imposed by 5 U.S.C. 6304(a).

(c) Transferred annual leave may not be—

(1) Transferred to another leave recipient under this subpart, except as provided in § 630.911(e)(3) of this part;

(2) Included in a lump-sum payment under 5 U.S.C. 5551 or 5552; or

(3) Made available for recredit under 5 U.S.C. 6306 upon reemployment by a Federal agency.

**§ 630.910 Termination of medical emergency.**

(a) The medical emergency affecting a leave recipient shall terminate—

(1) When the leave recipient's Federal service is terminated;

(2) At the end of the biweekly pay period in which the leave recipient's employing agency receives written notice from the leave recipient or from a personal representative of the leave recipient that the leave recipient is no longer affected by a medical emergency;

(3) At the end of the biweekly pay period in which the leave recipient's employing agency determines, after written notice and opportunity for the leave recipient (or, if appropriate, a personal representative of the leave recipient) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or

(4) At the end of the biweekly pay period in which the leave recipient's employing agency receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient under the Civil Service Retirement System or the Federal Employees' Retirement System.

(b) The leave recipient's employing agency shall continuously monitor the status of the medical emergency affecting the leave recipient to ensure that the leave recipient continues to be affected by a medical emergency.

(c) When the medical emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to the leave recipient may be granted, and any unused transferred annual leave remaining to the credit of the leave recipient shall be restored to the leave donors under § 630.911 of this part.

**§ 630.911 Restoration of transferred annual leave.**

(a) Under procedures established by the leave recipient's employing agency, any transferred annual leave remaining to the credit of a leave recipient when the medical emergency terminates shall be restored, as provided in paragraphs (b) and (c) of this section and to the extent administratively feasible, by transfer to the annual leave accounts of leave donors who, on the date leave restoration is made, are employed by a Federal agency and subject to chapter 63 of title 5, United States Code.

(b) The amount of unused transferred annual leave to be restored to each leave donor shall be determined as follows:

(1) Divide the number of hours of unused transferred annual leave by the total number of hours of annual leave transferred to the leave recipient;

(2) Multiply the ratio obtained in paragraph (b)(1) of this section by the number of hours of annual leave transferred by each leave donor eligible for restoration under paragraph (a) of this section; and

(3) Round the result obtained in paragraph (b)(2) of this section to the nearest increment of time established by the leave donor's employing agency to account for annual leave.

(c) If the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored, no unused transferred annual leave shall be restored. In no case shall the amount of annual leave restored to a leave donor exceed the amount transferred to the leave recipient by the leave donor.

(d) If the leave donor retires from Federal service, dies, or is otherwise separated from Federal service before the date unused transferred annual leave can be restored, the employing agency of the leave recipient shall not restore the unused transferred annual leave.

(e) At the election of the leave donor, unused transferred annual leave restored to the leave donor under paragraph (a) of this section may be restored by—

(1) Crediting the restored annual leave to the leave donor's annual leave account in the current leave year;

(2) Crediting the restored annual leave to the leave donor's annual leave account effective as of the first day of the first leave year beginning after the date of election; or

(3) Donating such leave in whole or part to another leave recipient.

(f) If a leave donor elects to donate only part of his or her restored leave to another leave recipient under paragraph (e)(3) of this section, the donor may elect to have the remaining leave credited to the leave donor's annual leave account under paragraph (e)(1) or (e)(2) of this section.

(g) Transferred annual leave restored to the account of a leave donor under paragraph (e) (1) or (2) of this section shall be subject to the limitation imposed by 5 U.S.C. 6304(a) at the end of the leave year in which the restored leave is credited to the leave donor s annual leave account.

**§ 630.912 Prohibition of coercion.**

(a) An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using annual leave under this subpart.

(b) For the purpose of paragraph (a) of this section, the term "intimidate, threaten, or coerce" includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).

**§ 630.913 Records and reports.**

(a) The Office of Personnel Management (OPM) shall require agencies to maintain records and may require agencies to report pertinent information to OPM concerning the administration of the voluntary leave transfer program for the purpose of evaluating the desirability, feasibility, and cost of a voluntary leave transfer program.

(b) Agencies shall maintain the following information:

(1) The number of applications approved for medical emergencies affecting the employee and the number of applications approved for medical emergencies affecting an employee's family member;

(2) The grade or pay level of each leave recipient and leave donor;

(3) The total amount of annual leave transferred to each leave recipient's annual leave account;

(4) The total amount of transferred annual leave used by each leave recipient;

(5) The estimated direct and indirect costs of processing leave transfer requests, transferring leave between the accounts of leave donors and leave recipients, monitoring the use of transferred leave, restoring unused leave to the accounts of leave donors, and other activities related to administering the voluntary leave transfer program; and

(6) Any additional information OPM may require.

**§ 630.914 Continuation of temporary leave transfer program.**

Until each agency establishes procedures to administer the voluntary leave transfer program established under 5 U.S.C. 6332, Pub. L. 100–566, and this subpart, the temporary leave transfer program authorized by Public Laws 100–102 and 100–440 shall remain in effect.

**§ 630.915 Termination of voluntary leave transfer program.**

(a) The voluntary leave transfer program shall terminate on October 31, 1993.

(b) If the voluntary leave transfer program terminates before the termination of the medical emergency affecting a leave recipient, any annual leave transferred to the leave recipient before the termination of the voluntary leave transfer program shall remain available for use by the leave recipient until the termination of the medical emergency.

[FR Doc. 89–2173 Filed 1–30–89; 8:45 am]
BILLING CODE 6325–01–M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 201

**[Docket No. 89–001]**

### Federal Seed Act Regulations

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Announcement of effective date of interim rule.

**SUMMARY:** This document announces an effective date of January 1, 1989, for the interim rule removing the origin staining requirements for seed of alfalfa or red clover grown in Canada and imported into the United States. The interim rule, previously published in the **Federal Register**, provided that it would become effective upon the entry into force of the United States-Canada Free-Trade Agreement. The Agreement entered into force on January 1, 1989, and accordingly, the interim rule is effective that date.

**EFFECTIVE DATE:** The effective date of the interim rule and request for comments published in the **Federal Register** on December 30, 1988 (53 FR 52973) is January 1, 1989. Written comments must be postmarked or received on or before February 28, 1989.

**ADDRESSES:** Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88–208. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Frank E. Cooper, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8393.

**SUPPLEMENTARY INFORMATION:**

**Background**

In an interim rule published in the **Federal Register** on December 30, 1988 (53 FR 52973), Docket No. 88–208, we amended the Federal Seed Act Regulations (the regulations) by removing the requirement that one percent of each container of seed of alfalfa or red clover grown in the Dominion of Canada and imported into the United States be stained violet. In that document, we explained that the rule would become effective upon the entry into force of the United States-Canada Free-Trade Agreement (FTA) and that we would publish a document in the **Federal Register** announcing the effective date of rule. We further stated that the Office of the United States Trade Representative would confirm in a **Federal Register** notice the precise date of the FTA's entry into force. We anticipated that the FTA would enter into force on January 1, 1989.

In a notice published in the **Federal Register** on January 6, 1989 (54 FR 505), the United States Trade Representative confirmed that the FTA entered into force on January 1, 1989. Accordingly, this document announces January 1, 1989, as the effective date of the interim rule.

We will consider comments postmarked or received on or before February 28, 1989.

Done in Washington, DC, this 26th day of January 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89–2226 Filed 1–30–89; 8:45 am]
BILLING CODE 3410–34–M

### Agricultural Marketing Service

### 7 CFR Part 979

### Melons Grown in South Texas; Expenses and Assessment Rate

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

**ACTION:** Final rule.

**SUMMARY:** This final rule regarding South Texas melons authorizes expenses and establishes an assessment rate under Marketing Order 979 for the 1988–89 fiscal period. Authorization of this budget will allow the South Texas

Melon Committee to incur expenses reasonable and necessary to administer the program. Funds for this program are derived from assessments on handlers.

**EFFECTIVE DATE:** October 1, 1988 through September 30, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 156 and Marketing Order No. 979 (7 CFR Part 979), regulating the handling of melons grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

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

There are approximately 35 handlers of Texas melons under this marketing order, and approximately 70 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The marketing order requires that an annual budget of expenses be prepared by the committee and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of melons. They are familiar with the committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee is derived by dividing anticipated expenses by expected shipments of regulated melons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses. A recommended budget and rate of assessment is usually acted upon by the committee before the season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approval must be expedited so that the committee will have funds to pay its expenses.

The South Texas Melon Committee met on November 1, 1988, and unanimously recommended a 1988–89 budget of $308,438. This total exceeds last year's budget of $251,811 by $56,627, reflecting an increase in production research project expenses from $50,723 to $104,398. Administrative expenses are up $3,517 from last year to $84,040, and promotion expenses have been reduced $565 to $120,000.

The committee also unanimously recommended an assessment rate of 4 cents per carton, down one cent from the 1987–88 rate. The recommended assessment rate, when applied to anticipated regulated shipments of 7.7 million cartons, would yield $308,000 in assessment revenue. This amount, when added to $438 from the reserve, would be adequate to cover budgeted expenses. The current reserve minus $438 would result in a yearend reserve of $382,353.This total is within the limit of two fiscal periods' expenses allowed by the order.

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

A proposed rule was published in the **Federal Register** (53 FR 49153, December 6, 1988). That document contained a proposal to add § 979.211 to establish expenses and an assessment rate for the South Texas Melon Committee. The proposal provided that interested persons could file comments through December 16, 1988. None were received.

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

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

**List of Subjects in 7 CFR Part 979**

Marketing agreements and orders, melons (Texas).

For the reasons set forth in the preamble, 7 CFR Part 979 is hereby amended as follows:

## PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979 continues to read as follows:

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

2. Section 979.211 is added to read as follows:

**§ 979.211 Expenses and assessment rate.**

Expenses of $308,438 by the South Texas Melon Committee are authorized and an assessment rate of $0.04 per carton of regulated melons is established for the fiscal period ending September 30, 1989. Unexpended funds may be carried over as a reserve.

Dated: January 26, 1989.

**William J. Doyle,**

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89–2222 Filed 1–30–89; 8:45 am]

**BILLING CODE 3410–02–M**

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## Rural Electrification Administration

## 7 CFR Part 1772

## REA Bulletin 345–22, REA Specification for Voice Frequency Loading Coils, PE–26

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Rural Electrification Administration (REA) hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and

Specifications by issuing revised Bulletin 345–22, REA Specification for Voice Frequency Loading Coils, PE–26. The specification has been revised to: (1) Allow use of mini loading coils; (2) establish performance requirements for mini loading coils; (3) allow use of a universal loading coil; (4) clarify the quantity of test samples; (5) eliminate fuel oil from the environmental tests; and (6) update the specification to reflect current industry standards. This action allows REA borrowers to install a full range of loading coils at reduced loading coil costs without degradation in loading coil quality. The revision will not adversely affect load coil manufacturers because no design changes in presently manufactured products will be required.

**EFFECTIVE DATE:** January 19, 1989.

**FOR FURTHER INFORMATION CONTACT:** W. F. Albrecht, Director, Telecommunications Staff Division, Rural Electrification Administration, Room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone (202) 382–8663. The Impact Analysis describing the options considered in developing this rule and the impact on implementing each option is available on request from the above office.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 *et seq.*), REA hereby amends 7 CFR 1772.97, Incorporation by Reference of Telephone Standards and Specifications, by incorporating by reference a revised Bulletin 345–22 (previous issue dated October 1978), REA Specification for Voice Frequency Loading Coils, PE–26. This incorporation by reference was approved by the Director of the Federal Register on December 30, 1983. These materials are incorporated as they existed on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**. Copies of the bulletin are available upon request from the address stated above. It is also available for inspection at the Office of the Federal Register Information Center, Room 8401, 1101 L Street, N.W., Washington, DC 20408.

This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and, therefore, has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 432 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This regulation contains no information or record keeping requirement which requires approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Background**

REA has issued a series of publications titled "bulletins" which serve to implement the policy, procedures, and requirements for administering its loans and loan guarantee programs and the security instruments which provide for and secure REA financing. In the bulletin series REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is revising Bulletin 345–22, REA Specification for Voice Frequency Loading Coils, PE–26. This specification was last issued in October 1978. The PE–26 designation is an arbitrary set of letters and numbers assigned by REA to identify telephone materials and equipment specifications.

The controlling objective in designing a telephone system is to provide adequate transmission between any two subscribers wherever located. Loading coils are used in situations where the estimated level of transmission for a proposed subscriber line design does not meet the limits necessary to provide satisfactory two-way conversations, and where it has been found that other means of improving the transmission are not satisfactory from an economic point of view in comparison with the loaded subscriber line.

Requirements for the design and electrical performance of mini loading coils resulted from extensive laboratory testing by REA personnel. The current REA loading coil specification does not permit the use of mini loading coils. This limitation was included because the performance of mini loading coils had not been proven, and further surge current testing was needed. The testing has been completed and mini loading coils have proven satisfactory in field applications.

Limits were set forth in the present specification which put restrictions on the application of loading coil assemblies with filled plastic cable stubs. The cable manufacturers are now making filled cable stubs capable of being installed in any application without danger of the filling compound dripping. The revised specification incorporates a universal loading coil assembly for all applications.

The quantity of loading coils to be tested by the manufacturers was not clear in the present specification. The revision eliminates this ambiguity.

One of the environmental tests in the existing specification requires the exposure of the load coil filling compound to fuel oil, and that the specimen cannot increase in weight by more than ten percent as a result of the exposure. It is not known that this is not a viable test and the test has been eliminated in the revision.

To summarize, the revision will: (1) Establish REA requirements for both standard and mini loading coils without affecting the current designs or manufacturing techniques of loading coil manufacturers, (2) provide REA borrowers use of a universal loading coil assembly for all types of installations at a reduced cost, (3) allow borrowers to select the type of loading coil which best meets their need, and (4) benefit the REA borrower in cost savings from the use of mini loading coils. This would be without any degradation in voice frequency transmission.

A Notice of Proposed Rulemaking was published in the **Federal Register** on August 19, 1986, Volume 51, No. 160, Page 29558. Several interested parties commented on this proposal. A summary of the areas addressed in their comments is as follows:

1. Inductance tolerance limits of mini loading coils should be increased.

2. The dc resistance of the 66 mH mini loading coil should be decreased to 7.5 ohms.

3. The dialectric strength and dialectric strength design capability requirements for mini loading coils should be decreased to 3 kv dc and 5 kv dc, respectively.

4. Current surge requirements for the mini loading coils should be decreased

to 1000 amperes peak for the 66 mH mini coils and a 800 amperes peak for the 88 mH mini coil.

5. The overall outside diameter of the mini loading coils should be increased to a maximum of 2.0 inches.

REA's response to these comments is summarized as follows:

1. Since REA is aware that mini loading coils having wider inductance tolerance limits than those shown in the specification are providing satisfactory field performance in non-REA telephone systems, REA will widen the inductance tolerance limits. The new inductance tolerance limits for the mini coils will be as follows:

*Inductance—Mini Coil*

66 mH coils 66±2.3 mH
88 mH coils 88±3.7 mH

2. REA will not decrease the dc resistance of the 66 mH mini coil from 8.0 to 7.5 ohms because no technical justification for the change was presented by the commentator.

3. The reason for the requested change in the protection requirements was that more damage to the wire on the inside diameter of the coil would occur as a result of wire type, number, or wire turns and a faster fill of the "window" thru which the shuttle and slider pass while the coil is being wound. In addition, the commentator indicated the number of wire turns around the core to achieve the required inductance is dependent upon the inductance tolerance limit.

Since REA is going to widen the inductance tolerance, REA inferred from the comment that the number of wire turns can be reduced resulting in a slower filling of the "window" which in turn will reduce the possibility of damage to the wire on the inside diameter of the coil. Therefore, REA will not decrease the dielectric strength and dielectric strength capability requirements for the mini loading coils.

4. REA will not decrease the current surge requirements of the mini coils to the commentator's recommended values because service affecting problems as a result of damage from lightning strikes on long rural subscriber routes is our main concern with these products.

Although REA did not decrease the current surge requirements as recommended by the commentator, REA will change the surge value of the 66 mH mini coil from 1900 Amps (peak) to 1800 Amps (peak) to bring the current ratio of the mini coil in line with the current ratio of the standard coils.

5. Since REA is aware that mini coils are now being manufactured and supplied to the telephone industry having a maximum outside diameter of 2.0 inches, which exceeds the specification requirement, and are providing satisfactory field performance, REA will change the proposed 1.5 inch maximum outside diameter to 2.0 inch maximum outside diameter.

**List of Subjects in 7 CFR Part 1772**

Loan Programs—Communications, Telecommunications, Telephone. Incorporation by reference.

**Part 1772—[AMENDED]**

In view of the above, REA hereby amends 7 CFR Part 1772 by issuing a revised Bulletin 345–22.

1. The authority citation for Part 1772 continues to read as follows:

**Authority:** 7 U.S.C. 901 et seq., 7 U.S.C. 1921 *et seq.*

2. The table in § 1772.97 is amended by revising the entry for Bulletin 345–22 to read as follows:

**§ 1772.97 Incorporation by reference of telephone standards and specifications.**

* * * * *

| REA Bulletin No. | Specification No. | Date last issued | Title of standard or specification |
|---|---|---|---|
| 345–22 | PE–26 | Jan. 1989 | REA specification for voice frequency loading coils. |

* * * * *

Dated: January 19, 1989.

**Jack Van Mark,**

*Acting Administrator.*

[FR Doc. 89–1742 Filed 1–30–89; 8:45 am]

BILLING CODE 3410–15–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 210

**[INS Number: 1118–88]**

### Special Agricultural Workers

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** Section 210(b)(3)(B)(ii) of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, provides for the Attorney General to promulgate regulations relative to securing timely production of employment records from employers or farm labor contractors under the Special Agricultural Worker (SAW) program. This rule adopts as final the interim rule published at 53 FR 27335 (July 20, 1988) with changes resulting from a review of the comments received and the Service's operational experience with the SAW program.

**EFFECTIVE DATE:** January 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Aaron Bodin, Deputy Assistant Commissioner, Special Agricultural Workers (SAW), (202) 786–3658.

**SUPPLEMENTARY INFORMATION:** New § 210.3(b)(4) is added to establish procedures to secure the timely production of employment records from employers or farm labor contractors under the Special Agricultural Worker (SAW) program. This rule provides for the use of regulatory procedures already in place at 8 CFR 287.4(a)(2) which enable the Service to "issue a subpoena requiring the attendance of witnesses or the production of documentary evidence, or both, for use in any proceeding under this Chapter, other than under Part 335 of this Chapter, or any application made ancillary to the proceedings."

Written comments were received from a number of individuals and organizations in response to the interim rule published at 53 FR 27335 on July 20, 1988. Several commentors wrote on behalf of a variety of employers and growers associations, as well as special interest groups concerned with the rights of migrant and seasonal agricultural workers. The Service appreciates the constructive intent of the comments, suggestions, and recommendations submitted and wishes to thank all parties for their interest.

All commentors agreed that a need exists to compel production of employment records from employers who are reluctant or unwilling to

provide such records to SAW applicants. However, several commentors objected to the procedures to secure employment records outlined in the interim rule as being overburdensome for the applicant, and inconsistent with Congressional intent in legislating the SAW provisions of the Immigration Reform and Control Act of 1986 (IRCA).

Concern was expressed that the Service would resort to the subpoena issuance process only after an application has been filed, an interview has been conducted, the applicant's testimony appears credible and the Service has determined that the application cannot be adjudicated in the absence of the employment records. Some commentors suggested that this is too late in the application process to benefit the applicant and recommended that the subpoena issuing process be made available at the outset of the application process when the need to establish a claim to SAW status is most critical. The Service does not take its subpoena power lightly and seeks to ensure that every attempt has been made to secure employment records before it issues a subpoena to an employer or farm labor contractor. The interview is necessary to determine if the application is approvable in the absence of the employment records or, conversely, if it is deniable for reasons having to do with other than employment (e.g., if applicant is not admissible to the United States as an immigrant).

Several commentors objected to the prerequisite that the Service must determine that the application cannot be adjudicated in the absence of the employer or farm labor contractor records. They stated that if an applicant has given credible testimony in support of his or her claim for SAW status at the interview, the Service should approve the application, notwithstanding the absence of employment records. Both the statute and governing regulations require documentary evidence of employment apart from the applicant's own testimony. The intention of the Service in this provision is to require the production of records only if the application cannot be approved without them. That is, if documentation other than employment records is presented from which the performance of qualifying employment may be inferred, the application would be approved, if otherwise approvable, without resort to the use of subpoena authority. The Service trusts that the intent of this provision will be clarified by substituting the term "approved" for "adjudicated".

The majority of commentors expressed objection to granting District Directors discretion in issuing a subpoena to uncooperative employers and urged that District Directors be required to issue a subpoena to employers who fail to produce employment records after unsuccessful attempts for voluntary compliance. One commentor supported the exercise of the District Director's discretion in this area and suggested that the Service establish some prerequisites to be met by the applicant before an employer is subpoenaed to produce employment records. The Service has carefully considered these comments and is modifying its positions to require District Directors to issue a subpoena in cases where the applicant has met all of the conditions set forth in this final rule and attempts for voluntary compliance have been unsuccessful.

Some commentors suggested that the final rule state explicitly what types of employment records the Service will try to secure. They also stated that the demand for employment information should not be limited to employment records, but should include affidavits, other written statements, oral communications, depositions and any other form of evidence. The statute provides that these regulations shall secure the timely production of records "If an employer or farm labor contractor employing such alien has kept proper and adequate records respecting such employment." The Service does not want to unintentionally limit the types of records that would be subject to this regulation by specifically listing or defining them. Nor does the Service believe that expansion of the statutory authority by compelling the production of other forms of evidence is warranted. In its attempt to secure voluntary compliance, the Service will invite employers and contractors who cannot provide records to provide affidavits confirming the alleged employment of former employees. Affidavits are, under the governing regulations, acceptable evidence of employment. The record of correspondence, including any affidavits provided, will be used in adjudicating the performance of qualifying employment.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR Part 299.5.

**List of Subjects in 8 CFR Part 210**

Aliens, Permanent resident status, Reporting and recordkeeping requirements, Temporary resident status.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

## PART 210—SPECIAL AGRICULTURAL WORKERS

1. The authority citation for Part 210 is revised to read as follows:

**Authority:** 8 U.S.C. 1103, 1160, 8 CFR Part 2.

2. In § 210.3, paragraph (b)(4) is revised to read as follows:

**§ 210.3 Eligibility.**

* * * * *

(b) * * *

(4) *Securing SAW employment records.* When a SAW applicant alleges that an employer or farm labor contractor refuses to provide him or her with records relating to his or her employment and the applicant has reason to believe such records exist, the Service shall attempt to secure such records. However, prior to any attempt by the Service to secure the employment records, the following conditions must be met: a SAW application (Form I–700) must have been filed; an interview must have been conducted; the applicant's testimony must support credibly his or her claim; and, the Service must determine that the application cannot be approved in the absence of the employer or farm labor contractor records. Provided each of these conditions has been met, and after unsuccessful attempts by the Service for voluntary compliance, the District Directors shall

utilize section 235 of the Immigration and Nationality Act and issue a subpoena in accordance with 8 CFR 287.4, in such cases where the employer or farm labor contractor refuses to release the needed employment records.

* * * * *

**Richard E. Norton,**

*Associate Commissioner, Examinations Immigration and Naturalization Service.*

Dated: November 9, 1988.

[FR Doc. 89-2202 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 77

**[Docket No. 88-195]**

### Tuberculosis in Cattle and Bison: State Designation

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule.

**SUMMARY:** We are affirming without change an interim rule that amended the regulations governing the interstate movement of cattle and bison because of tuberculosis by raising the designation of the state of Arkansas from a modified accredited state to an accredited-free state.

**EFFECTIVE DATE:** March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ralph L. Hosker, Senior Staff Veterinarian, Cattle Diseases and Surveillance, VS, APHIS, USDA, Room 734, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436-8438.

**SUPPLEMENTARY INFORMATION:**

#### Background

In an interim rule published in the **Federal Register** and effective September 20, 1988 (53 FR 36432-36433, Docket Number 88-132), we amended § 77.1 of the tuberculosis regulations by removing Arkansas from the list of modified accredited states and adding it to the list of accredited-free states. Comments on the interim rule were required to be postmarked or received on or before November 21, 1988. We did not receive any comments. The facts in the interim rule still provide a basis for the rule.

#### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $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 cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of the state of Arkansas may affect the marketability of cattle and bison from the state since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free states. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other states, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

#### List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, 9 CFR Part 77 is amended as follows:

### PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR Part 77 that was published at 53 FR 36432-36433 on September 20, 1988.

**Authority:** 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51 and 371.2(d).

Done at Washington, DC, this 26th day of January 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89-2227 Filed 1-30-89; 8:45 am]

BILLING CODE 3410-34-M

### 9 CFR Part 77

**[Docket No. 89-004]**

### Tuberculosis in Cattle and Bison; State Designation

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule.

**SUMMARY:** We are amending the regulations concerning the interstate movement of cattle and bison because of tuberculosis by raising the designation of Alabama from a modified accredited state to an accredited-free state. We have determined that Alabama meets the criteria for designation as an accredited-free state.

**DATES:** Interim rule effective January 31, 1989. Consideration will be given only to comments postmarked or received on or before April 3, 1989.

**ADDRESSES:** Send an original and two copies of written comments to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-004. Comments received may be inspected at Room 1141 of the South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ralph L. Hosker, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 734, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7717.

**SUPPLEMENTARY INFORMATION:**

#### Background

The "Tuberculosis" regulations contained in 9 CFR Part 77 (referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. The requirements of the regulations

concerning the interstate movement of cattle and bison not known to be affected with, or exposed to, tuberculosis are based on whether the cattle and bison are moved from jurisdictions designated as accredited-free states, modified accredited states, or nonmodified accredited states.

The criteria for determining the status of states (the term state is defined to mean any state, territory, the District of Columbia, or Puerto Rico) or portions of states are contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," 1985 edition, which has been made part of the regulations via incorporation by reference. The status of either states or portions of states is based on the rate of tuberculosis infection present and the effectiveness of a tuberculosis control and eradication program.

Before publication of this interim rule, Alabama was designated in § 77.1 of the regulations as a modified accredited state. However, Alabama now meets the requirements for designation as an accredited-free state. Therefore, we are amending the regulations by removing Alabama from the list of modified accredited states in § 77.1 and adding it to the list of accredited-free states in that section.

### Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that good cause exists for publishing this rule without prior opportunity for public comment. It is necessary to change the regulations so that they accurately reflect the current tuberculosis status of Alabama as an accredited-free state. This will provide prospective cattle and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free states.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these circumstances, there is good cause under 5 U.S.C. 553 to make it effective upon publication. We will consider comments postmarked or received within 60 days of publication of this interim rule in the **Federal Register**. As soon as possible after the comment period closes, we will publish another document in the **Federal Register** discussing any comments we receive and any amendments we make to the rule as a result of the comments.

### Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in comformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $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 cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle and bison moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Alabama may affect the marketability of cattle and bison from the state, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free states. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other states, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Supart V.)

### List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR Part 77 as follows:

## PART 77—TUBERCULOSIS

1. The authority citation for Part 77 continues to read as follows:

**Authority:** 21 U.S.C. 111, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

### § 77.1 [Amended]

2. Section 77.1, paragraph (2) of the definition for "Modified accredited state" is amended by removing "Alabama,".

3. Section 77.1, paragraph (2) of the definition for "Accredited-free state" is amended by adding "Alabama," immediately before "Alaska,".

Done in Washington, DC, this 26th day of January 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89–2225 Filed 1–30–89; 8:45 am]

BILLING CODE 3410-34-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 88–NM–106–AD; Amdt. 39–6125]**

## Airworthiness Directives; Airbus Industrie Model A300–600 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300–600 series airplanes, which requires repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary. This amendment is prompted by reports of cracks found during routine inspection of an airplane of similar design. This condition, if not corrected, could lead to separation of the door from the airplane and subsequent rapid decompression.

**EFFECTIVE DATE:** March 7, 1989.

**ADDRESSES:** The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Airbus Industrie Model A300–600 series airplanes, which requires repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary, was published in the **Federal Register** on August 31, 1988 (53 FR 33498).

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

One commenter supported the proposed rule.

The other commenter supported the proposed rule, but suggested that the inspections required for the Model A300, A310, and A300–600 series airplanes should be addressed in one AD action, since the parallel French Airworthiness Directive encompassed all three airplanes in one document. The FAA does not concur. Since each required inspection and modification are described in separate service bulletins for each airplane, the FAA has determined that addressing the requirements for each airplane model in separate rulemaking actions will pose less confusion to affected operators.

Since service bulletins are always subject to change, the commenter suggested that, whenever the latest issue of the service bulletin is cited in the final rule, the words "or later approved revision" should be added. The FAA does not concur. Since service bulletins issued by foreign manufacturers and revisions thereto are not subject to approval by the FAA, use of such a phrase would be inappropriate. Furthermore, reference in AD's to future service bulletins is contrary to FAA policy. However, later revisions of the service bulletin may be used if they are approved as an alternate means of compliance, as provided by paragraph C. of the final rule.

This commenter also noted that all the service bulletins cited in the Notice have been revised, and the final rule should cite the latest revision to the service bulletins. The FAA concurs. Since the issuance of the Notice, Airbus Industrie has issued Service Bulletin A300–53–6024, Revision 1, dated July 8, 1988, and Service Bulletin A300–53–6019, Revision 3, dated October 13, 1988, which clarify and update the procedures for the inspections and the modifications. Paragraphs A. and B. of the final rule have been revised to reflect the latest revision to these service bulletins. The FAA has determined that these changes will not increase the economic burden on any operator, nor will they increase the scope of the AD.

The commenter also suggested that a separate paragraph be added to the final rule to require operators to contact the manufacturer for repair instructions if cracks exceeding 0.8 inch are found. The FAA does not concur, since to do so would be delegating FAA rulemaking authority to the manufacturer. Moreover, the FAA has determined that all cracks equal to or greater than 0.8 inch must be repaired prior to further flight, as was proposed in the Notice.

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

It is estimated that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,080.

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.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($360). A final evaluation has been prepared for this regulation and has been placed in the docket.

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

Aviation safety, Aircraft.

**Adoption of the Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A300–600 series airplanes, as listed in Airbus Industrie Service Bulletin A300–53–6024, Revision 1, dated July 8, 1988. Compliance required as indicated, unless previously accomplished.

To prevent separation of the rear passenger/crew door from the airplane and subsequent rapid decompression, accomplish the following:

A. Prior to the accumulation of 8,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 73A RH and LH between beams 5 and 7 in accordance with Airbus Industrie Service Bulletin A300–53–6024, Revision 1, dated July 8, 1988.

1. If cracks are detected that are less than 0.4 inch, modify the frame within the next 2,500 landings, in accordance with Airbus Industrie Service Bulletin A300–53–6019, Revision 3, dated October 13, 1988. The inspection must be repeated at intervals not to exceed 1,250 landings until the modification is accomplished.

2. If cracks are detected that are equal to or more than 0.4 inch but less than 0.8 inch, modify the frame within the next 1,500 landings, in accordance with Airbus Industrie Service Bulletin A300–53–6019, Revision 3, dated October 13, 1988. The inspection must be repeated at intervals not to exceed 750 landings until the modification is accomplished.

3. If cracks are detected that are equal to or more than 0.8 inch, prior to further flight, modify the frame in accordance with Airbus Industrie Service Bulletin A300–53–6019, Revision 3, dated October 13, 1988.

4. If no cracks are detected, repeat the inspection at intervals not to exceed 4,000 landings.

B. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification of the door frame structure in accordance with Airbus Industrie Service Bulletin A300–53–6019, Revision 3, dated October 13, 1988.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 7, 1989.

Issued in Seattle, Washington, on January 12, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-2143 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 88-NM-105-AD; Amdt. 39-6124]**

## Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A310 series airplanes, which requires repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary. This amendment is prompted by reports of cracks found during routine inspection of an airplane of similar design. This condition, if not corrected, could lead to separation of the door from the airplane and subsequent rapid decompression.

**EFFECTIVE DATE:** March 7, 1989.

**ADDRESSES:** The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Airbus Industrie Model A310 series airplanes, which requires repetitive inspections of the rear/passenger crew door for cracks, and modification, if necessary, was published in the **Federal Register** on August 31, 1988 (53 FR 33495).

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

One commenter supported the proposed rule.

The other commenter supported the proposed rule, but suggested that the inspections required for the Model A300, A310, and A300-600 series airplanes be addressed in one AD action since the parallel French Airworthiness Directive encompassed all three airplanes in one document. The FAA does not concur. Since each required inspection and modification are described in separate service bulletins for each airplane, the FAA has determined that addressing the requirements for each airplane model in separate rulemaking actions will pose less confusion to affected operators.

Since service bulletins are always subject to change, this commenter suggested that, whenever the latest issue of the service bulletin is cited in the final rule, the words "or later approved revision" should be added. The FAA does not concur. Since service bulletins issued by foreign manufacturers and revisions thereto are not subject to approval by the FAA, use of such a phrase would be inappropriate. Furthermore, reference in AD's to future service bulletins is contrary to FAA policy. However, later revisions of the service bulletin may be used if they are approved as an alternate means of compliance, as provided by paragraph C. of the final rule.

This commenter also noted that all the service bulletins cited in the Notice have been revised, and the final rule should cite the latest revision to the service bulletins. The FAA concurs. Since the issuance of the Notice, Airbus Industries has issued Service Bulletin A310-53-2043, Revision 1, dated July 8, 1988, and Service Bulletin A310-53-2038, Revision 4, dated October 13, 1988, which clarify and update the procedures for the required inspections and the modifications. Paragraphs A. and B. of the final rule have been revised to reflect the latest revision of these service bulletins. The FAA has determined that these changes will not increase the economic burden on any operator, nor will they increase the scope of the AD.

This commenter also suggested that a separate paragraph be added to the final rule to require operators to contact the manufacturer for repair instructions if cracks exceeding 0.8 inch are found. The FAA does not concur, since to do so would be delegating FAA rulemaking authority to the manufacturer. Moreover, the FAA has determined that all cracks equal to or greater than 0.8 inch must be repaired prior to further flight, as was proposed in the Notice.

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

It is estimated that 7 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $2,520.

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.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule does not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($360). A final evaluation has been prepared for this regulation and has been placed in the docket.

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

Aviation safety, Aircraft.

**Adoption of the Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A310 series airplanes, as listed in Airbus Industrie Service Bulletin A310–53–2043, Revision 1, dated July 8, 1988. Compliance required as indicated, unless previously accomplished.

To prevent separation of the rear passenger/crew door from the airplane and subsequent rapid decompression, accomplish the following:

A. Prior to the accumulation of 8,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 73A RH and LH between beams 5 and 7 in accordance with Airbus Industrie Service Bulletin A310–53–2043, Revision 1, dated July 8, 1988.

1. If cracks are detected that are less than 0.4 inch, modify the frame within the next 2,500 landings, in accordance with Airbus Industrie Service Bulletin A310–53–2038, Revision 4, dated October 13, 1988. The inspection must be repeated at intervals not to exceed 1,250 landings until the modification is accomplished.

2. If cracks are detected that are equal to or more than 0.4 inch but less than 0.8 inch, modify the frame within the next 1,500 landings, in accordance with Airbus Industrie Service Bulletin A310–53–2038, Revision 4, dated October 13, 1988. The inspection must be repeated at intervals not to exceed 750 landings until the modification is accomplished.

3. If cracks are detected that are equal to or more than 0.8 inch, prior to further flight, modify the frame in accordance with Airbus Industrie Service Bulletin A310–53–2038, Revision 4, dated October 13, 1988.

4. If no cracks are detected, repeat the inspection at intervals not to exceed 4,000 landings.

B. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification of the door frame structure in accordance with Airbus Service Bulletin A310–53–2038, Revision 4, dated October 13, 1988.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 7, 1989.

Issued in Seattle, Washington, on January 12, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89–2144 Filed 1–30–89; 8:45 am]

**BILLING CODE 4910–13–M**

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**14 CFR Part 39**

**[Docket No. 88–NM–104–AD; Amdt. 39–6123]**

## Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, which requires repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary. This amendment is prompted by reports of cracks found during routine inspection of this airplane. This condition, if not corrected, could lead to separation of the door from the airplane and subsequent rapid decompression.

**EFFECTIVE DATE:** March 7, 1989.

**ADDRESSES:** The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Greg Holt, Standardization Branch, ANM–113; telephone (206) 431–1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to Airbus Industrie Model A300 series airplanes, which requires repetitive inspections of the rear passenger/crew door for cracks, and modification, if necessary, was published in the **Federal Register** on August 31, 1988 (53 FR 33496).

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

One commenter supported the proposed rule.

The other commenter supported the proposed rule, but suggested that the inspections required for the Model A300, A310, and A300–60 series airplanes be addressed in one AD action, since the parallel French Airworthiness Directive encompassed all three airplanes in one document. The FAA does not concur. Since each required inspection and modification are described in separate service bulletins for each airplane, the FAA has determined that addressing the requirements for each airplane model in separate rulemaking actions will pose less confusion to affected operators.

Since service bulletins are always subject to change, this commenter suggested that, wherever the latest issue of the service bulletin is cited in the final rule, the words "or later approved revision" be added. The FAA does not concur. Since service bulletins issued by foreign manufacturers, and revisions thereto, are not subject to approval by the FAA, use of such a phrase would be inappropriate. Furthermore, reference in AD's to future service bulletins is contrary to FAA policy. However, later revisions of the service bulletin may be used if they are approved as an alternate means of compliance, as provided by paragaph C. of the final rule.

This commenter also noted that all the service bulletins cited in the Notice have been revised, and that the final rule should cite the latest revision to the service bulletins. The FAA concurs. Since the issuance of the Notice, Airbus

Industrie has issued Service Bulletin A300–53–220, Revision 1, dated July 8, 1988, and Service Bulletin A300–53–221, Revision 2, dated October 13, 1988, which clarify and update the procedures for the required inspections and the modifications. Paragraphs A. and B. of the final rule have been revised to reflect the latest revision of these service bulletins. The FAA has determined that these changes will not increase the economic burden on any operator, nor will they increase the scope of the AD.

This commenter also noted typographical error in paragraph A. of the proposed rule. The Notice cited Airbus Service Bulletin "A300–53–200;" it should have read "A300–53–220." The final rule has been revised accordingly.

This commenter also suggested that a separate paragraph be added to the final rule to require operators to contact the manufacturer for repair instructions if cracks exceeding 0.8 inch are found. The FAA does not concur, since to do so would be delegating FAA rulemaking authority to the manufacturer. Moreover, the FAA has determined that all cracks equal to or greater than 0.8 inch must be repaired prior to further flight, as was proposed in the Notice.

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

It is estimated that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $19,080.

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.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule does not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($360). A final evaluation has been prepared for this regulation and has been placed in the docket.

### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

### Adoption of the Amendment

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

## PART 39—[AMENDED]

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

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

### § 39.13 [Amended]

2. By adding the following new airworthiness directive:

**Airbus Industrie:** Applies to Model A300 series airplanes, as listed in Airbus Industrie Service Bulletin A300–53–220, Revision 1, dated July 8, 1988. Compliance required as indicated, unless previously accomplished.

To prevent separation of the rear passenger/crew door from the airplane and subsequent rapid decompression, accomplish the following:

A. Prior to the accumulation of 8,000 landings or within the next 1,000 landings after the effective date of this AD, whichever occurs later, inspect frame 73A RH and LH between beams 5 and 7, in accordance with Airbus Industrie Service Bulletin A300–53–220, Revision 1, dated July 8, 1988.

1. If cracks are detected that are less than 0.4 inch, modify the frame within the next 2,500 landings, in accordance with Airbus Industrie Service Bulletin A300–53–221, Revision 2, dated October 13, 1988. The inspection must be repeated at intervals not to exceed 1,250 landings until the modification is accomplished.

2. If cracks are detected that are equal to or more than 0.4 inch but less than 0.8 inch, modify the frame within the next 1,500 landings, in accordance with Airbus Industrie Service Bulletin A300–53–221, Revision 2, dated October 13, 1988. The inspection must be repeated at intervals not to exceed 750 landings until the modification is accomplished.

3. If cracks are detected that are equal to or more than 0.8 inch, prior to further flight, modify the frame in accordance with Airbus Industrie Service Bulletin A300–53–221, Revision 2, dated October 13, 1988.

4. If no cracks are detected, repeat the inspection at intervals not to exceed 4,000 landings.

B. The repetitive inspections required by paragraph A., above, may be terminated following completion of the modification of the door frame structure, in accordance with Airbus Service Bulletin A300–53–221, Revision 2, dated October 13, 1988.

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

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

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

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 7, 1989.

Issued in Seattle, Washington, on January 12, 1989.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89–2145 Filed 1–30–89; 8:45 am]

BILLING CODE 4910–13–M

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## 14 CFR Part 39

**[Docket No. 88–NM–133–AD; Amdt. 39–6135]**

## Airworthiness Directives; Cessna Model S550 Series Airplanes

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

**ACTION:** Final Rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to Cessna Model S550 series airplanes, which currently requires repetitive checks of the main landing gear (MLG) torque link assemblies to verify that the torque link cotter pins are not broken or missing; and retorquing of the nut and replacement of the cotter pin, if necessary. This action provides for an optional modification of the MLG torque link assemblies which, if accomplished, eliminates the need for

the repetitive checks. This action also limits the applicability of the AD only to airplanes, Serial Numbers S550–0001 through S550–0158.

**EFFECTIVE DATE:** March 15, 1989.

**ADDRESSES:** The applicable service information may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Douglas W. Haig, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4409.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 88–13–03, Amendment 39–5946 (53 FR 20826; June 7, 1988) applicable to Cessna Model S550 series airplanes, to provide for an optional modification of the MLG torque link assemblies which, if accomplished, eliminates the need for certain required repetitive checks of the main landing gear (MLG) torque link assemblies, and to limit the applicability of the AD to only certain airplanes, was published in the **Federal Register** on September 30, 1988 (53 FR 38301).

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

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

It is estimated that 157 airplanes of U.S. registry will be affected by this AD, that it will take approximately 10.5 manhours per airplane to accomplish the optional terminating action, and that the average labor cost will be $40 per manhour. The cost of parts is estimated to be $125 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators who elect to install the optional modification is estimated to be $545 per airplane.

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.

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

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

Aviation safety, Aircraft.

**Adoption of the Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.15 [Amended]**

2. By revising AD 88–13–03, Amendment 39–5946 (53 FR 20826; June 7, 1988), by revising the applicability statement, redesignating paragraph C. as D., and adding a new paragraph C., as follows:

**Cessna:** Applies to Model S550 series airplanes, Serial Numbers S550–0001 through S550–0158, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of control of the airplane during landing or takeoff due to failure of the cotter pins securing the main landing gear torque link connections, accomplish the following:

A. Within 48 hours after the effective date of this AD, incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by including a copy of this AD in the AFM:

"Prior to the first flight of each day, verify that the cotter pins securing the left and right main landing gear torque link connections are installed. If either cotter pin is broken, missing, or exhibits any evidence of being cut or sheared by the nut, prior to further flight, accomplish paragraph B. of this AD."

B. If either cotter pin is broken, missing, or exhibits any evidence of being cut or sheared by the nut, the nut must be retorqued to 630 inch-pounds, then tightened to align the cotter pin(s) hole, up to a maximum torque of 810 inch-pounds, and a new cotter pin(s), P/N MS24665–287, installed. This must be accomplished in accordance with Cessna S550 Maintenance Manual Section 32–11–01, pages 403, 404, and 405.

C. Modification of the main landing gear torque link assemblies in accordance with Cessna Service Bulletin SBS550–32–5, dated August 26, 1988, constitutes terminating action for the requirements of paragraphs A. and B., above.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or FAA, Central Region, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This amendment becomes effective March 15, 1988.

Issued in Seattle, Washington, on January 23, 1989.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Northwest Mountain Region.*

[FR Doc. 89–2142 Filed 1–30–89; 8:45 am]

BILLING CODE 4910–13–M

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**14 CFR Part 39**

**[Docket No. 88–CE–23–AD; Amendment 39–6130]**

## Airworthiness Directives; Dornier Models Do28 D and Do28 D–1 Airplanes

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

**ACTION:** Final Rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to Dornier Models Do28 D and Do28 D–1 airplanes, which requires inspection of the horizontal tail bearing fitting. Loose rivets and cracks have been reported at rear fuselage frame

10420. The inspection specified in this AD will detect the loose rivets and cracks before the possible loss of the horizontal tail surface and preclude the loss of the airplane.

**EFFECTIVE DATE:** March 3, 1989.

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

**ADDRESSES:** Dornier Service Bulletin (S/B) No. 1110–3204, dated April 15, 1988, applicable to this AD may be obtained from Dornier GmbH, P.O. Box 2160, D–8000 Munchen 66, Federal Republic of Germany. 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. Heinz Hellebrand, Aircraft Certification Staff, AEU–100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B–1000, Brussels, Belgium; Telephone (322) 513.38.30; or Mr. Herman C. Belderok, Project Support Section Foreign Aircraft, Central Region, 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 periodic visual inspections and repair as necessary of (a) the rivet connections between the LH and RH horizontal tail bearing fittings and the lateral skins for play; and (b) aft fuselage frame 10420 and the corner gusset for cracks on certain Models Do28 D and Do28 D–1 airplanes was published in the **Federal Register** on August 29, 1988 (53 FR 32920). The proposal resulted from Dornier receiving reports of loose rivet connections between the left hand (LH) and right hand (RH) horizontal tail bearing fittings and the lateral skins, and also reports of cracks in frame 10420 and the corner gusset. If uncorrected, these conditions may cause loss of the horizontal tail bearing fitting or failure of the frame which can lead to the loss of horizontal tail control functions. Consequently, Dornier issued S/B 1110–3204, dated April 15, 1988, which detailed initial and subsequent visual inspections every 100 hours time-in-service and repair as necessary of (a) the rivet connections between the LH and RH horizontal tail bearing fittings and the lateral skins for play; and (b) aft fuselage frame 10420 and the corner gusset for cracks. The Federal Republic of Germany, Civil Aviation Authority the Luftfahrt-Bundesamt (LBA), which has responsibility and authority to maintain the continuing airworthiness of these airplanes in the Federal Republic of Germany, classified this Service Bulletin and the actions recommended therein by the manufacturer as mandatory to assure the continued airworthiness of the affected airplanes in Germany.

On airplanes operated under LBA 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 LBA combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicabe 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 Dornier S/B No. 1110–3204, dated April 15, 1988, and the mandatory classification of this Service Bulletin by the LBA, and concluded that the condition addressed by S/B No. 1110–3204 was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

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

The FAA has determined that this regulation involves 3 airplanes at an approximate single inspection cost of $40 (one man-hour) for each airplane, for a total fleet cost of $120 to the private sector. 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:

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. By adding the following new AD:

**Dornier:** Applies to Models Do28 D and Do28 D–1 (all serial numbers) airplanes certificated in any category.

Compliance: Required within the next 100 hours time-in-service and every 100 hours time-in-service thereafter after the effective date of this AD, unless already accomplished.

To preclude the loss of the horizontal tail, accomplish the following:

(a) Visually inspect in accordance with Dornier Service Bulletin No. 1110–3204, dated April 15, 1988, as follows:

(1) Inspect the rivet connections between the left hand and right hand horizontal tail bearing fittings and the lateral skins for loose rivets. It loose rivets are found, before further flight replace the loose rivets in accordance with Dornier Service Bulletin No. 1110–3204, and

(2) Inspect the rear fuselage frame 10420 and the corner gusset for cracks. If cracks are detected, before further flight repair as follows:

(i) For cracks less than 25mm (.98 inch), stop drill the crack in accordance with Dornier Service Bulletin No. 1110–3204.

(ii) For cracks 25mm or longer (.98 inch or more), repair the airplane in accordance with instructions from Dornier approved by the Manager, Aircraft Certification Staff, AEU–100.

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

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Staff, 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 a copy of the document referred to herein upon request to

Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, B-1000 Brussels, Belgium; or Dornier GmbH, P.O. Box 2160, D-8000 Munchen 66, Federal Republic of Germany; or may examine this document at the FAA, Office of the Assistant Chief Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on March 3, 1989.

Issued in Kansas City, Missouri, on January 20, 1989.

**Barry D. Clements,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-2146 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 88-NM-97-AD; Amdt. 39-6137]**

## Airworthiness Directives; Boeing Model 757 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires replacement of both spoiler wheel command units. This amendment is prompted by reports that a potential failure mode exists which could cause uncommanded deployment of three flight spoilers on one wing to their full up position. This condition, if not corrected, could result in a sudden large rolling moment and, after recovery by the pilot, diminished roll capability and a significant loss of lift.

**EFFECTIVE DATE:** March 15, 1989.

**ADDRESSES:** 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 Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Henry A. Jenkins, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1947. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires replacement of both spoiler wheel command units on Boeing Model 757 series airplanes, was published in the **Federal Register** on August 23, 1988 (53 FR 32077).

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

The Airline Transport Association (ATA) of America commented that several of its members had expressed concern regarding the ability of the vendor for the part being replaced in accordance with the AD to provide parts in a timely manner. The FAA was requested to verify that the vendor could provide parts to support the proposed compliance period. The manufacturer has advised FAA that adequate parts will be available to affected operators within the proposed compliance time, assuming an orderly demand.

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

There are approximately 175 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 104 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The costs required for replacement or modification of the required parts will be borne by the manufacturer. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,800.

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.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because few, if any, Model 757 series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

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

Aviation safety, Aircraft.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (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 757 series airplanes, as listed in Boeing Service Bulletin 757-27-0076, dated May 19, 1988, certificated in any category.

Compliance is required within the next 24 months after the effective date of this AD, unless previously accomplished.

To prevent uncommanded extension of three flight spoilers on one wing, due to failure of a spoiler wheel command unit, accomplish the following:

A. Replace both spoiler wheel command units, in accordance with Boeing Service Bulletin 757-27-0076, dated May 19, 1988.

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 for the accomplishment of the inspections required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to 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.

This amendment becomes effective March 15, 1989.

Issued in Seattle, Washington, on January 23, 1989.

Leroy A. Keith,

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-2139 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 88-NM-111-Ad; Amdt. 39-6134]**

## Airworthiness Directives; British Aerospace Model BAC 1-11 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes two existing airworthiness directives (AD), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, which currently require repetitive inspection procedures and repair, if necessary, of the main landing gear (MLG) support structure, and a one-time inspection and repair, if necessary, of a component in the nose landing gear (NLG). Those actions were prompted by reports of cracks in the MLG rear pintle support beam and the collapse of one NLG. This amendment adds additional model series to the AD applicability, and requires additional inspections and maintenance procudures for the MLG support structure. This amendment is prompted by a structural re-evaluation, which identified the need for additional procedures for some variations of the airplane to adequately detect cracking. Such cracking, if not corrected, could lead to collapse of the MLG and NLG.

**EFFECTIVE DATE:** March 15, 1989.

**ADDRESSES:** The applicable service information may be obtained from British Aerospace Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 86-04-07, Amendment 39-5235 (51 FR 4588; February 6, 1986) and AD 88-07-01, Amendment 39-5878 (53 FR 8869; March 18, 1988), applicable to British Aerospace Model BAC 1-11 200 and 400 series airplanes, to require additional inspections for cracks in the rear pintle support beam and repair, if necessary, and a one-time inspection of the nose landing gear and repair, if necessary, was published in the **Federal Register** on September 30, 1988 (53 FR 38297).

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

Both commenters noted that the proposal would require the beam to be replaced, prior to further flight, if a crack is found that is equal to 0.6 inch in length; whereas, the service bulletin authorizes blending of a crack measuring 0.6 inch (or less) in length. The commenters requested that the final rule be revised to be consistent with the service bulletin. The FAA concurs that cracks equal to or less than 0.6 inch may be blended and still provide an adequate level of safety. Paragraph D.1. and D.2. of the final rule have been revised to identify the appropriate crack size and action to be taken, as well as to identify the specific paragraph in the service bulletin that specifies the repair procedures.

These commenters further noted that the proposal would require the beam to be replaced if cracks exceed 0.6 inch; whereas, the service bulletin instructs operators to consult British Aerospace for advice with regard to further action. The commenters requested that the final rule be revised to be consistent with the service bulletin instructions. The FAA does not totally concur. The FAA did not include a requirement to contact the manufacturer for further advice, since to do so would, in effect, be delegating our rulemaking authority to the manufacturer. However, the FAA has determined that if any crack exceeds 0.6 inch in length, the operator must either replace the cracked part prior to further flight, or repair the crack in a manner approved by the FAA. Paragraph D.2. of the final rule has been revised accordingly.

The FAA has determined that the compliance times in paragraphs A., B., and C. of the final rule may be extended by one landing in order to be in conformance with the recommendations of the manufacturer and to create less confusion to operators. This change will not compromise the safety of flight, expand the scope of the AD, or impose an additional economic burden on any operator.

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

It is estimated that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $8,400.

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.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11304; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities, because of the minimal cost of compliance per airplane ($120). A final evaluation has been prepared for this regulation and has been placed in the docket.

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

Aviation safety, Aircraft.

**Adoption of the Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. By superseding AD 86-04-07, Amendment 39-5235 (51 FR 4588; February 6, 1986), and AD 88-07-01, Amendment 39-5878 (53 FR 8869; March 18, 1988), with the following new airworthiness directive:

**British Aerospace:** Applies to Model BAC 1-11 200 and 400 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent a hazardous landing condition, accomplish the following:

A. For Model BAC 1-11 200 series airplanes [pre-modification PM3070; Modification PM3070 with main support beams, Part No. ED03-1001/2; or Modification PM5928]: At or prior to the accumulation of 50,000 landings or within the next 1,500 landings after April 25, 1988, (which is the effective date of AD 88-07-01, Amendment 39-5878), whichever occurs later, perform an eddy current or dye penetrant inspection for cracks in the rear pintle support beam, in accordance with the paragraph 2.1.1 of the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5896, Issue Number 4, dated February 17, 1988. Thereafter, repeat the inspection at intervals not to exceed 3,200 landings.

**Note:** Airplanes that complied with paragraph A. of AD 88-07-01, Amendment 39-5878, are considered to have met the initial inspection requirements of this paragraph, and the inspection is to be repeated at intervals not to exceed 3,200 landings.

B. For Model BAC 1-11 400 series airplanes [pre-modification PM3070; Modification PM3070 with main support beams, Part No. ED03-1001/2; or Modification PM5928]: At or prior to the accumulation of 15,000 landings, or within 1,500 landings after March 17, 1986 (which is the effective date of AD 86-04-07, Amendment 39-5235), whichever occurs later, perform an eddy current or dye penetrant inspection for cracks in the rear pintle support beam, in accordance with paragraph 2.1.1 of the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5896, Issue Number 4, dated February 17, 1988. Thereafter, repeat the inspection at intervals not to exceed 3,200 landings.

**Note:** Airplanes that complied with paragraph A. of AD 86-04-07, Amendment 39-5235, are considered to have met the initial inspection requirements of this paragraph, and the inspection is to be repeated at intervals not to exceed 3,200 landings.

C. For Model BAC 1-11 200 and 400 series airplanes [Modification PM3070 with main support beams, Part No. EN03-1259/60]: At or prior to the accumulation of 7,500 landings or within 90 days after the effective date of this AD, whichever occurs later, perform an eddy current or dye penetrant inspection for cracks in the rear pintle support beam, in accordance with paragraph 2.1.1 of the accomplishment instruction of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5896, Issue Number 4, dated February 17, 1988. Thereafter, repeat the inspection at intervals not to exceed 3,200 landings.

**Note:** Model BAC 1-11 200 series airplanes that complied with paragraph A. of AD 88-07-01, Amendment 39-5878; and Model BAC 1-11 400 series airplanes that complied with paragraph A. of AD 86-04-07, Amendment 39-5235; are considered to have met the initial inspection requirements of this paragraph, and the inspection is to be repeated at intervals not to exceed 3,200 landings.

D. If cracks are discovered during the inspections required by paragraph A., B., or C., above, accomplish the following:

1. If cracks are less than or equal to 0.6 inch on pre-modification PM3070 airplanes, or less than or equal to 0.2 inch on post-modification PM3070 airplanes, repair or replace the cracked part prior to further flight, in accordance with paragraph 2.5.1 of the Accomplishment Instructions of British Aerospace BAC 1-11 Alert Service Bulletin 57-A-PM5896, Issue Number 4, dated February 17, 1988. If cracks are repaired in accordance with the service bulletin, continue to perform eddy current or dye penetrant inspections at intervals not to exceed 800 landings, providing that, in the case of pre-modification PM3070 airplanes, if cracks are present in the aft half beam, cracked parts must be replaced prior to further flight.

2. If cracks exceed 0.6 inch in length on pre-modification PM3070 airplanes, or exceed 0.2 inch in length on post-modification PM3070 airplanes, repair or replace in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region. If the part is repaired, further inspection requirements will be determined by the Manager, Standardization Branch, at the time of repair approval. If the main landing gear pintle support beam is replaced, the inspection must be repeated at intervals not to exceed 3,200 landings.

E. Prior to June 17, 1986, (which is 90 days after the effective date of AD 86-04-07, Amendment 39-5235), inspect for damage of the toggle links' special bolt assembly, part number AB44A1275, in accordance with the accomplishment instructions of British Aerospace BAC 1-11 Alert Service Bulletin 32-A-PM5872, dated July 25, 1983. If the special bolt assembly is found damaged, replace with a servicable part before further flight.

**Note:** Airplanes that have complied with paragraph B. of AD 86-04-07, Amendment 39-5235, are considered to have met the requirements of this paragraph.

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

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

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment supersedes AD 86-04-07, Amendment 39-5235, and AD 88-07-01, Amendment 39-5878.

This Amendment becomes effective March 15, 1989.

Issued in Seattle, Washington, on January 23, 1989.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-2138 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 88-NM-182-AD; Amdt. 39-6133]**

## Airworthiness Directives; Cessna Model 650 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This action publishes in the **Federal Register** and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of Cessna Model 650 series airplanes by individual letters. This AD requires a revision of the FAA-approved Airplane Flight Manual (AFM) to restrict certain airplanes to a 45,000 foot maximum calibrated operating altitude until such time as the elevator balance has been checked and rebalanced, if necessary. This action is prompted by reports that certain airplanes may not have been manufactured with the correct static balance. This condition, if not corrected, could result in structural dynamic instability at flight levels above 45,000 feet.

**EFFECTIVE DATE:** February 21, 1989.

This AD was effective earlier to all recipients of Priority Letter AD 88-23-04, dated November 16, 1988.

**ADDRESSES:** The applicable service information may be obtained from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This material may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Mr. Douglas Haig, Aerospace Engineer, Wichita Aircraft Certification Office, Room 100, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946-4409.

**SUPPLEMENTARY INFORMATION:** On November 16, 1988, the FAA issued Priority Letter AD 88-23-04, applicable to certain Cessna Model 650 series airplanes, which requires restriction of the maximum calibrated operating altitude to 45,000 feet until such time as the elevator balance has been checked and rebalanced, if necessary. That action was prompted by reports that elevators on certain of these airplanes may not have been manufactured with the correct static balance. Analysis has shown that this improper balance could result in a structural dynamic instability at flight levels above 45,000 feet.

The FAA has reviewed and approved Cessna Alert Service Letter SLA650-27-20, dated November 11, 1988, which describes procedures for removing the elevators from the airplane, checking the elevator balance of each elevator, and rebalancing, if necessary.

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

The regulations 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 warrent the preparation of a Federalism Assessment.

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

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

Aviation safety, Aircraft.

**Adoption of the Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Cessna:** Applies to Model 650 series airplanes; Serial Numbers 650-0094, 650-0096, 650-0100 through 650-0103, 650-0105 through 650-0107, 650-0117, 650-0120, 650-0123, 650-0125 through 650-0129, 650-0131 through 650-0159, 650-0161, and 650-0162; certificated in any category. Compliance is required as indicated, unless already accomplished.

To prevent elevator flutter, accomplish the following:

A. Prior to further flight, incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD, or the Temporary AFM Change included as part of the Cessna Alert Service Letter SLA650-27-20, dated November 11, 1988, into the AFM:

"Enroute Operations Limits: 45,000 ft. Maximum Calibrated Operating Altitude."

B. Within the next 100 flight hours time-in-service or 60 days after the effective date of this AD, whichever occurs sooner, remove both elevators from the airplane and check for proper balance, in accordance with Cessna Alert Service Letter SLA650-27-20, dated November 11, 1988. Elevators not meeting proper balance specifications must be rebalanced, prior to further flight, in accordance with the Accomplishment Instructions of the service bulletin.

C. Accomplishment of the requirements of paragraph B., above, constitutes terminating action for the requirements of paragraph A., above, and the AFM revision may be removed.

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

E. 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 may obtain copies of the applicable service information from Cessna Aircraft Company, Citation Marketing Division, P.O. Box 7706, Wichita, Kansas 67277. This material may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Wichita Aircraft Certification Office, FAA, Central Region, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

This amendment becomes effective February 21, 1989.

This AD was effective earlier to all recipients of Priority Letter AD 88-23-04, issued November 16, 1988.

Issued in Seattle, Washington, on January 23, 1989.

**Leroy A. Keith,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-2137 Filed 1-30-89; 8:45 am]

**BILLING CODE 4910-13-M**

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**14 CFR Part 39**

**[Docket No. 88-NM-174-AD; Amdt. 39-6127]**

## Airworthiness Directives; Fokker Model F-27 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to certain Fokker Model F-27 series airplanes, which currently requires a revision to the Limitations Section of the Airplane Flight Manual (AFM) restricting the maximum turbulent air penetration airspeed for certain airplanes, and installation of a placard to this effect near each airspeed indicator. That action was prompted by a report of improper heat treatment of the wing structure, resulting in a reduction of the strength of the skin splice at Wing Station 7900. This condition, if not corrected, could result in reduced structural capability of the wing. This amendment expands the applicability statement to include additional Model F-27 airplanes that have been retrofitted with a new

outerwing, wing serial number 246 or higher, and are subject to the same unsafe condition.

**EFFECTIVE DATE:** February 15, 1989.

**ADDRESSES:** The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** On September 16, 1988, the FAA issued AD 88-17-02, Amendment 39-6035 (53 FR 37995; September 29, 1988), applicable to Fokker Model F-27 series airplanes, which requires a revision to the Limitations Section of the Airplane Flight Manual (AFM) restricting the maximum turbulent air penetration speed for certain airplanes, and installation of a placard to this effect near each airspeed indicator. That action was prompted by a report of improper heat treatment of the wing structure, resulting in a reduction of the strength of the skin splice at Wing Station 7900. This condition, if not corrected, could result in reduced structural capability of the wing.

Since the issuance of the AD, the FAA has been notified that additional Fokker Model F-27 series airplanes, serial numbers 10105 to 10345, may be subject to the same unsafe condition if they have been retrofitted with an outerwing having a serial number of 246 or higher.

For airplanes with Serial Number 10105 through 10345, since records may not reflect a wing change, the only way to identify the outerwing serial number is to remove the wing tip and perform a visual inspection of the serial number plate, which is attached to the wing end rib at Station 14300.

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, has also issued Netherlands Airworthiness directive BLA No. 88-55, Issue 3, dated September 7, 1988, which calls for restricting the maximum turbulent air penetration airspeed of these Fokker Model F-27 series airplanes operating at weights of more than 32,000 lbs.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD revises the applicability of AD 88-17-02 to add additional airplanes subject to the requirements of that AD. By this action, these additional planes are required to revise the Limitations Section of the Airplane Flight Manual (AFM) to restrict the maximum turbulent air penetration airspeed to 165 KIAS (168 KTS CAS) for airplanes operating at weights over 32,000 lbs., and to install a placard to this effect near each airspeed indicator.

Additionally, this action revises the existing AD by deleting two airplanes from the applicability statement since it has been determined that those planes have a completely different wing design that is not subject to the unsafe condition addressed. Both planes are Fokker Model 50 prototypes and will never be sold for commercial use.

Fokker has advised the FAA that it is revising Service Bulletin F27/57-63, which will describe inspection and repair procedures for Wing Station 7900. When this information is available, the FAA may consider further rulemaking action to address it.

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

The regulations 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.

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

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

Aviation safety, Aircraft.

**Adoption of the Amendment**

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

## PART 39—[AMENDED]

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

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

**§ 39.13 [Amended]**

2. By revising AD 88-17-02, Amendment 39-6035 (53 FR 37995; September 29, 1988), by amending the applicability statement, as follows:

**Fokker:** Applies to Model F-27 series airplanes, serial number 10346 to 10684, inclusive; 10686, 10687; 10689 to 10692, inclusive; and serial numbers 10105 to 10345, inclusive, if retrofitted with outerwing serial number 246 or higher; certificated in any category. Compliance is required within 24 hours after the effective date of this AD, unless previously accomplished.

To prevent reduced structural capability of the wing, accomplish the following:

A. Incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD into the AFM:

"For airplanes operating at weights over 32,000 lbs.:

Speed Limitation $V_B$: 165 KIAS (168 KTS CAS)"

B. Install a placard near each airspeed indicator, stating the following:

FOR AIRPLANES OPERATING AT WEIGHTS OVER 32,000 LBS.:

SPEED LIMITATION $V_B$: 165 KIAS (168 KTS CAS)

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

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

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, VA 22314. This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective February 15, 1989.

Issued in Seattle, Washington, on January 18, 1989.

Steven B. Wallace,

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-2149 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 39**

**[Docket No. 88-NM-134-AD; Amdt. 39-6136]**

## Airworthiness Directives; SAAB-Scania Model SF-340A Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to SAAB-Scania Model SF-340A series airplanes, which requires installation of water traps and additional insulation pads in the main and standby pitot tubes. This amendment is prompted by reports of the intrusion of rain water into the pitot system, and the subsequent formation of ice causing a blockage in the pitot line. This condition, if not corrected, could lead to erroneous airspeed readings.

**EFFECTIVE DATE:** March 15, 1989.

**ADDRESSES:** The applicable service information may be obtained from SAAB-Scania, Product Support, S-58188, Linkoping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations, to include a new airworthiness directive applicable to SAAB-Scania Model SF-340A series airplanes, which requires installation of water traps and additional insulation pads in the main and standby pitot tubes, was published in the **Federal Register** on October 20, 1988 (53 FR 41195).

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

The commenter concurred with the intent of the proposed AD. However, the commenter stated that 76 airplanes would be affected by this AD, rather than a total of 68 affected airplanes, as reflected in the economic analysis paragraph in the preamble to the Notice. After investigating this point further with the manufacturer's representative, the FAA has determined that currently there are 76 U.S.-registered airplanes affected by this AD. Accordingly, the economic analysis paragraph below has been changed to reflect this information and to revise the total cost impact figure.

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

It is estimated that 76 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. The cost of required parts is estimated to be $175 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $25,460.

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.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($335). A final evaluation has been prepared for this regulation and has been placed in the docket.

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

Aviation safety, Aircraft.

**Adoption of the Amendment**

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

**PART 39—[AMENDED]**

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

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

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**SAAB-Scania:** Applies to Model SF-340A series airplanes, serial numbers -003 through -138, inclusive, certificated in any category. Compliance required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent erroneous airspeed readings due to ice in the pitot system, accomplish the following:

A. Install water traps and insulation pads in the main and standby pitot systems, in accordance with SAAB-Scania Service Bulletin SF340-34-056, dated August 1, 1988.

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

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the 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 of SAAB-Scania, Product Support, S-58188, Linkoping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective March 15, 1989.

Issued in Seattle, Washington, on January 23, 1989.

Leroy A. Keith,

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89-2141 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 239 and 274

**[Release Nos. 33-6814; IC-16766; File No. S7-13-88]**

### Consolidated Disclosure of Variable Annuity Separate Account Expenses

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Adoption of form amendments.

**SUMMARY:** The Commission is adopting revisions to the expense-related disclosure requirements of Forms N-3 and N-4, the registration forms under the Investment Company Act of 1940 and the Securities Act of 1933 for insurance company separate accounts that issue variable annuity contracts, and is publishing revisions to the staff guidelines accompanying these forms. The amendments consolidate the expense data in a tabular presentation near the front of the prospectus. The Commission is adopting these amendments to improve the quality of expense disclosure in variable annuity separate account prospectuses.

**EFFECTIVE DATES:** May 1, 1989. The amendments will become effective: (1) On May 1, 1989 for separate accounts offering variable annuity contracts whose registration statements become effective on or after that date and those with fiscal years ending December 31; and (2) for all other separate accounts offering variable annuity contracts, upon use of any prospectus contained in any post-effective amendment filed on or after May 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Nancy M. Rappa, Attorney, or Clifford E. Kirsch, Special Counsel, (202) 272-2061, Office of Insurance Products, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission today is amending Forms N-3 and N-4 [17 CFR 274.11b and 274.11c], the registration forms under the Investment Company Act of 1940 [15 U.S.C. 80a *et seq.*] (the "1940 Act") and the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] for insurance company separate accounts that issue variable annuity contracts ("separate accounts"), and publishing revised guidelines to those forms. These revisions, proposed on July 15, 1988 (Investment Company Act Release No. 16482) ("Proposal"),[1] require a tabular presentation of expenses ("fee table") to be included as part of the synopsis at the beginning of the prospectus. The fee table will show transaction expenses paid directly by the shareholder, such as sales load; annual contract fees deducted from shareholder assets; and annual expenses deducted from separate account assets, such as management fees, whether paid from fund assets or deducted from shareholder accounts. The fee table will also provide an example of the cumulative amount of these fees over various investment periods ("Example"). In addition, the Commission is publishing amendments to Form N-1A that eliminate the fee table requirement for management investment companies offering shares exclusively to separate accounts.

### Discussion

The Commission received 11 comment letters in response to the Proposal.[2] The commenters generally supported the objectives of the Proposal, but suggested that the Commission modify and clarify some portions. Many of the commenters objected to a fee table for variable annuity separate accounts that is patterned closely after the mutual fund fee table. Several pointed out what they characterized as fundamental differences between variable annuity contracts and mutual funds that make certain aspects of the fee table inappropriate for separate accounts. Those commenters believe that differences in the design, market, function, and tax treatment of mutual fund shares and variable annuity contracts, as well as the long-term nature of an annuity contract, warrant greater differences in the fee table than the Proposal provided. The Commission continues to believe that the proposed fee table for separate accounts will foster comparability among separate accounts offering variable annuity contracts, as well as between separate accounts and mutual funds.[3] Therefore, the Commission has decided to adopt the proposed amendments to Forms N-3 and N-4, but with clarifications and changes that address many of the comments received.

The first part of this release will discuss three issues that appear to have caused the most concern for commenters. These issues are the presentation of the annual contract fee in the Example, potential prospectus liability due to the requirement that trust account prospectuses list portfolio company expenses, and the presentation of sales load. The second part of the release deals with other comments relating to the fee table, and the third section discusses issues raised regarding the Example.

#### *A. Major Issues*

1. Presentation of Annual Contract Fee in the Example

Eight commenters objected to the proposed method of allocating contract fees in the Example.[4] The Commission proposed an instruction that would require the separate account to multiply the contract fee by the total number of contractowners that allocated amounts to a sub-account during the year.[5] This amount would be divided by the average net assets of the sub-account and the resulting percentage would be added to "Annual Expenses" in making the calculations required by the Example. Under this method, each investor is assumed to pay a full contract fee for each sub-account in which he or she is invested, a portion of which is deducted on a daily basis.[6]

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[1] 53 FR 27872 (July 25, 1988). The Commission previously adopted revisions to Form N-1A for consolidated disclosure of mutual fund expenses in Investment Company Act Release No. 16244 (Feb. 1, 1988) (53 FR 3192 (Feb. 4, 1988)).

[2] The comment letters and a summary of comments prepared by the Commission staff are contained in File No. S7-13-88.

[3] While differences exist, mutual funds and variable annuities may be alternative investments for many investors. A survey of news reports reveals that variable annuity products are sold in direct competition with other investment vehicles, such as mutual funds. *See, e.g.*, Hayes, *If You Don't Understand It, Don't Buy It*, Forbes, Oct. 3, 1988, at 98. There are also substantial differences in design, market, function and tax treatment among mutual funds. Nonetheless, all mutual fund prospectuses must contain the fee table prescribed by Form N-1A.

[4] The Proposal defines "Contract Fee" to include any contract, account, or similar fee imposed on all contractowner accounts on any recurring basis.

[5] *See* proposed Instruction 19(e) to Item 3(a) of Form N-3 and Instruction 21(e) to Item 3(a) of Form N-4. General Instruction 5 to the Instructions for Item 3(a) of Forms N-3 and N-4 require a separate account to list separately the fee table data for each sub-account.

[6] The Proposal states that "[t]he assumption that each investor in a sub-account pays a contract fee has been proposed instead of allocating the total amount of contract fees collected among the sub-accounts because the latter method assumes that all contractowners allocated their contract value among all sub-accounts." Proposal at 27873, n.11. The Commission was concerned that the latter

Continued

Commenters objected to the proposed allocation because they believe it invariably results in overstatement of the fee. The proposed method suggests that the contractholders are charged a fee for each sub-account in which they invest, even though typically one contract fee is charged regardless of participation in various sub-accounts. Two commenters argued that because sub-accounts have varying average contractowner account sizes, the proposed method would cause the contract fees in the Example to vary by sub-account. This would cause investors to conclude erroneously that the charge varies by sub-account.[7]

One commenter suggested a method under which separate accounts would calculate the fee by multiplying the annual contract fee by the total number of contractholders in all available sub-accounts, and dividing this amount by the total average net assets of all available sub-accounts.[8] The resulting percentage would be added to each sub-account's "Annual Expenses" in making the calculations required by the Example. While the proposed method assumes that an investor is charged a full contract fee for each sub-account in which he or she invests, this method takes the total amount of contract fees collected and allocates this total among all available sub-accounts as a percentage of total assets. The Commission believes that this method will more accurately reflect the impact of annual contract fees and has, therefore, decided to adopt this approach. The Commission believes that this method is less likely to distort the impact of fees on contractowners, and will more accurately reflect that a contract fee is assessed only once regardless of participation in two or more sub-accounts. Under the adopted method of calculation, total contract fees collected that are attributable to the contract offered by the prospectus is divided by the total average net assets of all available sub-accounts.[9]

2. Prospectus Liability

The proposed fee table for trust account prospectuses (Form N–4 fee table) divides "Annual Expenses" into two parts. One part lists annual expenses deducted from separate account assets and the other lists annual portfolio company expenses. This segregates separate account expenses from those of the portfolio company, providing a complete unfragmented depiction of expenses. The Proposal would require the trust account to disclose expense information and, in some cases, make estimates about portfolio company expenses. The Proposal invited comment on whether the listing of portfolio company expenses in the trust account prospectus would create potential prospectus liability for the trust account and, accordingly, whether separate fee tables should be required in both the separate account and the underlying fund prospectuses instead.

Several commenters expressed concern about potential prospectus liability if the separate account prospectus is required to list annual expenses incurred by the underlying fund. Although the Proposal suggests that indemnification provisions in participation agreements could reduce potential liability, some commenters argued that separate accounts investing in unaffiliated funds might not be protected by indemnification in participation agreements.[10] One commenter believed there could be no protection because (i) some indemnification agreements may predate the new requirements, and (ii) indemnification is not the legal equivalent of limitation of liability. For separate accounts that purchase shares of affiliated funds, however, this commenter acknowledged that the disclosure of portfolio company expenses would not present the same type of potential liability.[11]

The Commission has decided to adopt this part of the Form N–4 fee table as proposed. The Commission notes that separate accounts offering variable life insurance contracts typically factor into the hypothetical illustrations of account value an average of the investment advisory fees and certain other expenses of the portfolio company, whether affiliated or unaffiliated. The narrative disclosure accompanying these hypothetical illustrations usually sets forth the investment advisory fees and operating expenses of the underlying fund. In addition, trust account prospectuses offering either variable life insurance or variable annuity contracts typically disclose the investment objectives of unaffiliated portfolio companies. In these situations, the separate account and the unaffiliated underlying fund apparently have been able to resolve the separate account's potential prospectus liability in a manner satisfactory to both.

3. Presentation of Sales Load

a. *Sales Load in "Contractowner Transaction Expenses."* The Proposal requires that sales load include the maximum load imposed on purchase payments, but would permit a tabular presentation, within the large table, of the range of such sales loads. Deferred sales load must include the maximum contingent deferred sales load expressed as a percentage of purchase payments or amount surrendered, but a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time is permitted.

Four commenters objected to the prominent presentation of sales loads in "Contractowner Transaction Expenses." In particular, commenters believed that presentation of contingent deferred sales loads in the fee table in a fashion similar to that of the Form N–1A table is unwarranted due to the long-term nature of an annuity contract as compared to

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method would understate the fees, "especially for separate accounts having a large number of sub-accounts." *Id.*

[7] The other commenters that addressed this issue echoed these concerns. For example, one commenter believed that the overstatement of contract fees corresponded proportionately to the increased use of available investment options, arguing that the proposed method is accurate only for investors who have allocated their total assets to one option. Another commenter admitted that an understatement of fees may result where the fee is prorated among sub-accounts, but asserted that the proposed method would inflate the fee and falsely imply that different sub-accounts charge different fees.

[8] Five other commenters endorsed this alternative.

[9] Instruction 19(e) to Item 3(a) of Form N–3 and Instruction 21(e) to Item 3(a) of Form N–4 as adopted read: Reflect any [annual] contract fee by dividing the total amount of [annual] contract fees collected during the year that are attributable to the contract offered by the prospectus by the total average net assets of all the sub-accounts in the separate account that are attributable to the contract offered by the prospectus. Add the resulting percentage to "Annual Expenses," and assume that it remains the same in each year of the one, three, five, and ten-year periods. New Registrants should estimate [annual] contract fees collected.

[10] Footnote 16 of the Proposal states: "One possible approach a trust account might take to limit its exposure to liability is to provide for indemnification in its participation agreement (or other agreement) with the portfolio company with respect to information provided by the portfolio company."

A participation agreement sets forth the contractual obligations between an insurance company separate account that invests in shares of a fund and the underlying investment vehicle or fund. Many participation agreements contain indemnification provisions.

[11] Indeed, as stated in the Proposal, "[i]n circumstances where the separate account is a controlling person, there should be no question about the account's ability to satisfy itself as to the accuracy of the portfolio company expense data." Proposal at note 16.

mutual fund shares.[12] Commenters also expressed concern that because many annuity contracts allow for free withdrawal of a percentage of account value or purchase payments during the life of the contract, consequences of surrender even for contracts with identical maximum CDSLs could differ, rendering the proposed illustration meaningless.

The Commission continues to believe that the proposed fee table disclosure of sales loads is appropriate. Even though an annuity contract may be designed and/or marketed as a long-term investment, it is important to prominently disclose the effects of early surrender. The Commission believes that the presentation of sales load in this manner will facilitate comparison among variable annuity products, as well as between variable annuity products and mutual funds.[13] Therefore, the Commission has decided to retain the proposed method of reflecting sales loads in the fee table, but will permit a footnote to the fee table regarding distinguishing characteristics, such as where contracts allow for free withdrawal of percentages of account value during the life of the contract.

b. *Sales Load in the Example.* The proposed Example illustrates the expenses an investor might expect to incur at different time intervals; sales load expenses are included in the Example's calculations. Several commenters objected to the presentation of the effect of sales loads in the Example; one commenter felt that the proposed approach ignored the "contingent nature" of the CDSL by focusing on shortened time periods. Another commenter argued against the use of the one, three, five, and ten-year investment periods, stating that depiction of sales loads at these intervals presented an inaccurate emphasis for variable annuity contracts, which are designed and sold as long-term investments.

The Commission has decided to adopt, in the Example, the proposed assumptions that the maximum sales load is deducted from purchase payments, and that surrender occurs on the last day of the year. As discussed in the adopting release for the amendments to the Form N–1A,[14] the Example provides a relatively simple means for investors to compare expense levels of funds with different fee structures over varying investment periods. The same rationale applies to the Example proposed for variable annuities. In response to concerns of the commenters, however, the Commission will not object if durations of time greater than ten years, for example, fifteen, twenty-five, thirty-year periods, are used in addition to the standard one, three, five, and ten-year periods.[15]

*B. Comments on the Fee Table*

1. Annual Contract Fee in the Fee Table

The second part of the proposed fee table would require a Registrant to list any recurring contractowner contract fees. Six commenters objected to the Proposal's inclusion of the contract fee in the table as a separate line item expressed as a flat dollar amount. Two commenters recommended that it would be more accurate to reflect the fee as a percentage of average account size, as is required for mutual funds.[16] One commenter felt that prominent disclosure of what it believes to be a comparatively low fee is unnecessary, and suggested that the instructions allow a *de minimis* exception to permit exclusion of minor fees, accompanied by appropriate narrative disclosure.

The Commission has decided to adopt the proposed method of reflecting annual contract fees in the fee table. The majority of separate accounts assess contract fees as a flat fee; if a separate account assesses the fee as a percentage of net assets, the fee table allows the fee to be expressed as a percentage. Prominent disclosure is appropriate; the contract fees charged by separate accounts are typically larger than similar fees assessed by mutual funds. However, where the annual contract fee is not assessed against some contractowners, or is waived in certain circumstances, the Commission would not object to a footnote or cross-reference to appropriate narrative disclosure that discusses those markets for which the fee is inapplicable. Similarly, where a separate account assesses a range of contract fees, the fee table should disclose the maximum contract fee assessed, but may contain a footnote or cross-reference to narrative disclosure discussing circumstances under which the fee may be reduced or waived.

2. Group Variable Annuity Contracts

Two commenters believed that because the proposed table appears to be designed specifically for individual variable annuity contracts, several elements are inapplicable to the group variable annuity contract market. For example, one commenter believed that it is inappropriate to isolate the contract fee as a separate line item where the fee is often waived or reduced for group contracts.[17] The commenter suggested that where aspects of the proposed fee table are inappropriate for group contracts, suitable, meaningful disclosure should be allowed instead. Another suggested alternative was permitting presentation of an additional table within the larger fee table highlighting expenses applicable to the group market. A third solution suggested permitting separate accounts offering both types of contracts to identify in the fee table the markets that can disregard the contract fee or other fee.

The Commission agrees that where different fee structures apply to group and individual annuity contracts offered by the same prospectus, it may be useful to investors if the fees charged to the group contract market are set out separately from the fees assessed to individual contractowners. Therefore, the Commission has determined that where one separate account prospectus offers a contract in both the individual and group contract markets, and assesses different fees for the two markets, a separate fee table may be provided for each. Where only minor variations in fees exist, Registrants may use one fee table, and highlight the lower fees applicable to group markets through a footnote to the fee table.[18]

[12] One commenter stated that unlike mutual funds, most separate accounts have CDSLs but no front-end sales load, so that sales loads will be reduced or waived entirely as a reward for long-term investment.

[13] The Commission believes that facilitating comparisons between variable annuity products and mutual funds would provide useful information to investors. There is evidence to suggest that variable annuity contracts and mutual funds compete for the same investment dollar. *See supra* note 3.

[14] Investment Company Act Release No. 16244 (Feb. 1, 1988).

[15] In any case, however, the Commission and staff will object if the presentation of non-standard time periods is unduly complex or confusing; generally speaking, no more than a few additional time periods should be added. The Commission would not object if registrants using the Form N–1A fee table also include durations of time greater than ten years in addition to those required by the form.

[16] On the other hand, two commenters felt that expressing the fee as a dollar amount, rather than as a percentage of average account size, would be more appropriate. Currently, similar fees assessed by mutual funds, such as account fees, are reflected in the Form N–1A fee table under "Other Expenses," calculated as a percentage of average net assets. The Commission is considering amending the Form N–1A fee table to conform the presentation of the annual contract fee in the mutual fund fee table to that required for Forms N–3 and N–4.

[17] Of course, this is a concern only when the fee is assessed against some contractowners but is reduced or waived for others. If a particular caption is not applicable to a Registrant at all, General Instruction 3 to Item 3(a) of both Forms N–3 and N–4 permit the caption to be omitted from the table.

[18] Proposed General Instruction 6 to Item 3(a) would require that a separate fee table (or separate column within the fee table) be provided for each

Continued

3. Variable Life Insurance Separate Accounts

Item 2(a)(ii) of Form N–1A permits portfolio companies of variable life insurance separate accounts to omit the fee table from their prospectuses. This provision was adopted because these separate accounts contain tables of hypothetical account values that serve similar purposes as the fee table. However, because these tables do not illustrate the effects of different portfolio company expenses, but rather illustrate an average of expenses among the portfolio companies, the Proposal invited comment on whether a portfolio company fee table should be required.

The three commenters that addressed this issue believe that inclusion of the fee table for variable life insurance prospectuses is unnecessary. One commenter opposed the inclusion of the fee table in the underlying fund prospectus because the separate account prospectus contains tables of hypothetical account value that serve a similar purpose as a fee table. Another commenter stated that inclusion of the fee table would be confusing to an investor where the portfolio company offers shares to both variable life and variable annuity separate accounts. The commenter felt that annuity contract investors may be confused because they may not understand why fund expenses are set out in both prospectuses; variable life investors may be confused because they may assume that the expenses set forth in the underlying fund prospectus are in addition to those factored into the tables of hypothetical account value. In light of these comments, the Commission has determined not to require that the prospectuses of funds that are used solely as funding vehicles for variable life insurance separate accounts, or both variable life and variable annuity separate accounts, contain a fee table.

*C. Comments on the Example*

As in the Form N–1A fee table, the proposed variable annuity fee table would provide an example of the cumulative amount of fees and expenses incurred over various investment periods.[19] The Example is intended to provide a simple means for investors to compare expense levels among different separate accounts, and would illustrate the value of a hypothetical $1,000 investment at the end of one-, three-, five-, and ten-year periods, assuming 5% annual return on assets. The illustration would show the expenses incurred on the $1,000 investment assuming redemption at the end of each period, and the expenses incurred if the contract is not redeemed.[20]

1. Adding 3rd Line to the Example to Assume Annuitization

The Proposal states that "the Example assumes that the annuity contract is held only during the accumulation period and that redemption is effected by surrender of the contract." The Proposal invited comment on whether a third line should be added to the Example to assume annuitization at the end of the one-, three-, five- and ten-year periods.

One commenter felt that addition of the third line to assume annuitization would demonstrate accurately that lower charges are incurred upon annuitization. However, this commenter suggested that incorporation of the additional line should be optional because of the potential complexity for unit investment trust separate accounts with more than one underlying fund and because, in some cases, the figures in the Example and the annuitization figures would be identical.

The Commission has determined that for those separate accounts with surrender charges or deferred sales loads assessed upon surrender that are identical to the charges imposed on annuitization, the additional line for annuitization is not necessary and should be omitted. However, inclusion of the additional line will be mandatory for those separate accounts charging different fees upon annuitization. In that case, appropriate disclosure should be added to the Example under the following caption: "If you annuitize at the end of the applicable time period."[21]

2. Additional Line of Information for Annual Return Necessary to Preserve Initial Investment

The Proposal invited comment on whether the Example for Forms N–3 and N–4 should include a line of information illustrating the annual return the fund must obtain to preserve the value of a shareholder's initial investment. The five commenters that addressed this issue responded negatively. Several indicated that the inclusion of the additional line would be confusing and duplicative. One commenter felt that the similarity between the proposed line of information and the percentage figure in the fee table for total expenses would render the addition of the line confusing. Another commenter echoed this sentiment, claiming that the proposed amendment was essentially a duplication of the expense disclosure itself. For similar reasons, three commenters opposed inclusion of a similar line in the Form N–1A fee table. The Commission believes that the commenters have raised significant issues regarding this aspect of the Proposal. In the interests of keeping the fee table as simple and as straightforward as possible, the Commission has decided not to incorporate the additional line of information in Forms N–3 and N–4 at this time. However, the Commission, through the staff's review of post-effective amendments, will monitor the need for inclusion of such a line, and whether the line would provide useful additional information.

3. Use of Different Terminology

The Example demonstrates the expenses paid at various intervals under two different scenarios: "If you redeem your shares at the end of the applicable time period" and "If you do not redeem your shares." Two commenters stated that "redeem" should be replaced with "surrender" or "terminate," which they

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contract form offered by a prospectus that has different fees. This Instruction as adopted states:

"Provide a separate fee table (or separate column within the table) for each contract form offered by the prospectus that has different fees. If a Registrant uses one prospectus to offer a contract in both the group and individual variable annuity contract markets, the Registrant may a) add narrative disclosure following the fee table identifying markets where certain fees are either inapplicable or waived or lower fees charged to contractowners in group markets, or b) provide a separate fee table for group and individual contracts."

[19] The majority of commenters did not question the use of the Example in the fee table. One commenter, however, believed that the inclusion of the Example would not enhance the quality of disclosure because it would unduly emphasize cash values rather than retirement income for the annuitant. This commenter also objected to the distortion that could result from the disparity between the 5% rate of return required by the Example and actual performance. This commenter concluded that the difficulties generated by inclusion of the Example outweigh any informative value that the Example would provide. Many of these issues were considered when the Form N–1A fee table was adopted. The Commission is adopting the proposed Example in the Forms N–3 and N–4 for the stated purpose of illustrating the cumulative amount of fees and expenses over various investment periods.

[20] One commenter raised a technical comment regarding the appearance of the Example. In the Proposal as it appeared in the Federal Register, the caption "If you do not redeem your shares" was inadvertently shifted to a position that made it less prominent than the caption "If you redeem your shares at the end of the applicable time period." This was unintended and is corrected in this Adopting Release.

[21] *See* Instruction 19(j) to Item 3(a) of Form N–3 and Instruction 21(j) to Item 3(a) of Form N–4, which state that the information provided by the caption "If you annuitize at the end of the applicable time period" should be set forth only if a Registrant charges fees upon annuitization that are different from those charged upon surrender.

believe are more appropriate in the annuity context. Another commenter simply stated that the use of the term "redeem" is inappropriate.[22] The Proposal states that "* * * the Example assumes that the annuity contract is held only during the accumulation period and that redemption is effected by surrender of the contract." Also, in the portion of the fee table entitled "Contractowner Transaction Expenses," the Proposal uses the term "surrender." The Commission agrees with these commenters and therefore is changing the language in the Example to read "If you surrender your contract at the end of the applicable time period" and "If you do not surrender your contract."

*D. Date of Effectiveness*

As a compromise between the need to include this information in all separate account prospectuses as soon as possible and the burdens that would be imposed on funds and the Commission staff if all funds were required to amend their prospectuses immediately, the Commission is staggering the date when these revisions will become effective. For those separate accounts offering variable annuity contracts whose registration statements become effective on or after May 1, 1989, the revisions become effective for prospectuses used on or after May 1, 1989. For those with fiscal years ending on December 31, the revisions will become effective on May 1, 1989 as to any prospectuses used on or after that date, which is the date on which their post-effective amendments ordinarily must become effective. For all other separate accounts, today's revisions will become effective upon use of any prospectus contained in any post-effective amendment filed on or after May 1, 1989.

**Regulatory Flexibility Act Certification**

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission previously certified that these amendments will not have a significant economic impact on a substantial number of small entities. No comments were received on that certification.

**List of Subjects in 17 CFR Parts 239 and 274**

Investment companies, Reporting and recordkeeping requirements, Securities.

**Text of Form Changes**

The Commission is amending Chapter II, Parts 239 and 274, Title 17 of the Code of Federal Regulations as set forth below:

**PART 239—[AMENDED]**

**PART 274—[AMENDED]**

1. The authority citation for Part 239 continues to read, in part, as follows:

**Authority:** The Securities Act of 1933, 15 U.S.C. 77a, *et seq.*, * * *

2. The authority citation for Part 274 continues to read, in part, as follows:

**Authority:** The Investment Company Act of 1940, 15 U.S.C. 80a–1, *et seq.*, * * *

3. Section 274.11A is amended by amending Item 2 of Form N–1A by revising paragraph (a)(ii) to read as follows:

**§ 274.11A Form N–1A, registration statement of open-end management investment companies.**

* * * * *

*Item 2.*

(a) * * *

(ii) A Registrant that offers its share exclusively to one or more separate accounts may omit the table.

* * * * *

4. By amending General Instructions for Parts A and B by revising paragraphs 1 and 4(a) of General Instruction I to Form N–3, described in §§ 239.17a and 274.11b, to read as follows:

**§ 274.11b Form N–3, registration statement of separate accounts organized as management investment companies.**

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*I. Preparation of the Registration Statement or Amendment*

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General Instructions for Parts A and B

1. The information in the prospectus and the Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant and the variable annuity contracts. The information need not be in any particular order, with the exception that Items 1, 2, 3, and 4 (a) and (b) must be in numerical order in the prospectus and may not be preceded or separated by any other item.

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4. * * *

(a). A Registration Statement on this Form may include any chart, graph, or table that is not misleading; however, with the exception of the fee table and the table of contents (required by Rule 481(c) [17 CFR 230.481(c)] under the 1933 Act), no chart, graph, or table should precede the condensed financial information specified in Items 4 (a) and (b).

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5. By redesignating current paragraphs (a), (b), and (c) of Item 3 of Form N–3 as (b), (c), and (d), adding a new paragraph (a) to Item 3, and revising redesignated paragraph (b) as follows:

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Item 3. Synopsis

(a) Include a table furnishing the following information, using the captions provided, in the format illustrated below:

| | |
|---|---|
| Contractowner transaction expenses: | |
| Sales load imposed on purchases (as a percentage of purchase payments) | _____% |
| Deferred sales load (as a percentage of purchase payments or amount surrendered, as applicable) | _____% |
| Surrender fees (as a percentage of amount surrendered, if applicable) | _____% |
| Exchange fee | _____% |
| [Annual] Contract fee | _____ |
| Annual Expenses (as a percentage of average net assets): | |
| Management fees | _____% |
| Mortality and expense risk fees | _____% |
| Other expenses | _____% |
| _____ | _____% |
| _____ | _____% |
| _____ | _____% |
| Total annual expenses | _____% |

| Example | 1 year | 3 years | 5 years | 10 years |
|---|---|---|---|---|
| If you surrender your contract at the end of the applicable time period: You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets | $_____ | $_____ | $_____ | $_____ |
| If you annuitize at the end of the applicable time period: You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets | $_____ | $_____ | $_____ | $_____ |
| If you do *not* surrender your contract: You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets | $_____ | $_____ | $_____ | $_____ |

[22] A third commenter stated that where different terms are used in a prospectus to describe expenses, a Registrant should be allowed to designate line items in a manner consistent with those used in the prospectus and contracts.

*Instructions:*

*General Instructions*

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the contractowner in understanding the various costs and expenses that a contractowner will bear directly or indirectly. Include, where appropriate, cross-references to the relevant sections of the prospectus for more complete descriptions of the various costs and expenses. Disclose that premium taxes may be applicable.

2. Assume that the annuity contract is owned during the accumulation period for purposes of the table (including the Example). If an annuitant would pay different fees or be subject to different expenses, disclose this in the brief narrative and provide a cross-reference to those portions of the prospectus describing these fees.

3. If a particular caption is not applicable to the Registrant, the caption may be omitted from the table.

4. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

5. If the Registrant has sub-accounts, list separately the data for each sub-account.

6. Provide a separate fee table (or separate column within the table) for each contract form offered by the prospectus that has different fees. If a Registrant uses one prospectus to offer a contract in both the group and individual variable annuity contract markets, the Registrant may (a) add narrative disclosure following the fee table identifying markets where certain fees are either inapplicable or waived or lower fees charged to contractowners in group markets, or (b) provide a separate fee table for group and individual contracts.

*Contractowner Transaction Expenses*

7. "Sales Load Imposed on Purchase Payments" includes the maximum sales load imposed upon purchase payments and may include a tabular presentation, within the larger table, of the range of such sales loads.

8. "Deferred Sales Load" includes the maximum contingent deferred sales load, expressed as a percentage of purchase payments or amount surrendered, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time.

9. "Surrender fee" includes any fee charged for any surrender or partial surrender, but does not include any sales load charged upon surrender or partial surrender.

10. "Exchange Fee" includes the maximum fee charged for any exchange or transfer of account value from the Registrant to another investment company or from one sub-account of the Registrant to another sub-account or the insurance company's general account. The Registrant may include a tabular presentation of the range of exchange fees unless such a presentation would be so lengthy as to encumber the larger table, in which case the Registrant should only provide a cross-reference to the narrative portion of the prospectus discussing the exchange fee.

11. If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and list the (maximum) amount or basis on which the fee is deducted.

*[Annual] Contract Fee*

12. "[Annual] Contract Fee" includes any contract, account, or similar fee imposed on all contractowner accounts on any recurring basis.

*Annual Expenses*

13. "Management Fees" include investment advisory fees (including any component thereof based on the performance of the Registrant), any other management fees payable to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses."

14. "Mortality and Expense Risk Fees" may be listed separately on two lines in the table.

15. "Other Expenses" include all expenses (except brokerage commissions and other capital items, sales loads, or mortality and expense risk fees) that are deducted from separate account assets.

(a) "Other Expenses" do not include extraordinary expenses as determined by use of generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the Registrant's "Other Expenses," the Registrant should disclose in the narrative following the table what the "Other Expenses" would have been had extraordinary expenses been included.

(b) The Registrant may subdivide this caption into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Expenses."

16. Except as provided in (a) or (b) below, the percentages expressing annual expenses should be based on amounts incurred during the most recent fiscal year.

(a) A New Registrant should state the basis on which payments will be made, except that "Other Expenses" should be estimated and stated (after any expenses reimbursement or waiver) as a percentage of net assets. Disclose in the narrative following the table that "Other Expenses" is based on estimated amounts for the current fiscal year. A New Registrant, for purpose of this instruction and Instructions 18(b), 19(e) and 19(f), is a Registrant (or series of the Registrant) the prospectus of which either (i) does not include financial statements reporting operating results as a registered investment company, or (ii) includes financial statements for the initial fiscal year of the Registrant that report operating results as a registered investment company for a period of less than ten months.

(b) If the Registrant has changed its fiscal year, and as a result the most recent fiscal year is less than three months, the Registrant should use the fiscal year prior to the most recent fiscal year as the basis for determining annual expenses.

17. If there have been any changes in the annual expenses that would materially affect the information disclosed in the table:

(a) Restate the expense information using the current fees that would have been applicable had they been in effect during the previous fiscal year; and

(b) In the narrative following the table, disclose that the expense information in the table has been restated to reflect current fees.

A change in annual expenses means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. It includes the elimination of any expense reimbursement or fee waiver arrangement, in which case the expenses that would have been incurred had there been no reimbursement or waiver should be listed, but does not include circumstances where separate account expenses decrease in relation to the size of the separate account so as to make any waiver or reimbursement arrangement inoperative. An expected decrease in expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement for a separate account whose assets have increased is an example of a change that should not be treated as a change requiring restatement.

18. (a) If there were expense reimbursement or fee waiver arrangements that reduced any operating expenses and will continue to reduce them in the current fiscal year: (i) Revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses incurred, (*i.e.*, net of the amount reimbursed or waived); and (iii) disclose in the narrative following the table the amount the expenses would have been absent the reimbursement or waiver.

(b) If there are expense reimbursement or waiver arrangements that are expected to reduce any operating expense or the estimate of "Other Expenses," a New Registrant should (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase; (ii) state the amount of actual expenses expected to be incurred or the actual estimate (*i.e.*, net of the amount expected to be reimbursed or waived); and (iii) disclose in the narrative following the table what the expenses (or estimates) would have been absent the reimbursement or waiver.

**Example**

19. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under "Annual Expenses" remain the same in each year of the one, three, five, and ten-year periods, except that an appropriate adjustment to reflect reduced annual expenses from completion of organization expense amortization may be made;

(b) Assume the maximum sales load that may be deducted from purchase payments is deducted;

(c) For the purpose of any breakpoint in any fee, assume that the amount of the Registrant's assets remains constant at the level at the end of the most recently completed fiscal year;

(d) Assume no exchanges or other transactions;

(e) Reflect any [annual] contract fee by dividing the total amount of [annual] contract fees collected during the year that are attributable to the contract offered by the

prospectus by the total average net assets of all the sub-accounts in the separate account that are attributable to the contract offered by the prospectus. Add the resulting percentage to "Annual Expenses," and assume that it remains the same in each year of the one, three, five, and ten-year periods. New Registrants should estimate [annual] contract fees collected;

(f) A New Registrant should complete only the one and three year period portions of the Example;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the third section of the Example only if a sales load or other fee is charged upon complete surrender;

(i) Prominently disclose that the Example should not be considered a representation of past or future expenses and that actual expenses may be greater or lesser than those shown; and

(j) Include in the Example the information provided by the caption "If you annuitize at the end of the applicable time period" only if the Registrant charges fees upon annuitization that are different from those charged upon surrender.

(b) The Registrant should include a synopsis of information contained in the prospectus when the prospectus is long or complex, except that the fee table must be included in all prospectuses. Normally, a synopsis should not be provided where the prospectus is twelve printed pages or less.

* * * * *

5. By amending Item 7 of Form N–3 by removing instruction 3 to paragraph (a), removing paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (e) and (f), and revising redesignated paragraph (f) to read as follows:

* * * * *

Item 7. * * *

* * * * *

(f) Describe the types of operating expenses for which the Registrant is responsible. If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized and the period over which the amortization will occur.

* * * * *

6. By adding a new Guideline 37 to Form N–3 as follows:

Guide 37. Fee Table

Item 3 requires inclusion of a fee table in the front of the prospectus. The amounts listed in the Example should represent cumulative expenses. Therefore, the Registrant should aggregate any sales load or other fee deducted from payments, together with cumulative annual expenses, and any sales load or other fee deducted upon surrender. The Registrant may compute annual expenses by multiplying average annual assets of the hypothetical $1,000 account for each year by total annual expenses (a percentage taken from the second part of the table). Compute the account's average annual assets by adding the beginning account value to the ending account value and dividing by two. Determine the ending account value by multiplying the beginning account value by the assumed growth rate less total annual expenses (5%−X%) and adding the result to the beginning account value. Determine the beginning account value in the first year by subtracting the maximum amount of any sales load deducted from payments from the hypothetical $1,000 payment; in each subsequent year, the beginning account value is the previous year's ending account value.

* * * * *

7. By amending General Instructions for Parts A and B by revising paragraphs 1 and 4(a), of General Instruction I of Form N–4, described in §§ 239.17b and 274.11c, to read as follows:

**§ 274.11c Form N–4, registration statement of separate accounts organized as unit investment trusts.**

* * * * *

*I. Preparation of the Registration Statement or Amendment.*

* * * * *

General Instructions for Parts A and B

1. The information in the prospectus and the Statement of Additional Information should be organized to make it easy to understand the organization and operation of the Registrant and the variable annuity contracts. The information need not be in any particular order, with the exception that Items 1, 2, 3, and 4(a) must be in numerical order in the prospectus and may not be preceded or separated by any other item.

* * * * *

4. * * *

(a). A Registration Statement on this Form may include any chart, graph, or table that is not misleading; however, with the exception of the fee table and the table of contents (required by Rule 481(c) [17 CFR 230.481(c)] under the 1933 Act), no chart, graph, or table should precede the condensed financial information specified in Item 4(a).

* * * * *

8. By redesignating current paragraphs (a), (b), and (c) of Item 3 of Form N–4 as (b), (c), and (d), adding a new paragraph (a) to Item 3, and revising redesignated paragraph (b) as follows:

* * * * *

Item 3. Synopsis

(a) Include a table furnishing the following information, using the captions provided, in the format illustrated below:

Contractowner Transaction Expenses:
- Sales load imposed on purchases (as a percentage of purchase payments) ..... %
- Deferred sales load (as a percentage of purchase payments or amount surrendered, as applicable) ..... %
- Surrender fees (as a percentage of amount surrendered, if applicable) ..... %
- Exchange Fee ..... %

[Annual] Contract Fee ..... _____

Separate Account Annual Expenses (as a percentage of average account value):
- Mortality and expense risk fees ..... %
- Account fees and expenses ..... %
- Total Separate Account Annual Expenses ..... %

[Portfolio Company] Annual Expenses (as a percentage of [portfolio company] average net assets):
- Management fees ..... %
- Other expenses ..... %
- _____ _____ %
- _____ _____ %
- _____ _____ %
- Total [portfolio company] annual expenses ..... %

| Example | 1 year | 3 years | 5 years | 10 years |
|---|---|---|---|---|
| If you surrender your contract at the end of the applicable time period: You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets | $_____ | $_____ | $_____ | $_____ |
| If you annuitize at the end of the applicable time period: You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets | $_____ | $_____ | $_____ | $_____ |
| If you do *not* surrender your contract: You would pay the following expenses on a $1,000 investment, assuming 5% annual return on assets | $_____ | $_____ | $_____ | $_____ |

*Instructions:*

*General Instructions*

1. Immediately after the table, provide a brief narrative explaining that the purpose of the table is to assist the contractowner in understanding the various costs and expenses that a contractowner will bear directly or indirectly, and that the table reflects expenses of the separate account as well as the portfolio company. Include, where appropriate, cross-references to the relevant sections of the prospectus and a cross-reference to the portfolio company prospectus for more complete descriptions of the various costs and expenses. Disclose that premium taxes may be applicable.

2. Assume that the annuity contract is owned during the accumulation period for purposes of the table (including the Example). If an annuitant would pay different fees or be subject to different expenses, disclose this in

the brief narrative and provide a cross-reference to those portions of the prospectus describing these fees.

3. If a particular caption is not applicable to the Registrant, the caption may be omitted from the table.

4. Round all dollar figures to the nearest dollar and all percentages to the nearest hundredth of one percent.

5. If the Registrant has sub-accounts, list separately the data for each sub-account.

6. Provide a separate fee table (or separate column within the table) for each contract form offered by the prospectus that has different fees. If a Registrant uses one prospectus to offer a contract in both the group and individual variable annuity contract markets, the Registrant may a) add narrative disclosure following the fee table identifying markets where certain fees are either inapplicable or waived or lower fees charged to contractowners in group markets, or b) provide a separate fee table for group and individual contracts.

*[Annual Contract Fee*

7. "[Annual] Contract Fee" includes any contract, account, or similar fee imposed on all contractowner accounts on any recurring basis.

*Contractowner Transaction Expenses*

8. "Sales Load Imposed on Purchase Payments" includes the maximum sales load imposed upon purchase payments and may include a tabular presentation, within the larger table, of the range of such sales loads.

9. "Deferred Sales Load" includes the maximum contingent deferred sales load, expressed as a percentage of the original purchase price or amount surrendered, and may include a tabular presentation, within the larger table, of the range of contingent deferred sales loads over time.

10. "Surrender fee" includes any fee charged for any surrender or partial surrender, but does not include any sales load charged upon surrender or partial surrender.

11. "Exchange Fee" includes the maximum fee charged for any exchange or transfer of account value from the Registrant to another investment company or from one sub-account of the Registrant to another sub-account or the insurance company's general account. The Registrant may include a tabular presentation of the range of exchange fees unless such a presentation would be so lengthy as to encumber the larger table, in which case the Registrant should only provide a cross-reference to the narrative portion of the prospectus discussing the exchange fee.

12. If the Registrant (or any other party pursuant to an agreement with the Registrant) charges any other transaction fee, add another caption describing it and list the (maximum amount or basis on which the fee is deducted.

*Separate Account Annual Expenses*

13. "Mortality and Expense Risk Fees" may be listed separately on two lines in the table.

14. "Account Fees and Expenses" include all fees and expenses (except sales loads and mortality and expense risk fees) that are deducted from separate account assets or charged to all contractowner accounts. The Registrant may subdivide the caption into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Account Fees."

*Portfolio Company Annual Expenses*

15. The Registrant may substitute the term used in the prospectus to refer to the portfolio companies for the bracketed portion of the caption provided.

16. "Management Fees" include investment advisory fees (including any component thereof on the performance of the portfolio company), any other management fees payable by the portfolio company to the investment adviser or its affiliates, and administrative fees payable to the investment adviser or its affiliates not included as "Other Expenses."

17. "Other Expenses" include all expenses (except brokerage commissions and other capital items, and management fees) that are deducted from portfolio company assets.

(a) "Other expenses" do not include extraordinary expenses as determined by use of generally accepted accounting principles (*see* Accounting Principles Board Opinion No. 30). If extraordinary expenses were incurred that materially affected the portfolio company's "Other Expenses," the Registrant should disclose in the narrative following the table what the "Other Expenses" would have been had extraordinary expenses been included.

(b) The Registrant may subdivide this caption into no more than three subcategories of the Registrant's choosing, but must also include a total of all "Other Expenses."

18. Except as provided in (a) or (b) below, the percentages expressing annual expenses should be based on amounts incurred during the most recent fiscal year. If the portfolio company has a fiscal year different from that of the Registrant, base the expenses on those incurred during either the period that corresponds to the fiscal year of the Registrant, or the most recently completed fiscal year of the portfolio company.

(a) A New Registrant (or a Registrant on behalf of a new portfolio company) should state the basis on which payments will be made, except that "Other Expenses" should be estimated and stated (after any expense reimbursement or waiver) as a percentage of net assets. Disclose in the narrative following the table that "Other Expenses" is based on estimated amounts for the current fiscal year. A New Registrant, for purpose of this instruction and Instructions 20(b), 21(e) and 21(f), is a Registrant (or sub-account of the Registrant) the prospectus of which either (i) does not include financial statements reporting operating results as a registered investment company, or (ii) includes financial statements for the initial fiscal year of the Registrant that report operating results as a registered investment company for a period of less than ten months.

(b) If the Registrant or the portfolio company has changed its fiscal year, and as a result of the most recent fiscal year is less than three months, the Registrant should use the fiscal year prior to the most recent fiscal year as basis for determining annual fund operating expenses.

19. If there have been any changes in the annual expenses that would materially affect the information disclosed in the table:

(a) Restate the expense information using the current fees that would have been applicable had they been in effect during the previous fiscal year; and

(b) In the narrative following the table, disclose that the expense information in the table has been restated to reflect current fees.

A change in annual expenses means either an increase or a decrease in expenses that occurred during the most recent fiscal year or that is expected to occur during the current fiscal year. It includes the elimination of any expense reimbursement or fee waiver arrangement, in which case the expenses that would have been incurred had there been no reimbursement or waiver should be listed, but does not include circumstances where separate account expenses decrease in relation to the size of the separate account or portfolio company so as to make any waiver or reimbursement arrangement inoperative. An expected decrease in expenses as a percentage of assets due to economies of scale or breakpoints in a fee arrangement for a portfolio company whose assets have increased is an example of a change that should not be treated as a change requiring restatement.

20. (a) If there were expense reimbursement or fee waiver arrangements that reduced any operating expenses and will continue to reduce them in the current fiscal year: (i) revise the appropriate caption by adding "After Expense Reimbursement" or some similar phrase; (ii) state the amount of actual expenses incurred, (*i.e.*, net of the amount reimbursed or waived); and (iii) disclose in the narrative following the table the amount the expenses would have been absent the reimbursement or waiver.

(b) If there are expense reimbursement or waiver arrangements that are expected to reduce any operating expense or the estimate or "Other Expenses," a New Registrant should (i) revise the appropriate caption by adding "After Expense Reimbursements" or some similar phrase' (ii) state the amount of actual expenses expected to be incurred or the actual estimate (*i.e.*, net of the amount expected to be reimbursed or waived); and (iii) disclose in the narrative following the table what the expenses (or estimates) would have been absent the reimbursement or waiver.

*Example*

21. For purposes of the Example in the table:

(a) Assume that the percentage amounts listed under "Separate Account Annual Expenses" and "Portfolio Company Annual Expenses" remain the same in each year of the one-, three-, five-, and ten-year periods, except that appropriate adjustment to reflect reduced annual expenses from completion of organization expense amortization may be made;

(b) Assume the maximum sales load that may be deducted from purchase payments is deducted;

(c) For the purposes of any breakpoint in any fee, assume that the amount of the

Registrant's (and the portfolio company's) assets remains constant at the level at the end of the most recently completed fiscal year;

(d) Assume no exchange or other transactions;

(e) Reflect any [annual] contract fee by dividing the total amount of [annual] contract fees collected during the year that are attributable to the contract offered by the prospectus by the total average net assets of all the sub-accounts in the separate account that are attributable to the contract offered by the prospectus. Add the resulting percentage to "Annual Expenses," and assume that it remains the same in each year of the one-, three-, five-, and ten-year periods. New Registrants should estimate [annual] contract fees collected;

(f) A New Registrant should complete only the one- and three-year period portions of the Example;

(g) Reflect any contingent deferred sales load by assuming a complete surrender on the last day of the year;

(h) Provide the information required in the third section of the Example only if a sales load or other fee is charged upon a complete surrender;

(i) Prominently disclose that the Example should not be considered a representation of past or future expenses and that actual expenses may be greater or lesser than those shown; and

(j) Include in the Example the information provided by the caption "If you annuitize at the end of the applicable time period" only if the Registrant charges fees upon annuitization that are different from those charged upon surrender.

(b) The Registrant should include a synopsis of information contained in the prospectus when the prospectus is long or complex, except that the fee table must be included in all prospectuses. Normally, a synopsis should not be provided where the prospectus is twelve printed pages or less.

* * * * *

9. By amending Item 6 of Form N–4 by removing paragraph (e), redesignating paragraphs (f) and (g) as paragraphs (e) and (f), and revising redesignating paragraph (f) to read as follows:

* * * * *

Item 6. * * *

* * * * *

(f) Describe the type of operating expenses for which the Registrant is responsible. If organizational expenses of the Registrant are to be paid out of its assets, explain how the expenses will be amortized and the period over which the amortization will occur.

* * * * *

10. By adding a new Guideline 13 to Form N–4 as follows:

Guide 13. Fee Table

Item 3 requires inclusion of a fee table in the front of the prospectus. The amounts listed in the Example should represent cumulative expenses. Therefore, the Registrant should aggregate any sales load or other fee deducted from payments, together with cumulative annual expenses, and any sales load or other fee deducted upon surrender. The Registrant may compute annual expenses by multiplying average annual assets of the hypothetical $1,000 account for each year by total annual expenses (a percentage taken from the second part of the table). Compute the account's average annual assets by adding the beginning account value to the ending account value and dividing by two. Determine the ending account value by multiplying the beginning account value by the assumed growth rate less total annual expenses (5%−X%) and adding the result to the beginning account value. Determine the beginning account value in the first year by subtracting the maximum amount of any sales load deducted from payments from the hypothetical $1,000 payment; in each subsequent year, the beginning account value is the previous year's ending account value.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

January 23, 1989.

[FR Doc. 89–2088 Filed 1–30–89; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 12

**[T.D. 89–20]**

## Customs Regulation Amendment Imposing Import Sanctions Against the Toshiba Machine Co. and the Kongsberg Trading Co.

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Interim rule; solicitation of comments.

**SUMMARY:** This document amends the Customs Regulations to implement the import sanctions against products produced by the Toshiba Machine Company ("Toshiba") and the Kongsberg Trading Company ("Kongsberg") imposed by Executive Order No. 12661, pursuant to section 2443(a)(2) of the Omnibus Trade and Competitiveness Act of 1988 ("the Act"). Executive Order No. 12661 imposed a 3 year import prohibition, subject to certain exceptions, on products of Toshiba and Kongsberg. This document also contains a list of the exemptions from the sanctions and provides guidance to importers to whom the exemptions apply. Although the regulations will become effective upon publication in the **Federal Register**, comments from members of the public will be reviewed and considered prior to the publication of a final rule.

**DATES:** Interim rule effective January 31, 1989; comments must be received by April 3, 1989.

**ADDRESS:** Written comments (preferably in triplicate) concerning the rule should be submitted to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service Headquarters, Room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Paley, Office of Regulations and Rulings, Commercial Rulings Division, United States Customs Service, at 202–566–5856.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 2443(a)(2) of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) ("the Act") requires the President to impose, for a period of 3 years, a prohibition on the importation into the United States of all products produced by the Toshiba Machine Company (Toshiba), the Kongsberg Trading Company (Kongsberg), and any other foreign person whom the President finds to have knowingly facilitated the diversion of advanced milling machinery and technology to the Soviet Union by Toshiba and Kongsberg. The President has issued Executive Order No. 12661, which announces the imposition of the sanctions required by section 2443(a)(2). These regulations are being adopted to implement the Executive Order.

Section 2443(a)(2) requires the President to prohibit the importation of products produced by Toshiba and Kongsberg. However, in order to prevent undue hardship to U.S. national security interests and minimize the collateral impact of sanctions on U.S. companies, exemptions were provided for a wide range of transactions. The regulations implement the import prohibition and provide necessary definitions and procedures whereby parties can import products exempted from the sanctions.

### Comments

These interim regulations are effective immediately upon publication in the **Federal Register**. Such action is necessary to implement the sanctions made effective by the Executive Order. However, before adopting these interim regulations as a final rule, consideration will be given to any written comments (preferably in triplicate) timely submitted. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs

Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, Room 2119, 1301 Constitution Avenue NW., Washington, DC 20229.

**Inapplicability of Notice And Delayed Effective Date**

The effective date of the import sanctions imposed by Executive Order No. 12261 is December 28, 1988. In order to implement the import sanctions it is necessary that these regulations be effective on the date of publication. Accordingly, it is determined, pursuant to 5 U.S.C. 553(b)(B), that notice is impracticable. For the same reason, pursuant to 5 U.S.C. 553(d)(3), it is determined to dispense with a delayed effective date. In addition, notice is not necessary since these regulations involve a foreign affairs function. However, before adopting final regulations, consideration will be given to all written comments timely submitted.

**Executive Order 12291**

Because this amendment involves a foreign affairs function, it is not subject to E.O. 12291.

**The Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), do not apply.

**Paperwork Reduction Act**

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1515–0166.

Comments concerning the collection of information and the accuracy of estimated average annual burden, and suggestions for reducing the burden should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for Customs.

The collection of information in this section is in § 12.143. This information is required by the U.S. Customs Service in order to properly determine the validity of claimed exemptions from the import sanctions imposed by § 12.140. This information will be used by the U.S. Customs Service to ensure that products being imported are, in fact, the products to which the exemptions apply. The likely respondents are business or other for-profit institutions, State and local governments, and Federal agencies.

*Estimated total annual reporting and/or recordkeeping burden:* 1,125 hours.

*Estimated number of respondents:* 2500.

*Estimated annual frequency of responses:* 1.

**Drafting Information**

The principal author of this document was Peter T. Lynch, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 12**

Customs duties and inspection.

**Amendments to the Regulations**

Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below:

## PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624.

§§ 12.140–12.144 also issued under section 2443 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418).

2. Part 12, Customs Regulations (19 CFR Part 12) is amended by adding a new center heading entitled "Sanctions Against Toshiba Machine Company and Kongsberg Trading Company", which heading shall appear immediately before new, added §§ 12.140–12.144 as set forth below.

### Part 12—Sanctions Against Toshiba Machine Company and Kongsberg Trading Company

Sec.



**§ 12.140 Applicability, prohibited importations.**

Except as otherwise provided by these regulations, the importation into the United States of products produced by Toshiba Machine Company (Toshiba) or Kongsberg Trading Company (Kongsberg) is prohibited for a period of three years following [effective date of Executive Order].

**§ 12.141 Exceptions.**

The prohibition contained in Section 12.140 shall not apply to:

(a) Products provided under contracts or other binding agreements entered into before June 30, 1987;

(b) Spare parts;

(c) Component parts, but not finished products, essential to United States products or production;

(d) Routine servicing and maintenance of products;

(e) Information and technology; and

(f) Excepted defense articles.

**§ 12.142 Definitions.**

For the purposes of these regulations:

(a) The term "products produced by Toshiba or Kongsberg" means products manufactured or produced by Toshiba, Kongsberg, their successors or assigns, or any other entity directly or indirectly owned or controlled by any of the foregoing, provided that such products are not subsequently substantially transformed by another party.

(b) The term "contracts or other binding agreements entered into before June 30, 1987" means:

(1) Written obligations entered into before June 30, 1987, and performed or to be performed on or after June 30, 1987, that require the purchase for delivery in the United States of products to which the prohibitions contained in Section 12.140 would otherwise apply, and that are without condition or qualification other than as provided by force majeure clauses or similar clauses;

(2) With respect to used products imported by or for the primary user, written obligations performed before June 30, 1987, whether or not they provide for delivery in the United States; and

(3) Agreements under which:

(i) Products are designed to a purchaser's specifications and marketed in the United States under the purchaser's trademark, brand, or name; and

(ii) The purchaser clearly documents a pattern of trade that began before June 30, 1987, and continued to the time of the importation.

For purposes of these regulations, no contract or other binding agreement may exist between Toshiba or Kongsberg and any entity directly or indirectly owned or controlled by Toshiba, Kongsberg, or by any parent or subsidiary of Toshiba or Kongsberg.

(c) The term "spare part" means any individual piece, part, or subassembly which is intended for the logistic support or repair of a finished product and not as a finished product itself.

(d) The term "component parts" means any article which is not usable for its intended functions without being imbedded in or integrated into any other product and which, if used in the production of a finished product, would be substantially transformed in that process.

(e) The term "finished product" means any article which is usable for its intended function without being imbedded or integrated into any other product, but in no case shall such term be deemed to include an article produced by a person other than Toshiba or Kongsberg that contains parts or components produced by Toshiba or Kongsberg if the parts and components have been substantially transformed during their production of the finished product.

(f) An article is "substantially transformed" when, by means of a substantial manufacturing or processing operation, the article is converted or combined into a new and different article of commerce having a new name, character and use.

(g) The term "essential to United States products or production" with respect to component parts means component parts which are produced by Toshiba, Kongsberg, or both, that are necessary for the manufacture or processing of United States products, and for which there is no suitable alternative. The term "suitable alternative" refers to an article (1) that can be substituted for an article produced by Toshiba or Kongsberg, (2) that will perform the same functions or is capable of the same use, and (3) is available at a competitive price.

(h) The term "routine servicing and maintenance" means customary servicing and maintenance, including repairs or installation of spare parts or component parts. The term shall also include the temporary importation of tools and equipment necessary to perform such servicing or maintenance, as well as reimportation of products exported for routine servicing and maintenance.

(i) The term "information and technology" includes plans, drawings, and other written and pictorial data in any form or medium, and personal transmissions of any of the foregoing. The term shall also include component parts, finished products, or other articles to which these prohibitions would otherwise apply if temporarily imported under the provisions of item 864.30 of the Tariff Schedules of the United States (subheading 9813.00.30 of the Harmonized Tariff Schedule of the United States) solely to demonstrate such technology and which are thereafter exported.

(j) The term "excepted defense articles" means any defense article, as defined in section 47 of the Arms Export Control Act (22 U.S.C. 2794), that the Secretary of Defense or his designee certifies:

(1) Are procured under existing contracts or subcontracts, including exercise of options for production quantities to satisfy United States operational military requirements;

(2) Are essential defense articles of which Toshiba or Kongsberg is a sole-source supplier and for which no alternative supplier can be identified; or

(3) Are essential to the national security under defense coproduction agreements.

(k) The term "United States" includes its territories and possessions

**§ 12.143 Procedures for exempted products.**

Importers of products of Toshiba or Kongsberg under any of the exceptions set forth above in § 12.141, shall file with the U.S. Customs Service, at the time of making entry, a declaration setting forth a complete statement of the exception under which such article is imported, including a copy of any certification provided by the Secretary of Defense or his designee pursuant to § 12.142. An importer of articles claimed to be exempt as "component parts" pursuant to § 12.141 shall file with the U.S. Customs Service, at the time of making entry, a certificate that such importer has made reasonable efforts to obtain a suitable alternative. Such reasonable efforts may include (1) open and public solicitations of known suppliers, or (2) advertising in appropriate trade journals or periodicals of general circulation. Importers shall also provide any other information or documentation deemed necessary by Customs to determine the admissibility of the articles in question.

**William von Raab,**

*Commissioner of Customs*

Approved: January 25, 1989.

**Salvatore R. Martoche,**

*Assistant Secretary of the Treasury*

[FR Doc. 89-2199 Filed 1-30-89; 8:45 am]

BILLING CODE 4820-02-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

[Docket No. FEMA 6822]

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

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

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

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

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et. seq.). Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but

prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

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

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

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

**List of Subjects in 44 CFR Part 64**

Flood insurance—floodplains.

**PART 64—[AMENDED]**

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

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

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

**§ 64.6 List of eligible communities.**

| State and location | Community number | Effective dates of authorization/ cancellation of sale of flood insurance in community | Current effective map date | Date certain federal assistance no longer available in special flood hazard areas. |
|---|---|---|---|---|
| | | Region III | | |
| Pennsylvania: Deer Lake, Borough of, Schuylkill County. | 422640 | Jan. 22, 1976, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp. | Feb. 2, 1989 | Feb. 2, 1989. |
| Kidder, Township of, Carbon County | 421453 | Aug. 29, 1975, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp. | Feb. 2, 1989 | Do. |
| Penn Forest, Township of, Carbon County. | 421457 | July 9, 1979, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp. | Feb. 2, 1989 | Do. |
| Ruscombmanor, Township of, Berks County. | 421099 | Aug. 6, 1975, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp. | Feb. 2, 1989 | Do. |
| Westfall, Township of, Pike County | 421970 | July 30, 1975, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp. | Feb. 2, 1989 | Do. |
| | | Region IV | | |
| Kentucky: Carrollton, City of, Carroll County. | 210232 | Mar. 20, 1975, Emerg.; Sept. 4, 1985, Reg.; Feb. 2, 1989, Susp. | Feb. 2, 1989 | Do. |
| North Carolina: Cherokee County, Unincorporated Areas. | 370059 | July 18, 1979, Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp. | Feb. 2, 1989 | Do. |
| | | Region V | | |
| Indiana: Waterloo, Town of, Dekalb County. | 180050 | Mar. 6, 1975, Emerg.; Sept. 4, 1985, Reg.; Feb. 2, 1989, Susp. | Feb. 2, 1989 | Do. |
| Michigan: Victor, Township of, Clinton County. | 260720 | May 11, 1981 Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp. | Feb. 2, 1989 | Do. |
| Wisconsin: Grantsburg, Village of, Burnett County. | 550033 | May 14, 1975 Emerg.; Feb. 2, 1989, Reg.; Feb. 2, 1989, Susp. | Feb. 2, 1989 | Do. |
| | | Region I | | |
| Maine: Lovell, Town of, Oxford County | 230336 | July 15, 1975 Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Feb. 17, 1989. |
| Wilton, Town of, Franklin County | 230063 | June 11, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |

| State and location | Community number | Effective dates of authorization/ cancellation of sale of flood insurance in community | Current effective map date | Date certain federal assistance no longer available in special flood hazard areas. |
|---|---|---|---|---|
| Vermont: Hartford, Town of, Windsor County. | 500148 | Feb. 11, 1972, Emerg.; July 2, 1979, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| | | Region II | | |
| New York: Duanesburg, Town of, Schenectady County. | 361191 | Sept. 15, 1975 Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| | | Region III | | |
| Pennsylvania: Brady, Township of, Huntington County. | 421684 | Nov. 25, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Burgettstown, Borough of, Washington, County. | 420847 | Feb. 18, 1976 Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Fallowfield, Township of, Washington, County. | 422148 | Oct. 15, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Franklin, Township of, Greene County | 422595 | Feb. 7, 1977, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Franklin, Township of, Huntingdon County. | 422573 | Mar 23, 1977 Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Greenwich, Township of, Berks County. | 421067 | Aug. 21, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Juniata, Township of, Huntingdon, County. | 421692 | Feb. 4, 1976 Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Lenhartsville, Borough of, Berks County. | 420139 | Aug. 25, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Maryland: Sharptown, Town of, Wicomico County. | 240081 | Aug. 15, 1975, Emerg.; Sept. 27, 1989, Reg.; Feb. 17, 1989, Susp. | Sept. 27, 1989 | Do. |
| | | Region IV | | |
| North Carolina: Lumberton, City of, Robeson County. | 370203 | Mar. 5, 1975, Emerg.; Nov. 5, 1980, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| | | Region V | | |
| Michigan: Lockport, Township of, St. Joseph County. | 260715 | Aug. 30, 1982, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Ohio: Byesville, Village of, Guernsey County. | 390199 | June 17, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Guernsey County, Unincorporated Areas. | 390198 | Mar. 22, 1976, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Lore City, Village of, Guernsey County | 390202 | Mar. 25, 1976, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Quaker City, Village of, Guernsey County. | 390853 | Aug. 28, 1980, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |
| Cambridge, City of, Guernsey County | 390200 | July 10, 1975, Emerg.; July 10, 1975, Reg.; Feb. 17, 1989. Susp. | Feb. 17, 1989 | Do. |
| | | Region X | | |
| Oregon: Mosier, City of, Wasco County | 410234 | July 25, 1975, Emerg.; Feb. 17, 1989, Reg.; Feb. 17, 1989, Susp. | Feb. 17, 1989 | Do. |

*Code of reading fourth column:*

Emerg.—Emergency
Reg.—Regular
Susp.—Suspension

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR. Doc. 89-2174 Filed 1-30-89; 8:45 am]

BILLING CODE 6718-21-M

## NATIONAL SCIENCE FOUNDATION

### 45 CFR Part 606

### Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Science Foundation

**AGENCY:** National Science Foundation.

**ACTION:** Final rule.

**SUMMARY:** This regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the National Science Foundation (NSF). This regulation does not apply to recipients of financial assistance from NSF or to programs or activities that receive a benefit from such assistance because those matters are covered by NSF regulations at 45 CFR Part 605. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides definitions for "individual with handicaps" and "qualified individual with handicaps," and establishes a complaint mechanism for resolving allegations of discrimination.

**EFFECTIVE DATE:** April 3, 1989.

**ADDRESSES:** Comments received on the Notice of Proposed Rulemaking will be available for public inspection in the Office of Equal Opportunity, NSF, 1800 G Street, NW., Washington, DC, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday except legal holidays until April 3, 1989. Copies of this regulation are available on cassette tapes for persons with impaired vision. They may be obtained from the address below.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brenda M. Brush, Director, Office of Equal Opportunity, National Science Foundation, 1800 G Street, NW., Washington, DC 20550, Telephone (202) 357–9819 (Voice), (202) 357–9867 (TDD).

**SUPPLEMENTARY INFORMATION:**

## Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the National Science Foundation. Section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*
>
> (29 U.S.C. 794 (1978 amendment italicized).)

On April 4, 1988, the Foundation published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, 53 FR 10896. The period for receiving public comment expired on June 3, 1988. The Foundation received a total of two comments from national interest organizations and one from an individual. After analysis of these comments, the Foundation decided to adopt this final rule.

Section 504 requires that regulations that apply to the programs and activities of Federal Executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Foundation is submitting these regulations to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and to the House Committee on Education and Labor and its Subcommittee on Select Education. The regulation will become effective on April 3, 1989.

The substantive nondiscrimination obligations of the Foundation, as set forth in this rule, are virtually identical to those established by Federal regulations for programs or activities receiving Federal financial assistance. (*See* 28 CFR Part 41 (section 504, coordination regulations for federally assisted programs).) This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 *Cong. Rec.* 13,901 (1978) (remarks of Rep. Jeffords); 124 *Cong. Rec.* E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 *Cong. Rec.* 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

Two commenters objected to language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. As explained in the preamble to the proposed rule, these changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority* 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the recent decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's section 504 regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Foundation believes that there are no significant differences between this rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. This regulation is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

## Section-by-Section Analysis and Response to Comments

*Section 606.1 Purpose*

Section 606.1 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 2973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

*Section 606.2 Application*

The regulation applies to all programs or activities conducted by the

Foundation but not programs or activities conducted by recipients of Federal financial assistance from the Foundation. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing Foundation operations and those directly administered by the Foundation for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Foundation's facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

*Section 606.3 Definitions*

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the Foundation's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 606.60(a)(1), they may also be necessary to meet other requirements of the regulation.

A commenter suggested that the requirement for auxiliary aids in aspects of the Foundation's program other than those covered by § 606.60(a)(1) should be specifically stated in the regulation. The Foundation believes that such a statement is unnecessary, because the regulation makes the obligation not to discriminate clear and thus requires the provision of auxiliary aids whenever they are necessary to meet that obligation. Two commenters suggested that "attendant services" should be included in the list of examples of auxiliary aids appearing in the definition. The Foundation believes that attendant services are generally personal in nature and that they are therefore generally not required.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the Foundation to investigate the complaint. The definition is necessary, because the 180-day period for the Foundation's investigation (*see* § 606.70(f)) begins when the Foundation receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)) except that the term "rolling stock or other conveyances" has been added. The other exception is that the phrase, "or interest in such property," has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the Foundation regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the Foundation. The term "facility" is used in §§ 606.50, 606.51, and 606.70(e).

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in the regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulations for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the Foundation can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the Foundation. The Foundation is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the Foundation does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

Two commenters argued that this definition of "qualified individual with handicaps" was unnecessary, because *Davis* was an interpretation of the definition in paragraph (2), which requires only that the individual meet "the essential eligibility requirements" for participation in the program. The Foundation believes that *Davis* clarifies the meaning of "essential eligibility requirements" with respect to programs, such as the one at issue in that case, in which an individual "is required to perform services or to achieve a level of

accomplishment." In such a program, the Court held in *Davis*, an individual is not qualified if he or she cannot achieve the purpose of the program without modifications that would fundamentally alter its nature. The Foundation believes that it is appropriate to reflect this clarification in the regulation.

A commenter also suggested that the rule rather than the preamble should address when modifications to a program must occur. The Foundation believes that the obligation to make appropriate modifications or adjustments to enable individuals with handicaps to participate in its programs is made sufficiently clear in the substantive provisions of the regulation, so that a reference to it in this definition is unnecessary.

The Foundation has the initial burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the Foundation must follow the procedures established in § 606.51(a) and § 606.60(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the Foundation Director or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Foundation Director or his or her designee determines that an action would result in a fundamental alteration, the Foundation must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (3) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 606.40. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the Foundation and not to programs or activities to which it provides Federal financial assistance.

*Section 606.10 Self-evaluation*

The Foundation shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

One commenter suggested that among the post-evaluation material to be placed on file and made available to the public should be a list of the interested persons who provided comments during the self-evaluation. That list has been added at § 606.10(c)(1).

*Section 606.11 Notice*

Section 606.11 requires the Foundation to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Foundation's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

A commenter suggested that this provision be amended to include recruitment materials. Because this provision specifically mentions information available to "applicants . . . and other interested persons," the Foundation believes that recruitment information is already adequately covered by the notice provision, and for this reason this suggestion has not been adopted.

*Section 606.30 General prohibitions against discrimination*

Section 606.30 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 606.30 establish the general principles for analyzing whether any particular action of the Foundation violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the Foundation violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 606.30. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The Foundation may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 606.50–606.52) and communications (§ 606.60) are specific applications of this principle.

Despite the mandate of paragraph (d) that the Foundation administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with

handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the Foundation to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the Foundation's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the Foundation from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the Foundation from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the Foundation from utilizing criteria or methods of administration that deny individuals with handicaps access to the Foundation's programs or activities. The phrase "criteria or methods of administration" refers to official written Foundation policies and the actual practices of the Foundation. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 606.30(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the Foundation. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the Foundation, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

One commenter objected to the omission of a paragraph from the regulation for federally assisted programs that prohibits a recipient from providing significant assistance to an organization that discriminates. To the extent that assistance from the Foundation would provide significant support to an organization, it would constitute Federal financial assistance and the organization, as a recipient of such assistance, would be covered by the Foundation's section 504 regulation for federally assisted programs. The regulatory "significant assistance" provision, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the Foundation must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

*Section 606.40 Employment*

Section 606.40 prohibits discrimination on the basis of handicap in employment by the Foundation. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness v. United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd v. United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 606.40 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 606.70(b) specifies that the Foundation will use the existing EEOC procedures to resolve allegations of employment discrimination.

*Section 606.50 Program accessibility: Discrimination prohibited*

Section 606.50 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 606.51 and 606.52.

*Section 606.51 Program accessibility: Existing facilities*

This regulation adopts the program accessibility concept found in the existing § 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 606.51 requires that each Foundation program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the Foundation is not required to make each of its existing facilities accessible (§ 606.51(a)(1)). However, § 606.51, unlike 28 CFR 41.57, places explicit limits on the Foundation's obligation to ensure program accessibility (§ 606.51(a)(2)).

Paragraph (a)(2) generally codifies case law that defines the scope of the Foundation's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the Foundation is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 606.60(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of the program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis, (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981).

Paragraphs (a)(2) and 606.60(d) are also supported by the Supreme Court's recent decision in *Alexander v. Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that § 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program.' " *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the Foundation of all obligations to individuals with handicaps. Although the Foundation is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 606.51(a) would in most cases not result in undue financial and administrative burdens on the Foundation. In determining whether financial and administrative burdens are undue, all Foundation resources available for use in the funding and operation of the conducted program or activity should be considered. The initial burden of establishing that compliance with § 606.51(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the Foundation. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Foundation's decision or failure to make a decision may file a complaint under the compliance procedures established in § 606.70.

Two commenters argued that the decision that an action would result in undue burdens should be based on the resources of the Foundation as a whole. The Foundation believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Parts of the Foundation's budget may be earmarked for specific purposes and may simply not be available for use in making the Foundation's programs accessible to individuals with handicaps.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the Foundation shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the Foundation's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alterations to a load-bearing structural member.) The Foundation may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirements. As currently required for federally assisted programs by 28 CFR 41.57(b), the Foundation must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within 60 days.

*Section 606.52 Program accessibility: New construction and alterations*

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 606.52 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the Foundation shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the Foundation after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 606.51. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 606.52.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Foundation believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for among other things, consideration of that issue. The Foundation may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

*Section 606.60 Communications*

Section 606.60 requires the Foundation to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 606.60(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the Foundation's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given special consideration by the Foundation (§ 606.60(a)(2)(i)). The Foundation shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 606.60(d). That paragraph limits the obligation of the Foundation to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 606.51(a)(2)). Unless not required by § 606.60(d), the Foundation shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 606.51(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the Foundation's obligation to comply with § 606.60.

In certain circumstances, such as relatively simple requests for information by persons skilled in spoken or written language, a note pad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language and the potential for misunderstanding is high. Then a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the Foundation intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the Foundation's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The Foundation shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the Foundation. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the Foundation may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Foundation need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 606.60(a)(1)(ii)). For example, the Foundation need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the Foundation to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the Foundation to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the Foundation to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

One commenter recommended that the Foundation add a paragraph to § 606.60, Communications, requiring the agency to provide handicapped persons with information about their rights under section 504. Such a paragraph is unnecessary because it would duplicate § 606.11, Notice.

One commenter suggested that the Foundation add a paragraph to § 606.60, Communications, requiring the Foundation to provide captioning on films and videotapes that it produces. The regulation requires that the Foundation ensure that communications with hearing-impaired persons be effective. Although the captioning of films and videotapes is one means of ensuring effective communications, there are other, equally effective alternatives available. For this reason the Foundation has not adopted this suggestion.

*Section 606.70 Complaint procedures*

Paragraph (a) specifies that paragraphs (c) through (h) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) designates the official responsible for coordinating implementation of § 606.70 and paragraph (d) provides an address to which complaints may be sent.

The Foundation is required to accept and investigate all complete complaints (§ 606.70(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 606.70(d)).

One commenter on the compliance procedures suggested that the Foundation should be required to refer a complaint to the appropriate agency when the Foundation does not have jurisdiction over it. The proposed rule merely required the Foundation to make reasonable efforts to do so. The Foundation has not adopted this suggestion because of several possible circumstances in which the Foundation might not be able to refer a complaint successfully. For example, the Foundation might receive a complaint that no Federal agency would have jurisdiction over or that did not contain sufficient information to identify the appropriate agency.

A commenter suggested that the regulation should include procedures for handling complaints that are incomplete. The Foundation believes that it is not necessary to include such detailed procedures in the text of the regulation itself. The Foundation will, of course, develop methods for handling situations for which procedures are not spelled out in the regulation.

Section 606.70(e) requires the Foundation to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready

access to and use by individuals with handicaps.

Section 606.70(f) requires the Foundation to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal. One appeal within the Foundation shall be provided (§ 606.70(g)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 606.70(g)).

Two commenters suggested that the rule should incorporate a provision concerning judicial review, and one commenter suggested that the rule should state that a complainant is not required to exhaust the administrative remedies before bringing an action in court. It is beyond the Foundation's jurisdiction to specify the availability or scope of judicial review of agency actions. That issue is for the courts to decide.

One commenter requested the addition of a provision whereby the Foundation would award attorneys fees to complainants and two commenters requested the addition of a provision whereby compensation would be awarded to the prevailing parties in administrative proceedings. There is no general authorization in title V of the Rehabilitation Act for the agency award of attorney fees in agency administrative proceedings, or for the payment of compensation to prevailing parties in agency proceedings. For this reason the Foundation has not adopted either an attorneys fee provision or a compensation provision in the final regulation.

**List of Subjects in 45 CFR Part 606**

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Erich Bloch,

*Director, National Science Foundation.*

For the reasons set forth in the preamble, Title 45, Public Welfare, of the Code of Federal Regulations is amended by adding Part 606 as follows:

## PART 606—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL SCIENCE FOUNDATION

Sec.



Authority: 29 U.S.C. 794.

### § 606.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

### § 606.2 Application.

This part applies to all programs or activities conducted by the Foundation, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States. Programs and activities receiving Federal financial assistance from the Foundation are covered by 45 CFR Part 605.

### § 606.3 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Foundation. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the Foundation's alleged discriminatory action in sufficient detail to inform the Foundation of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Foundation" means the National Science Foundation.

"Individual with handicaps" means any person in the United States who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially

limit major life activities but is treated by the Foundation as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Foundation as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any Foundation program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Foundation can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 606.40.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810); and the Civil Rights Restoration Act of 1987 (Pub. L. 100–259, 102 Stat. 28). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

**§§ 606.4–606.9 [Reserved]**

**§ 606.10 Self-evaluation.**

(a) The Foundation shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Foundation shall proceed to make the necessary modifications.

(b) The Foundation shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Foundation shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) A list of the interested persons who made comments;

(2) A description of areas examined and any problems identified; and

(3) A description of any modifications made.

**§ 606.11 Notice.**

The Foundation shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Foundation and make such information available to them in such manner as the Director of the Foundation finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

**§§ 606.12–606.29 [Reserved]**

**§ 606.30 General prohibitions against discrimination.**

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Foundation.

(b)(1) The Foundation, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Foundation may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Foundation may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Foundation may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Foundation; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Foundation, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Foundation shall administer programs and activities in the most

integrated setting appropriate to the needs of qualified individuals with handicaps.

**§§ 606.31–606.39 [Reserved]**

**§ 606.40 Employment.**

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Foundation. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

**§§ 606.41–606.49 [Reserved]**

**§ 606.50 Program accessibility: Discrimination prohibited.**

Except as otherwise provided in § 606.51, no qualified individual with handicaps shall, because the Foundation's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Foundation.

**§ 606.51 Program accessibility: Existing facilities.**

(a) *General.* The Foundation shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Foundation to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Foundation has the initial burden of establishing that compliance with § 606.51(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her designee after considering all Foundation resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or burdens, the Foundation shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Foundation may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Foundation is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Foundation, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Foundation shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Foundation shall comply with the obligations established under this section within 60 days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Foundation shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The Foundation shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Foundation's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

**§ 606.52 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Foundation shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

**§§ 606.53–606.59 [Reserved]**

**§ 606.60 Communications.**

(a) The Foundation shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Foundation shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Foundation.

(i) In determining what type of auxiliary aid is necessary, the Foundation shall give primary consideration to the requests of the individual with handicaps.

(ii) The Foundation need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Foundation communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The Foundation shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence

and location of accessible services, activities, and facilities.

(c) The Foundation shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Foundation has the initial burden of establishing that compliance with § 606.60 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her designee after considering all Foundation resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Foundation shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

**§§ 606.61–606.69 [Reserved]**

**§ 606.70 Complaint procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Foundation.

(b) The Foundation shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Opportunity (OEO), shall coordinate implementation of this section.

(d) Persons wishing to submit complaints should submit complete complaints (see § 606.03) to the Office of Equal Opportunity, National Science Foundation, 1800 G Street NW., Washington, DC 20550. In accordance with the procedures outlined below, the Foundation will accept all complete complaints and will either undertake to investigate them if they are within the jurisdiction of the Foundation and submitted within 180 days of the alleged acts of discrimination or in the case of complaints not within the jurisdiction of the Foundation, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity. Complete complaints submitted after the 180 day time limit may also be acted upon at the discretion of the Foundation if good cause for the delay in submission is found.

(e) The Foundation shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or a facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(f) Within 180 days of the receipt of a complete complaint, the Director, Office of Equal Opportunity (OEO), or his or her designee or delegate, will investigate the complaint and shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of a right to appeal to the Director of the Foundation.

(g)(1) A complainant may appeal findings of fact, conclusions of law, or remedies to the Director of the Foundation. Such appeals must be in writing and must state fully the basis for the appeal, proposed alternative findings of fact, conclusions of law, or remedies. They must be sent (as evidenced by an appropriate postmark or other satisfactory evidence) within 90 days after the date of receipt from the Foundation of the letter described in paragraph (f) of this section. The Foundation may extend this time for good cause.

(2) The Director shall notify the complainant of the results of the appeal within 30 days of the receipt of the appeal. If the Director determines that additional information is needed from the complainant, the Director shall have 30 days from the date such additional information is received from the complainant to make a determination on the appeal.

(h) The time limits for sending a letter to the complainant in paragraph (f) and for deciding an appeal in paragraph (g)(2) of this section may be extended with the permission of the Assistant Attorney General.

**§§ 606.71–606.99 [Reserved]**

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BILLING CODE 7555-01-M

## HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

### 45 CFR Part 1803

### Nondiscrimination on the Basis of Handicap

**AGENCY:** Harry S. Truman Scholarship Foundation.

**ACTION:** Final rule.

**SUMMARY:** This regulation applies to programs or activities conducted by the Harry S. Truman Scholarship Foundation the provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap.

**EFFECTIVE DATE:** This regulation becomes effective upon the expiration of 30 days after this publication during which either or both Houses of Congress are in session.

**FOR FURTHER INFORMATION CONTACT:** Malcolm C. McCormack, Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place NW., Washington, DC 20006, (202) 395–4831 or (202) 566–2673 (TDD) (Treasury Department relay service).

**SUPPLEMENTARY INFORMATION:** On December 21, 1987 the Harry S. Truman Scholarship Foundation ("Foundation") published in the **Federal Register**, 52 FR 48297, a notice of proposed rulemaking. That notice solicited comments on a proposed regulation applying to programs and activities conducted by the Harry S. Truman Scholarship Foundation ("Foundation") the provisions of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as amended.

No comments were received. The Foundation therefore is adopting its earlier proposal as its final regulation with only minor changes to §§ 1803.10(a)(2), 1803.11(f), and 1803.11(1). These changes are made at the request of the Department of Justice. The preamble to the proposal explained the background for this regulation and analyzed each of its sections.

This regulation has been reviewed by the Department of Justice under Executive Order No. 12250 (45 FR 72 995, 3 CFR, 1980 Comp., p. 298). This

regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). As noted in connection with publication of the proposed regulation, § 1803.9 provides that the standards, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as elaborated in EEOC's regulations at 29 CFR Part 1613, are applicable under section 504 of the Act to employment by the Foundation.

This regulation is not a major rule within the meaning of Executive Order No. 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act, 5 U.S.C. 601–612.

**List of Subjects in 45 CFR Part 1803**

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

Chapter XXVIII of Title 45 of the Code of Federal Regulations, entitled "Harry S. Truman Scholarship Program," is amended by adding Part 1803 as follows:

## PART 1803—NONDISCRIMINATION ON THE BASIS OF HANDICAP

Sec.



Authority: 29 U.S.C. 794.

### § 1803.1 Purpose.

This part effectuates section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by executive agencies.

### § 1803.2 Application.

This part applies to all programs or activities conducted by the Foundation, except for programs or activities conducted outside the United States that do not involve individual(s) with handicaps in the United States.

### § 1803.3 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of programs or activities conducted by the Foundation.

"Complete complaint" means a written statement containing: (1) Date and nature of the alleged violation of section 504; (2) the complainant's name and address; and (3) the signature of the complainant or of someone authorized to act on his or her behalf.

Complaints filed on behalf of classes or third parties shall describe or identify, by name if possible, the alleged victims of discrimination.

"Executive Secretary" means the Executive Secretary of the Harry S. Truman Scholarship Foundation.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Foundation" means the Harry S. Truman Scholarship Foundation.

"General Counsel" means the General Counsel of the Harry S. Truman Scholarship Foundation.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been classified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Foundation as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in subparagraph (1) of this definition, but is treated by the Foundation as having such an impairment.

"Qualified individual with handicaps" means an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, any Foundation program or activity. For purposes of employment, "qualified individual with handicaps" means "qualified handicapped person" as defined in 29 CFR 1613.702(f), which is made applicable to this part by § 1803.10.

"Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394, 29 U.S.C. 794, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1617; the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955; and by the Rehabilitation Act amendments of 1986, Pub. L. 99–506, 100 Stat. 1810. As used in this part, section 504 applies only to programs or activities conducted by the Foundation and not to federally assisted programs.

### § 1803.4 Self-evaluation.

(a) The Foundation shall, within one year of the effective date of this part, evaluate, with the assistance of interested persons, including individuals with handicaps or organizations representing individuals with handicaps, its current policies and practices, and

the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Foundation shall proceed to make the necessary modification.

(b) The Foundation shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

**§ 1803.5 Notice.**

The Foundation shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Foundation as the Executive Secretary finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

**§ 1803.6 General prohibitions against discrimination.**

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity subject to this part.

(b) The Foundation may not, either directly or through arrangements with others, on the basis of handicap—

(1) Discriminate against a qualified individual with handicaps in the award or renewal of scholarships, through selection criteria or otherwise;

(2) Deny a qualified individual with handicaps the opportunity to participate as a member of boards or panels used to screen scholarship applicants;

(3) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(4) Otherwise subject a qualified individual with handicaps to discrimination.

(c) The Foundation may not, either directly or through arrangements with others, utilize criteria or methods of administration the purpose or effect of which would—

(1) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(2) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(d) The Foundation shall administer programs and activities in the most feasibly integrated setting appropriate to the needs of qualified individuals with handicaps.

**§ 1803.7 Program accessibility: Existing facilities.**

(a) The Foundation shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not necessarily require the Foundation to make each of its existing facilities accessible to and usable by individuals with handicaps, but no qualified individual with handicaps shall be denied the benefit of, be excluded from participation in, or otherwise be subjected to discrimination under any of the Foundation's programs and activities because any of the Foundation's facilities are inaccessible to or unusable by individuals with handicaps.

(b) When the Foundation uses facilities leased or otherwise provided by the General Services Administration (GSA), it shall request GSA to make any structural changes that the Foundation determines are required to provide necessary accessibility for individuals with handicaps, and shall inform that agency of any complaints regarding accessibility by individuals with handicaps.

(c) The Foundation periodically uses meeting rooms or similar facilities made available by non-federal entities. In any instances in which such temporarily used facilities are not readily accessible to qualified individuals with handicaps, the Foundation shall make alternative arrangements so that such qualified individuals with handicaps can participate fully in the Foundation's activity.

(d) This section does not require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administration burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter a program or activity or would result in undue financial and administrative burdens, the Foundation has the burden of proving that compliance with paragraph (a) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Executive Secretary after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Foundation shall take other action not resulting in such an alteration or such burdens, but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the programs or activities.

**§ 1803.8 Program accessibility: New construction and alterations.**

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Foundation shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

**§ 1803.9 Employment.**

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Foundation. The definitions, requirements and procedures of § 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

**§ 1803.10 Communications.**

(a) The Foundation shall take appropriate steps to assure that interested persons, including persons with impaired vision or hearing, can effectively communicate with the Foundation and obtain information as to the existence and availability of the Foundation's programs and activities.

(1) The Foundation shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in the scholarship interview process or other programs or activities conducted by the Foundation.

(i) In determining what type of auxiliary aid is necessary, the Foundation shall give primary consideration to the requests of the individual with handicaps.

(ii) The Foundation need not provide individually prescribed devices or other devices of a personal nature.

(2) When the Foundation communicates with applicants and beneficiaries by telephone, the Foundation shall use, for persons with impaired hearing, a telecommunication device for deaf persons or equally effective telecommunication device

(b) The Foundation shall take appropriate steps to provide individuals with handicaps with information regarding their § 504 rights under the Foundation's programs or activities.

(c) This section does not require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter a program or activity or would result in undue financial and administrative burdens, the Foundation has the burden of proving that compliance with paragraphs (a) and (b) of this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Executive Secretary after considering all Foundation resources available for use in the funding and operation of a conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Foundation shall take other action not resulting in such an alteration or such burdens, but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the programs or activities.

**§ 1803.11 Compliance procedures.**

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Foundation.

(b) The Foundation shall process complaints alleging violations of § 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to § 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Executive Secretary.

(d) The Foundation shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Foundation may extend this time period for good cause.

(e) If the Foundation receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Foundation shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is used by the Foundation that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(g) The Foundation shall notify the complainant of the results of the investigation within 90 days of the receipt of a complete complaint over which it has jurisdiction. Notification must be in a letter, and must include—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation discovered; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by paragraph (f) of this section. The Foundation may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the General Counsel.

(j) The Foundation shall notify the complainant of the results of the appeal within 90 days of the receipt of the request. If the Foundation determines that it needs additional information from the complainant, it shall have 90 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (h) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Foundation may delegate its authority for conducting complaint investigations to other federal agencies, but may not delegate to another agency the authority for making the final determination.

**Malcolm C. McCormack,**

*Executive Secretary.*

Dated: January 19, 1989.

[FR Doc. 89–2119 Filed 1–30–89; 8:45 am]

BILLING CODE 6820–AB–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 380

[90121–9021]

### Antarctic Marine Living Resources Convention Act of 1984

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Notice of final rule.

**SUMMARY:** The Secretary of Commerce (Secretary), on behalf of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), publishes notice of conservation and management measures promulgated by the Commission and accepted in whole by the United States Government to regulate catches in Convention for the Conservation of Antarctic Marine Living Resources (Convention) statistical reporting subarea 48.3. These measures restrict overall catches of certain species of fish, prohibit the taking of other species and require real-time reporting of the harvest of certain species.

**EFFECTIVE DATE:** January 31, 1989.

**ADDRESS:** A copy of the framework environmental assessment may be obtained from the Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910.

**FOR FURTHER INFORMATION CONTACT:** Robin Tuttle (NMFS International Science, Development and Polar Affairs Division), 301–427–2288.

**SUPPLEMENTARY INFORMATION:** At its annual meeting in Hobart, Tasmania, in 1986, CCAMLR, of which the United States is a member, adopted a conservation measure requiring the Commission at subsequent meetings to adopt limitations on catch, or equivalent measures, binding for species upon which fisheries are permitted in Convention statistical reporting subarea 48.3 (South Georgia) depicted at Figure 1, 50 CFR Part 380. These measures are implemented through measures set out at 50 CFR 380.26.

The measures for the 1988/89 fisheries season adopted by CCAMLR at its annual meeting in 1988 are based upon the advice of its Scientific Committee and take into account data resulting from recent fishery surveys around South Georgia. The measures were announced and public comment invited (until December 30, 1988) by Federal

Register notice on November 30, 1988, 53 FR 48364. No comments were received.

For the 1988/89 fishing season, fishing for *Champsocephalus gunnari* (mackerel icefish) is prohibited from November 4, 1988, to November 20, 1989, in Convention statistical reporting subarea 48.3, except for scientific research purposes. In order to avoid bycatch of this species, fishing is also prohibited for other species of finfish normally taken on the same grounds. Therefore, no *Nothothenia rossii* (marbled rockcod), *N. gibberifrons* (humped rockcod), *Chaenocephalus aceratus* (blackfin icefish), or *Pseudochaenichthys georgianus* (South Georgia icefish) may be taken in Convention statistical reporting subarea 48.3, from November 4, 1988, to November 20, 1989, except for scientific research purposes.

The reporting system for *C. gunnari* that was established at 50 CFR 380.24 for the 1977–88 fishing season is modified to require the reporing of *Patagonotothen brevicauda guntheri* (Patagonian rockcod) rather than *C. gunnari*. As required by 50 CFR 380.26 (a), the Secretary announces that the catch of *P. b. guntheri* in Convention statistical reporting subarea 48.3 for the 1988/89 season is limited to 13,000 tons. If this seasonal catch limitation for *P. b. guntheri* set by the Commission is reached before the end of the season the closure of the fishery will be announced in the **Federal Register** and NMFS will notify the designated representative of the holder of a permit to fish in Convention statistical reporting subarea 48.3 of the date of the closure of the fishery, pursuant to 50 CFR 380.26(b).

### Classification

The Secretary of Commerce has determined that this rule is necessary to implement the Antarctic Marine Living Resources Convention Act of 1984 and to give effect to the conservation and management measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources and agreed to by the United States.

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator) prepared a framework environmental assessment (EA) for the implementation of the Antarctic Marine Living Resources Convention Act of 1984 in 1987. NMFS has reviewed this rule and determined that the actions it requires were generally summarized in the framework EA and are thus excluded from further National Environmental Policy Act analysis.

This action is exempt from Executive Order 12291 and section 553 of the Administrative Procedure Act because it involves a foreign affairs function of the United States. Because notice and comment rulemaking is not required for this rule, the Regulatory Flexibility Act does not apply; therefore, a regulatory flexibility analysis has not been prepared. At present there are no U.S. vessels or vessels subject to the jurisdiction of the United States harvesting Antarctic marine living resources within the area to which these regulations apply, except for research purposes. Presently, the only Antarctic resources affected are scientific specimens taken under National Science Foundation permits and by the U.S. Antarctic Marine Living Resources directed research program. Accordingly, these regulations should not have an incremental impact on U.S. vessels harvesting or performing associated activities in the Convention area.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The collection of information has been approved by the Office of Management and Budget under Control Number 0648–0194.

The annual reporting burden for this collection of information is estimated to average one-hour per harvester, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Robin Tuttle, National Marine Fisheries Service, 1335 East-West Highway, Room 7240, Silver Spring, Maryland 20910 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

### List of Subjects in 50 CFR Part 380

Antarctic, Fish and wildlife, Reporting and recordkeeping requirements.

Dated: January 26, 1989.

**James W. Brennan,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble of this rule, 50 CFR Part 380 is amended as follows:

## PART 380—ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

1. The authority citation for Part 380 continues to read as follows:

**Authority:** 16 U.S.C. 2431 *et seq*

### §§ 380.24 [Amended]

2. In § 380.24 of Subpart B, paragraph (b) is amended by substituting "*Patagonotothen brevicauda guntheri*" for "*Champsocephalus gunnari*" and "*P. b. guntheri*" for "*C. gunnari*" each time they appear.

3. New § 380.27 is added to Subpart B to read as follows:

### § 380.27 Closure of Convention statistical reporting subarea 48.3.

From November 4, 1988, until November 20, 1989, no *C. gunnari* (Mackerel icefish), *Notothenia rossii* (Marbled rockcod), *N. gibberifrons* (Humped rockcod), *Chaenocephalus aceratus* (Blackfin icefish), or *Psuedochaenichthys georgianus* (South Georgia icefish) may be taken in subarea 48.3.

[FR Doc. 89–2242 Filed 1–30–89; 8:45 am]

BILLING CODE 3510-22-M

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## 50 CFR Part 651

[Docket No. 81128–9007]

## Northeast Multispecies Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA issues this final rule to amend the rule implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP) Amendment 2 (Amendment) will improve the overall effectiveness of existing management measures and enhance the conservation of the groundfish stocks. The intended effect of the rule is to afford better protection of the groundfish stocks to support both commercial and recreational fisheries

**EFFECTIVE DATE:** February 27, 1989 except for the measure establishing a regulated mesh area on Nantucket Shoals (§ 651.20(a)(2)) which is effective January 27, 1989. Public inspection and the measure requiring 5½ inch mesh throughout the net (§ 651.20(b)(1)(ii)) which is effective January 1, 1990.

**ADDRESSES:** Copies of the Amendment, the environmental assessment (EA), the regulatory impact review (RIR), and other supporting documents are available from Douglas Marshall, Executive Director, New England

Fishery Management Council, Suntaug Office Park, 5 Broadway, Saugus, MA 01908.

**FOR FURTHER INFORMATION CONTACT:** Jack Terrill (Resource Policy Analyst) 508–281–3600, ext. 252.

**SUPPLEMENTARY INFORMATION:** The New England Fishery Management Council (Council) prepared and submitted Amendment 2 to amend the FMP. A notice of availability was published on October 11, 1988 (53 FR 39627; corrected at 53 FR 44975, November 7, 1988) and the proposed rule on November 9, 1988 (53 FR 45301; corrected at 53 FR 47299, November 22, 1988). The amendment contains actions that are expected to improve the effectiveness of several of the existing FMP measures in relation to two major factors: (1) The promotion of regulatory compliance, and (2) the long-term achievement of management objectives. This amendment also adopts a management measure that had previously been implemented in February 1988 (53 FR 5773, February 26, 1988) as an emergency action.

Amendment 2 contains nine specific changes and additions to the management system. These are as follows:

1. An increase in the minimum fish size (total length, TL) for yellowtail flounder from 12 inches to 13 inches and for American plaice (dab) from 12 inches to 14 inches.

2. An indefinite postponement of the scheduled increase in regulated mesh (to 6 inches) in the Georges Bank portion of the Regulated Mesh Area. Alternatively, vessels operating in the Regulated Mesh Area will only be permitted to use nets with mesh no smaller than the regulated size throughout the net, effective January 1, 1990.

3. A modification to the language that allows nets of smaller than the regulated mesh aboard but not in use in the Regulated Mesh Area, by removing from § 651.20(f) paragraphs (3) and (4) and replacing them with "nets which are secured in a manner approved by the Regional Director".

4. Adopt regulatory language to facilitate non-reissuance of Exempted Fishery Program permits when participants have not complied with reporting requirements.

5. Establish a trip bycatch limit of 25 percent regulated species for vessels operating in the Exempted Fishery Program.

6. A prohibition on trawl vessels from entering Closed Area II during the period of seasonal closure.

7. The establishment of a minimum size of 9 inches (TL) for redfish.

8. Minimum fish sizes shall apply to both commercial and recreational fishermen.

| Species | Recreational minimum size (inches) |
|---|---|
| Atlantic cod | 19 |
| Haddock | 19 |
| Pollock | 19 |
| Witch flounder (gray sole) | 14 |
| Yellowtail flounder | 13 |
| American plaice (dab) | 14 |
| Winter flounder (blackback) | 11 |
| Redfish | 9 |

9. A Regulated Mesh area will be implemented for the months of December through March in an area designated as Nantucket Shoals.

**Comments and Responses**

Written comments were submitted by the U.S. Coast Guard, Department of the Interior, Portland Fish Exchange, New England Fishery Management Council and one individual. Several commenters supported approval of the Amendment.

*Comment:* The Portland Fish Exchange objected to the 25 percent bycatch by weight of regulated species allowed per trip in the Exempted Fisheries Program when shrimp is declared as the target species. They asked that shrimp landing slips be used rather than the actual amount on board the vessel upon landing to allow for the practice of holding over the regulated species for sale later. They asked for clarification of the measure and how it would be enforced.

*Response:* The measure was developed to respond to concerns that directed effort on regulated groundfish while in the exempted fisheries program would result in discard mortality of juvenile fish, and that the bycatch amount over the entire period of participation in the program was being used as an allocation rather than as true bycatch. Enforcement was hampered by the inability to enforce the bycatch provision at dockside where it applied to the entire time period. It was determined that a 25 percent bycatch of regulated species on a trip basis was necessary to protect juvenile regulated species and to insure attainment of Council intent. The determination of 25 percent was based on actual landing practices and was found to have a minimal impact. Exceptions to the measure could provide loopholes which would undermine effective enforcement and jeopardize the juvenile regulated species. The measure is implemented as proposed.

*Comment:* One commenter objected to the increased minimum sizes without a corresponding increase in mesh size which will result in discards. The commenter also requested a minimum mesh size of 3 inches for whiting.

*Response:* The minimum fish sizes specified agree more closely with the target retention levels of the other regulated species for a 5½ inch mesh net. The measures contained in the amendment are intended to insure the effective mesh in use is 5½ inches. A minimum mesh size in the Exempted Fishery Program has not been addressed in this amendment.

*Comment:* The Council commented that the preamble should note the need for early implementation of the regulated mesh area on Nantucket Shoals to protect large concentrations of juvenile Atlantic cod.

*Response:* Due to the large concentrations of juvenile cod presently occurring in the Nantucket Shoals area and the high mortality that will result from their discard, the Under Secretary for Oceans and Atmosphere, NOAA, (Under Secretary) has determined that it is in the best interest of the resource and the public to waive the Administrative Procedure Act delayed effectiveness period for this part of the Amendment.

*Comment:* The Council commented that the proposed rule failed to specify the implementation date of January 1, 1990 for the measure requiring the minimum mesh size throughout the net.

*Response:* The implementation date was stated in the preamble of the proposed rule and has been added as § 651.20(b)(1)(ii) of the final rule.

*Comment:* The Council made several comments of a minor technical or editorial nature.

*Response:* These comments are addressed in the body of the regulations.

**Classification**

The Director, Northeast Region, NMFS, (Regional Director) determined that this Amendment is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

The Council prepared an EA for the Amendment and concluded that there will be no significant impact on the environment as a result of this rule. You may obtain a copy of the assessment from the Council at the address listed above (see ADDRESSES).

The Under Secretary determined that this rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291.

The Under Secretary also finds that, due to the possibility of high mortality of juvenile Atlantic cod in the Nantucket Shoals area and the high mortality that will result from their discards, there is good cause to make the measure establishing a seasonal regulated mesh area for this area immediately effective under section 553(d) of the Administrative Procedure Act.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

The Council determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal zone management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, and North Carolina.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

**Changes to the Proposed Rule**

1. In § 651.20(a)(1)(i), the table entries for Points F, L and M are revised to correct errors.

2. In § 651.20(a)(1)(ii), the table entry for Point A is revised to correct an error.

3. In § 651.20(b)(1), an expiration date for the present provision and a new § 651.20(b)(1)(i) and § 651.20(b)(1)(ii) have been added to clarify the effective date for the new provision which more accurately reflects Council intent under the FMP.

4. In § 651.20(f), the first sentence is revised to clarify the scope of the provision and to make it consistent with the prohibition on use of liners set forth in § 651.20(e)(2).

**Other changes**

1. In § 651.21(a)(1), a technical change has been made to the second table entry for Point A to correct an error contained in the final rule implementing Amendment 1 to the FMP (52 FR 35098).

**List of Subjects in 50 CFR Part 651**

Fishing, Fisheries, Vessel permits and fees.

Dated: January 26, 1989.

**James E. Douglas, Jr.,**

*Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, NOAA amends 50 CFR Part 651 as follows:

## PART 651—[AMENDED]

1. The authority citation for 50 CFR Part 651 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. Section 651.7 is amended by adding new paragraph (b)(11) to read as follows:

**§ 651.7 Prohibitions.**

* * * * *

(b) * * *

(11) Enter the area described in § 651.21(a)(2) during a period in which that area is closed, unless allowed by § 651.21(a).

* * * * *

3. Section 651.20 is amended by revising paragraphs (a) (1) and (2), (b)(1), (c)(2), (d)(1) introductory text and (2), and (f) introductory text and (3) to read as follows:

**§ 651.20 Regulated mesh area and gear limitations.**

(a) * * *

(1) *Gulf of Maine/Georges Bank regulated mesh area* (Figure 1):

(i) Bounded on the east by the U.S.-Canada maritime boundary, defined by the following points in the order stated:

| Point | Latitude | Longitude |
|---|---|---|
| L | Southward along the irregular U.S.-Canada maritime boundary from the territorial sea | |
| K | 43°58' N | 67°22' W. |
| M | 42°53.1' N | 67°44.4' W. |
| F | 42°31' N | 67°28.1' W. |
| G | 41°18.6' N | 66°24.8' W. |

(ii) Bounded by straight lines connecting the following points in the order stated:

| Point | Latitude, longitude | Loran C bearings |
|---|---|---|
| N1 | 40°55.5' N, 66°38.0' W | 5930-Y-30750 and 9960-Y-43500. |
| N2 | 40°45.5' N, 68°00 W | 9960-Y-43500 and 68°00' W. |
| N3 | 40°37.0' N, 68°00' W | 9960-Y-43450 and 68°00' W. |
| N4 | 40°30.5' N, 69°00' W | 9960-Y-43450 and 69°00' W. |
| N5 | 40°22.7' N, 69°00' W | 9960-Y-43400 and 69°00' W. |
| Z | 40°18.7' N, 69°40' W | 9960-Y-43400 and 69°40' W. |
| A | 40°33.5' N, 69°40' W | |
| B | 41°35.0' N, 69°40' W | |
| C | 41°35.0' N and the territorial sea. | |

NOTE.—Loran lines are included for the convenience of fishermen.

(iii) Northward along the territorial sea of Massachusetts, New Hampshire, and Maine to the U.S.-Canada maritime boundary at Point L.

(2) *Nantucket Shoals regulated mesh area* (Figure 4): Bounded by straight lines connecting the following points in the order stated:

| Point | Latitude, longitude | Loran C bearings |
|---|---|---|
| NS1 | 41°24.0' N, 69°59.0' W | 9960-Y-43850 and 69°59' W. |
| NS2 | 41°28.0' N, 69°40.0' W | 9960-Y-43850 and 69°40' W. |
| NS3 | 41°56.5' N, 69°40.0' W | 9960-Y-43650 and 69°40' W. |
| NS4 | 41°51.5' N, 70°14.0' W | 9960-Y-43650 and 9960-X-25175. |
| NS5 | 41°00.0' N, 70°17.5' W | 9960-Y-25175 and 41°00' N. |
| NS6 | 41°10.0' N, 70°19.0' W | 9960-X-25175 and 41°10' N. |
| NS7 | 41°15.5' N, 70°18.5' W | 9960-X-25175 and 41°15.5' N. |

and then to NS1 following the seaward limit of the territorial sea.

NOTE.—Loran lines are included for the convenience of fishermen.

(i) This area will be in effect for the months of December through March, inclusive, unless suspended pursuant to § 651.20(a)(2)(ii).

(ii) The Regional Director may suspend this Regulated Mesh Area (RMA) by notice in the **Federal Register**, if he/she determines that concentrations of juvenile cod are not sufficiently abundant in the area to warrant protection by the RMA.

(b) *Trawl nets*—(1) *Diamond mesh.* (i) Except as provided for in §§ 651.20(b)(3), 651.20(d) and 651.22, the minimum mesh size for any trawl net, including midwater trawls, or Scottish seine used by a vessel fishing in the mesh area described in paragraphs (a)(1) and (a)(2) of this section is 5½ inches for at least 75 continuous meshes forward of the terminus of the net. This provision shall expire effective December 31, 1989.

(ii) Effective January 1, 1990, except as provided for in §§ 651.20(b)(3), 651.20(d) and 651.22, the minimum mesh size for any trawl net, including midwater trawls, or Scottish seine used by a

vessel fishing in the mesh area described in paragraphs (a)(1) and (a)(2) of this section is 5½ inches throughout the entire net.

* * * * *

(c) * * *

(2) In other portions of the New England area not subject to minimum mesh size restrictions under paragraph (b) of this section, the mesh in bottom-tending gillnets must be the same during the months of November through February as that in effect in the Regulated Mesh Area, as defined in paragraph (a)(1) of this section.

(d) *Midwater gear exception.* (1) For the RMA south of 42° N. latitude, fishing for Atlantic herring or blueback herring, mackerel, and squids may take place throughout the fishing year with mesh sizes less than the regulated size provided that:

* * * * *

(2) For the RMA north of 42° 20′ N. latitude, fishing for herring and mackerel may take place from December through May with mesh sizes less than regulated size, provided that the requirements of paragraphs (d)(1) (i) and (ii) of this section are met and that the bycatch of regulated species does not exceed 1 percent, by weight, of herrings and mackerel on board the vessel.

* * * * *

(f) Except as provided in paragraph (d) of this section, no vessel issued a permit under § 651.4 may have available for immediate use any net, or any piece of a net, not meeting the requirements specified in paragraphs (b) and (c) of this section, or mesh that is rigged in a manner that is inconsistent with § 651.20(e)(2), while in the areas described in paragraph (a) of this section. A net that conforms to one of the three following specifications and which can be shown not to have been in recent use is considered to be not "available for immediate use":

* * * * *

(3) Nets which are secured in a manner approved by the Regional Director. After review and approval, the Regional Director shall specify alternative manner(s) of securing nets by notice in the **Federal Register.**

**§ 651.21 [Amended]**

4. In § 651.21(a) the heading is revised to read "*Georges Bank*".

5. In § 651.21(a)(1), the second table entry for Point a is revised to read as follows:

| Point | Latitude | Longitude |
|---|---|---|
| a | 40°53′ N. | 68°53′ W. |

**§ 651.22 [Amended]**

6. In § 651.22(a)(1), the table entry for Point B is revised to read as follows:

| Point | Latitude | Longitude |
|---|---|---|
| B | 41°35′ N. | 69°40′ W. |

7. Section 651.22 is amended by revising paragraphs (c) and (e)(2) to read as follows:

**§ 651.22 Exempted fishery program.**

* * * * *

(c) *Certification.* (1) The Regional Director will certify in writing the entry of the applicant into the exempted fisheries program.

(2) Entry of the applicant into the exempted fisheries program cannot occur until the applicant receives written certification from the Regional Director.

(3) The Regional Director may suspend current participation or deny entry into the exempted fishery program, or both, to an applicant if:

(i) The Regional Director determines that the applicant has failed to file reports as required by § 651.22(f); or

(ii) The applicant violates any provision of these regulations or of the Magnuson Act, providing a notice of violation and assessment for such violation has been issued to the applicant.

(4) With respect to any suspension or denial for failure to report under paragraph (c)(3)(i) of this section, the Regional Director may reinstate the applicant or approve the applicant's request to enter the exempted fishery program for subsequent reporting periods; if the applicant submits, and the Regional Director receives, completed missing reports. For missing reports received within 5 calendar days of suspension or denial, the Regional Director shall decide whether reinstatement is appropriate within 14 calendar days of receiving the missing reports. For missing reports received after the 5 calendar days of suspension or denial, the Regional Director shall decide within 30 calendar days of receiving the reports. The Regional Director's authority to suspend participation in or deny entry into the exempted fishery program is separate and distinct from any civil penalty assessed under § 651.7(b)(8).

* * * * *

(e) * * *

(2) Participation in the exempted fisheries program is subject to seasonal limitations, exempted species, and maximum regulated species percentage restrictions as follows:

| Period | Target species | Comments |
|---|---|---|
| June through November | Dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid. | Regulated species weight may not exceed 10% of the total landings of dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid during the reporting period. Regulated species weight may not exceed 25% of the combined weight of dogfish, herring, mackerel, ocean pout, red hake, silver hake, and squid on each trip. |
| December through January | Silver hake (whiting) | Regulated species weight may not exceed 10% of the total landings of silver hake and shrimp during the reporting period. Regulated species weight may not exceed 25% of the combined weight of silver hake and shrimp on each trip. |
| December through May, or as specified by ASMFC.[1] | Shrimp | Regulated species weight may not exceed 10% of the total landings of shrimp during the reporting period. Regulated species weight may not exceed 25% of the weight of shrimp on each trip. |

[1] The Northern Shrimp Section of the Atlantic States Marine Fisheries Commission is responsible for the management of northern shrimp. The Section has designated a regulatory period from December through May within which it sets the annual fishing season for northern shrimp. The Section has the authority to adjust the regulatory period or add additional measures appropriate for the conservation of northern shrimp. The Section will consult with the New England Fishery Management Council regarding recommendations to adjust the regulatory period, with respect to the management of multispecies.

8. Section 651.23 is amended by revising paragraph (a) to read as follows:

**§ 651.23 Minimum fish size.**

(a) The minimum fish sizes (total length) for certain regulated species follow:

| | Inches |
|---|---|
| Cod, haddock, and pollock | 19 |
| Witch flounder (gray sole) | 14 |
| Yellowtail flounder | 13 |
| American plaice (dab) | 14 |
| Winter flounder (blackback) | 11 |
| Redfish | 9 |

* * * * *

9. In Part 651, Figures 1 and 4 are revised to read as follows:

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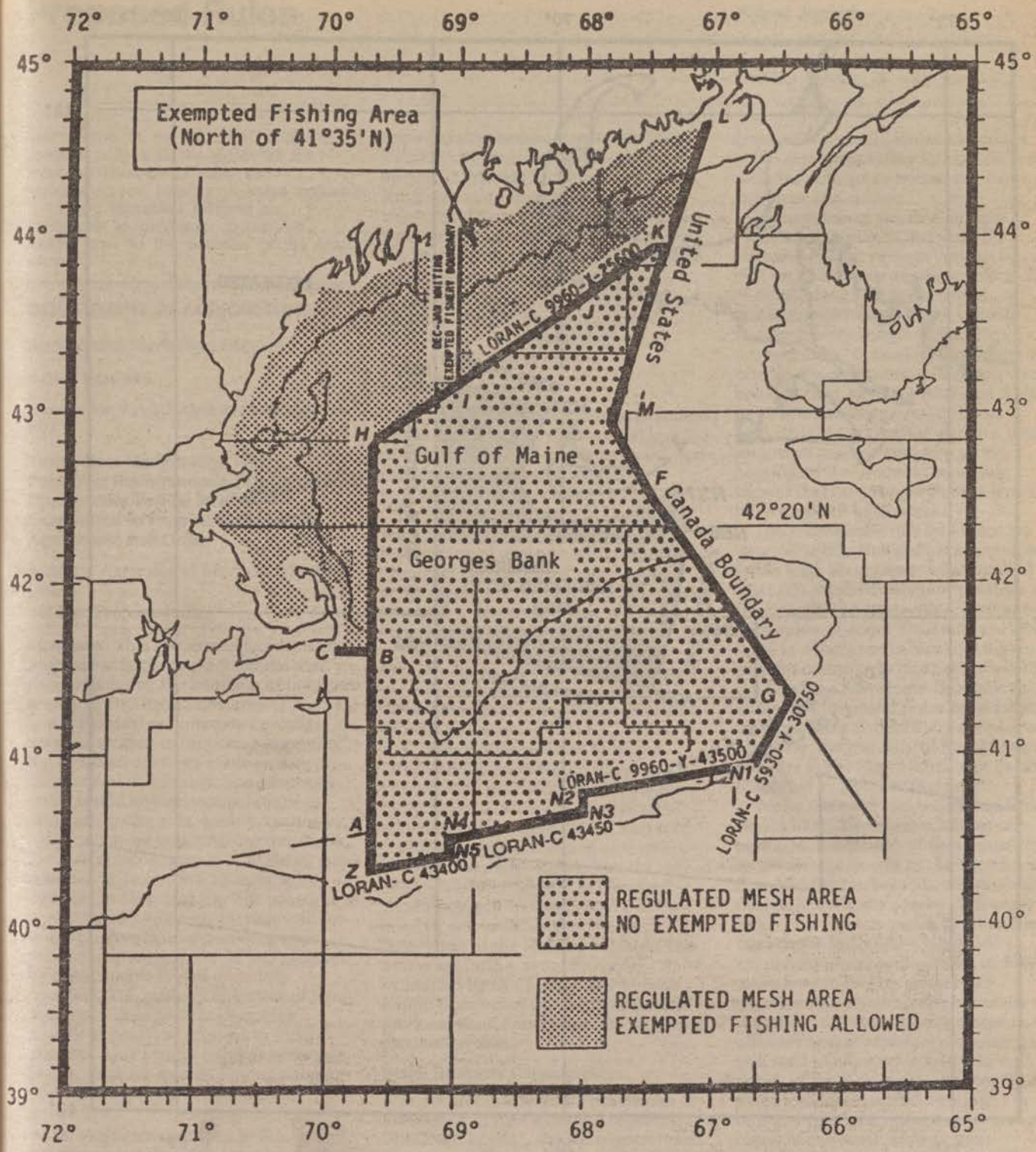


Figure 1. New England regulated mesh areas and areas of exempted and non-exempted fishing. See text for details. These areas are defined in 651.20(a)(1). Loran lines are included for the convenience of fishermen.

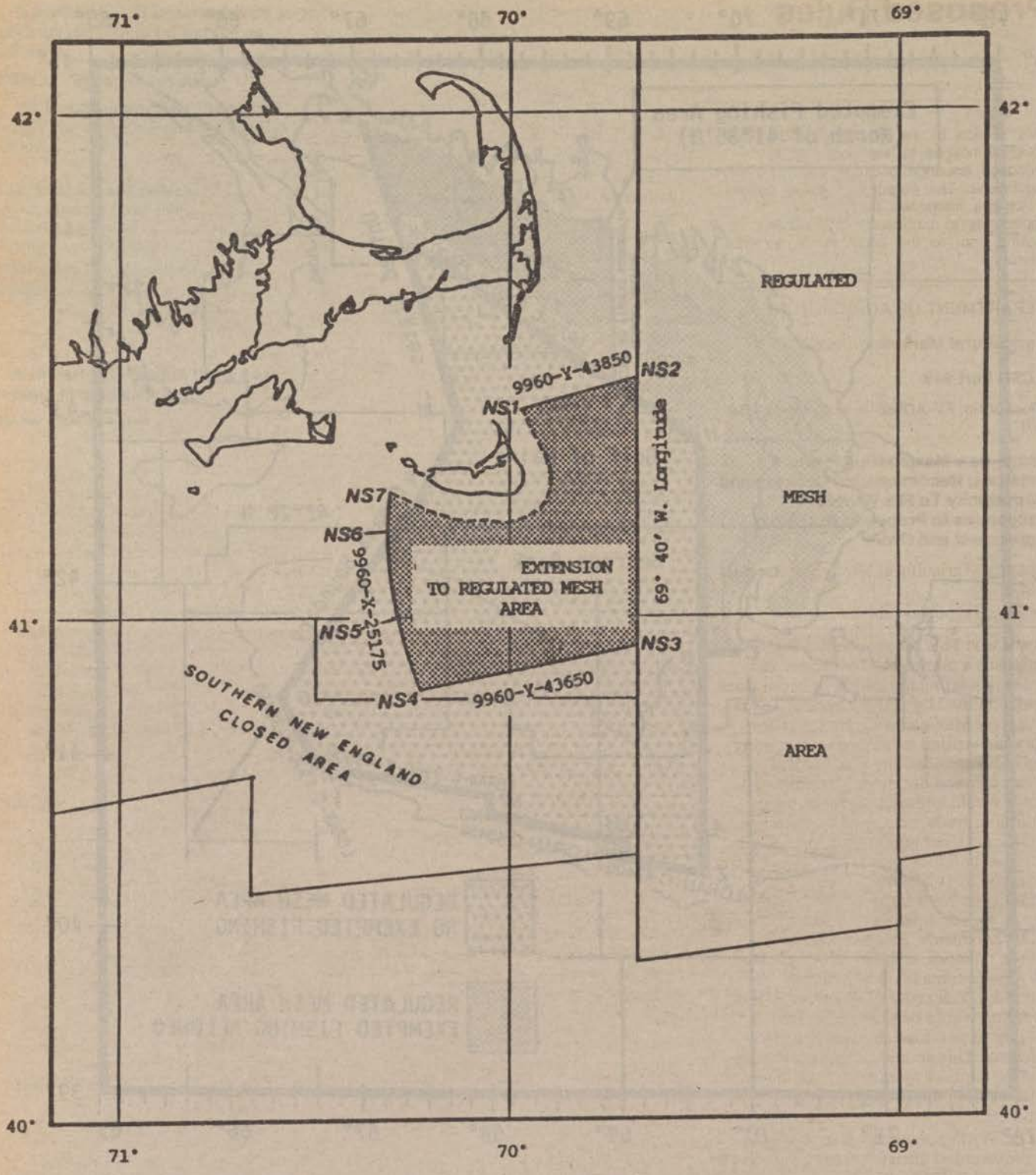


Figure 4. Nantucket Shoals regulated mesh area. See text for details. This area is defined in 651.20(a)(2). Loran lines are included for the convenience of fishermen.

[FR Doc. 89-2241 Filed 1-27-89; 10:41 am]

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# Proposed Rules

Federal Register
Vol. 54, No. 19
Tuesday, January 31, 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 AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 949

**[Docket No. FV-AO-88-2; AMS-FV-88-034 PD]**

### Texas-New Mexico High Plains Potatoes; Recommended Decision and Opportunity To File Written Exceptions to Proposed Marketing Agreement and Order

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

**ACTION:** Proposed rule.

**SUMMARY:** This recommended decision proposes a marketing agreement and order regulating the handling of potatoes grown in the High Plains area of Texas and New Mexico. Interested persons may file written exceptions concerning the recommendations made in this recommended decision. The proposed order would authorize regulations to establish grade, size, quality, maturity, pack, container and marking standards for Irish potatoes grown in 21 designated counties in Texas and 10 designated counties in New Mexico. The program would be administered by a committee of six producers, four handlers and a public member, and would be financed by assessments levied on potato handlers. The primary objective of the program would be to improve the quality of potatoes shipped to fresh markets. This should reduce marketing losses, improve quality for consumers, and result in improved returns to growers.

**DATE:** Written exceptions to this recommended decision must be received by March 2, 1989.

**ADDRESSES:** Four copies of written exceptions should be sent to the Hearing Clerk, Room 1079, South Building, U.S. Department of Agriculture, Washington, DC 20250. All written submissions will be made available for public inspection at the office of the Hearing Clerk during regular business hours [7 CFR 1.27(b)].

**FOR FURTHER INFORMATION CONTACT:** Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-2431.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing—Issued March 30, 1988, and published in the **Federal Register** on April 4, 1988 [53 FR 10887].

#### Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code, and therefore is excluded from the requirements of Executive Order 12291.

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed marketing agreement and order regulating the handling of potatoes grown in a designated area of Texas and New Mexico.

This recommended decision and opportunity to file exceptions is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601 *et seq.*], hereinafter referred to as the "Act", and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders [7 CFR Part 900].

The proposed marketing agreement and order were formulated on the record of a public hearing held at Hereford, Texas on April 19, 1988. Notice of the hearing was published in the April 4, 1988, issue of the **Federal Register.** The notice set forth a proposed order submitted by the Texas-New Mexico Potato Committee on behalf of potato producers and handlers in the proposed production area.

#### Small Business Consideration

In accordance with the provisions of the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Administrator of the Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) [13 CFR 121.2] as those having average annual gross revenues for the last three years of less than $500,000. Small agricultural service firms, which would include handlers under this proposed order, are defined as those with gross annual revenues of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable economic impact that the proposed order would have on small businesses.

The record indicates that there are approximately 30 handlers of potatoes in the High Plains area, who handled 2,848,000 hundredweight of potatoes for fresh market in 1986 with an estimated crop value of about $26.3 million. While there is a variance in size of individual handler operations, most, if not all, of the handlers that would be regulated under this proposed order would qualify as small firms under SBA's definition. Likewise, the majority of the 110 potato growers in the High Plains area could be classified as small businesses.

While the order recommended herein would likely impose regulations on handlers, the burden of these regulatory requirements should not be significant compared to the benefits which should accrue to such businesses. The expected impact on persons acting in a handling capacity who could be classified as small businesses is discussed in detail elsewhere in this recommended decision. In summary, the testimony is that the order should be operated in as efficient and economical a manner as will tend to effectuate the declared policy of the Act. In this way all entities, small and large, would be subject to minimal regulatory requirements as a result of the order. However, as discussed in the material issues, the proposed order would contain the authority to exempt from regulation special purpose shipments, as well as minimum quantities, and the order should be operated in a way that would incorporate sound business practices and efficiencies which would minimize the burden on all regulated business entities.

The Act does not authorize the regulation of growers. However, some impact upon growers is likely. Regulations promulgated under the proposed order could be expected to remove from fresh market channels less desirable grades and sizes of potatoes and divert them to other outlets, such as livestock feed. The record indicates that an extensive cattle-feeding industry exists within the proposed production area which serves as an outlet for culls, or low grade potatoes. Moreover, as the lower grades and smaller sizes are removed from fresh market channels, prices to growers for the resulting higher quality supplies should increase reflecting consumer preference for this level of quality. This should outweigh any loss to growers for cull potatoes, since such quality even on the fresh market historically returns little or nothing to the producer.

Although a somewhat larger proportion of a producer's potatoes may be marketed in secondary outlets at a lower price, the greater part of production, which includes the higher or fresh market grades, should yield a greater return. Thus, the proposed order could be expected to have a positive impact on grower returns.

The impact of the proposed order upon handlers is also expected to be positive. Most handlers perform their services for an established fee based on the quantity of potatoes handled for a producer. It is anticipated that most potatoes shipped to fresh market will be required to meet certain quality and size requirements. It is also expected that an expansion of existing markets and the development of new ones will result from the increase in quality.

Further, testimony indicated that the burden placed on handlers by the proposed order with respect to reporting and recordkeeping requirements would be negligible. Most of the information that would be reported to the committee is already compiled by handlers for other uses and is readily available. In compliance with Office of Management and Budget (OMB) regulations [5 CFR Part 1320] which implement the Paperwork Reduction Act of 1980 [44 U.S.C. Chapter 35] and § 3504(h) of that Act, the information collection and recordkeeping requirements that may be imposed by this proposed order would be submitted to OMB for approval. These requirements would not become effective prior to OMB approval. Any requirements imposed would be evaluated against the potential benefits to be derived, and any added burden resulting from increased recordkeeping would not be significant when compared to those anticipated benefits.

Reporting and recordkeeping requirements issued under comparable potato marketing order programs impose an average annual burden on each regulated handler of about four hours. It is reasonable to expect that a comparable burden may be imposed under this proposed order on the estimated 30 handlers of High Plains potatoes.

The Act requires that prior to the issuance of a marketing order, a referendum be conducted of affected producers to determine whether they approve of the order. The ballot material that may be used in conducting a referendum on this proposed order for High Plains potatoes has been submitted to OMB for approval. It has been estimated that it would take an average of 10 minutes for each of the approximately 110 potato growers to participate in the voluntary referendum balloting.

In determining that the proposed order would not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The proposed order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the programs under the proposed order would help to increase demand for potatoes grown in the High Plains area. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike.

Accordingly, it is determined that the proposed marketing order would not have a significant impact on small handlers or producers. Moreover, as discussed in material issue (3)(below), potatoes grown in more than one State would be regulated under the proposed order in order to effectuate the declared purposes of the Act. Thus, any marketing orders, or their equivalent, authorized under respective State statutes could not achieve the same results as an alternative to a Federal marketing order.

### Material Issues

The material issues presented on the record of the hearing are as follows:

(1) Whether the handling of potatoes in the proposed production area is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce;

(2) Whether the economic and marketing conditions are such that they justify a need for a marketing agreement and order which will tend to effectuate the declared policy of the Act.

(3) What the definition of the commodity and the production area to be covered by the proposed order should be;

(4) What the identity of the persons and the marketing transactions to be regulated should be; and

(5) What the specific terms and provisions of the proposed order should be including;

(a) The definitions of terms used therein which are necessary and incidental to attain the declared policy and objectives of the Act;

(b) The establishment, maintenance, composition, procedures, powers, duties, and operation of a committee which shall be the local administrative agency for assisting the Secretary in the administration of the proposed order;

(c) The authority to incur expenses and the procedure to levy assessments on handlers to obtain revenue for paying such expenses;

(d) The authority to establish production and marketing research, and market development projects;

(e) The method of regulating the handling of potatoes grown in the production area;

(f) The authority for inspection and certification of shipments;

(g) The establishment of requirements for handler reporting and recordkeeping;

(h) The requirement of compliance with all provisions of the proposed order and with regulations issued under it; and

(i) Additional terms and conditions as set forth in §§ 949.82 through 949.92 of the Notice of Hearing published in the **Federal Register** of April 4, 1988 [53 FR 10887] which are common to all marketing agreements and marketing orders, and other terms and conditions published as §§ 949.97 through 949.99 which are common to marketing agreements only.

### Findings and Conclusions

The following findings and conclusions on the material issues are based on the record of the hearing:

(1) Potatoes are an agricultural commodity within the group named in the Act to which its marketing regulatory authority may be applied. They are an important commercial vegetable crop in Texas and New Mexico. The Texas-New Mexico summer crop of potatoes is primarily grown in the production area, as defined in the proposed order. The area includes

the High Plains area of the Texas panhandle and eastern New Mexico. Data published by the New Mexico and Texas Departments of Agriculture show that growers in the High Plains area produced a summer-season potato crop in 1986 of 4 million hundredweight which had a farm value of $32.1 million.

The record indicates that potato harvest in the Texas portion of the production area begins in late June and continues into November, although weather conditions may result in some variation in harvest timing. The peak harvest period is early July through August. Harvest in New Mexico begins two weeks later, with the most active period from mid-July through mid-October. The record shows that production area potatoes move to nearby wholesale and retail outlets within the production area, and to such outlets in other parts of Texas and New Mexico and in other States.

A large portion of the potatoes grown in the proposed production area is marketed outside of that area. USDA Market News reports show that in 1986, there were 821,000 hundredweight of Texas and New Mexico potatoes unloaded in the leading 22 major U.S. markets. Dallas, Texas (which is outside the production area) accounted for 32 percent of the total reported Texas potato unloads and 61 percent of unloads reported from New Mexico. Substantial quantities of potatoes grown in the High Plains region were also reported in numerous markets in other States, such as Atlanta in the Southeast; New York City, Boston, Pittsburgh, and Baltimore in the East; Chicago and St. Louis in the Midwest; and New Orleans in the South. Some potatoes also moved to Western markets, including Los Angeles and Denver.

Record evidence shows that the High Plains area is an important domestic supplier of potatoes each year. For a brief period of several weeks in late June and early July, at the beginning of its season, there is little competition from other domestic areas in its major markets. However, High Plains producers encounter significant competition during most of the shipping season from potatoes grown in Washington and Colorado, where harvest begins soon after that in the proposed production area. Shipments of potatoes from Washington and Colorado are in large volume during the latter part of the Texas-New Mexico marketing period, and provide strong competition in most markets outside of Texas.

Record evidence shows that the Texas-New Mexico High Plains potato industry's market is the entire United States, and its members are in daily contact with buyers across the Nation. With modern communication and transportation systems, potato supplies and prices in any one location are promptly known elsewhere and have a direct effect on potato supplies and prices in all other locations. Record evidence also shows that these potatoes are shipped in foreign commerce.

There are few differences in sales between potatoes for use within the production area as compared with potatoes sold for use in other parts of the United States or other countries. If a program regulating only shipments to markets outside the production area were to be made effective, the market for potatoes within the production area would likely be overburdened with unregulated, lower quality potatoes resulting in unduly lower prices in the area. In turn, this would affect prices in other parts of Texas and New Mexico, and in other States. The evidence of record is that all movement of potatoes in marketing channels is inextricably intermingled and in direct competition, and hence it is concluded that the handling of potatoes grown within the production area is either in the current of interstate or foreign commerce or directly burdens, obstructs or affects such commerce. Hence, except as hereinafter otherwise provided, all handling of potatoes grown in the production area should be subject to the proposed order.

(2) The need for the proposed regulatory program for Texas-New Mexico High Plains potatoes is supported by the evidence in the record of hearing.

Irish potatoes are an important vegetable crop in the United States and are unique in that they are grown commercially in nearly every State. In 1986, the last year for which complete statistics are available, 1.22 million acres were harvested and U.S. production totalled 362 million hundredweight. The value of the crop was an estimated $1.8 billion. Over half the potatoes sold (59 percent) were sold to processors. Thirty-four percent was sold in fresh market channels, and the remaining 7 percent was sold for seed or livestock feed.

The U.S. potato crop is classified by four seasonal groupings according to the time of the harvest. The fall crop, harvested from October through December, is by far the largest and in 1986 accounted for almost 90 percent of total production. This crop is produced in the northern tier of States. Leading producers are Idaho, Washington, Minnesota, North Dakota, Oregon and Maine. The fall crop is referred to as a storage crop and with modern storage practices and facilities, supplies potatoes virtually all year round.

The winter crop, harvested from January through March, is grown primarily in Southern California and Southern Florida. This is the smallest crop of the four since it follows closely on large storage crop supplies that are usually ample. In addition, most crop land available for use during the cold months is planted to crops yielding a higher dollar crop. The 1986 winter crop was just under 3 million hundredweight, about average.

The spring crop is harvested from April through June. States shipping the most significant volume during this period are California, Florida and, toward the end of spring, North Carolina. In 1986 this crop totaled nearly 20 million hundredweight.

The summer season consists of the months of July through September. In 1986, the summer crop totaled nearly 21 million hundredweight. Leading producers were California, Colorado, New Jersey and the High Plains of Texas and New Mexico. Potatoes grown in the proposed production area accounted for about 20 percent of the 1986 summer crop and about 1 percent of total U.S. production.

According to the record, the origin of commercial potato production in the High Plains of Texas and New Mexico is uncertain, but one witness recalled growing potatoes as early as 1940. One of the major turning points in the Texas-New Mexico High Plains potato industry occurred about 20 years ago with the introduction of sprinkler irrigation. Until then, all of the potatoes were furrow irrigated, and potato production was restricted to heavier soils. On the lighter, sandier soils common in the proposed production area, irrigation water could not reach the end of the furrow. With the development of sprinkler irrigation, potato production shifted to the lighter soils of the High Plains area which are more suitable for the production of quality potatoes. The area of production also greatly expanded to include the Clovis area of New Mexico and the Seminole, Texas area to the south.

Production of potatoes in the proposed production area, as indicated by State data for the Texas and New Mexico summer potato crop, has trended upward during the last decade. During the five-year period 1977–81, potato acreage harvested in the Texas High Plains area averaged 9,280 acres and production averaged 2,067,000 hundredweight. However, during the period 1982–86 average acreage harvested had increased 11 percent to

10,340 acres and average production had increased 20 percent to 2,474,000 hundredweight.

Likewise, during the 1977–81 period, New Mexico High Plains producers harvested an average of 2,648 acres and produced an average of 593,200 hundredweight of potatoes. During the five-year period 1982–86, average acreage was up 91 percent to 5,070 acres and average production rose 131 percent to 1,373,000 hundredweight. Increasing acreage was primarily responsible for the expansion that took place during this time.

The record indicates that while total average acreage in the High Plains area increased 29 percent and average produciton rose 45 percent during this time period, acreage has shown signs of stabilizing and production has levelled off. In the years 1984, 1985 and 1986, harvested acreage has totalled 17,000, 19,750 and 15,350 acres respectively. Production during the same three years was 4,392,500 hundredweight, 4,729,300 hundredweight, and 4,044,600 hundredweight.

Witnesses testified that planting of the High Plains potato crop begins as early as February and extends to mid-April. The principal variety grown is the Norgold Russet. Some red potatoes are also produced, including the Red Lasoda and Viking varieties. Seed is purchased primarily from northern producing States. The record indicates that only a limited amount of breeding research has been undertaken to develop varieties specifically suited to the unique growing conditions of the High Plains. At present, however, growers in the area are dependent upon varieties developed for use in other production areas. Production research is needed to develop new varieties able to produce large, high quality crops, under the hot summers prevalent in the proposed production area. Evidence also supports research to develop better methods of dealing with heat stress at harvest time and when the potoatoes are shipped. Also, because the costs associated with production keep rising, more research is needed to find ways of reducing those costs.

As with other potato producing areas, the cost of production for the High Plains has trended upward. A study by the Texas Agricultural Market Center at College Station, Texas, presented at the hearing provided some comparative cost information. According to this study, in 1980 the cost to produce an acre of potatoes in the High Plains was $1,123 for variable costs and $87 for fixed costs, for a total cost of $1,210 per acre. By 1986 those costs had risen to $1,393, $155, and $1,548 respectively, and in 1987 the variable costs were $1,665, and the fixed costs were $140, for a total cost of $1,805 per acre. In 1986, assuming an average yield of 225 hundredweight per acre, a producer would have needed to receive $6.88 per hundredweight in order to break even. Record evidence shows that the season average price for 1986 was $7.19 per hundredweight. Thus, the producer's profit was only 31 cents for each 100-pound sack of potatoes.

As is typical for summer crop potatoes, those grown in the proposed production area are limited in their storage capability. This is due to the fact that the major variety grown (the Norgold Russet) does not store well. In addition, the high temperatures in this area at harvest time cause heat stress which renders the potatoes less suitable for long-term storage.

The record indicates that when properly grown and handled, High Plains potatoes are marketable for only a month or two after harvest. For this reason, most of the crop is shipped immediately after packing, with the most active shipping period being the months of July and August. Witnesses testified that the relatively short life of their potatoes accentuates marketing risks by adding an urgency to move High Plains potatoes quickly into wholesale and retail channels without regard to existing supplies and prices in those markets.

The High Plains potato crop is primarily marketed in fresh outlets, although a small portion (about 10 percent in 1985), is used for processing into chips. Competition in the fresh market for High Plains potatoes comes mainly from the summer crops grown in California and Colorado and the early part of the fall crop from Washington. Record evidence in the form of shipment data shows that while High Plains potatoes are distributed in most major U.S. makets, they are most competitive in nearby southern and midwestern markets, including markets within the State of Texas. The largest market for High Plains potatoes is Dallas, followed, in descending order, by Saint Louis, Chicago, New Orleans, and Denver. Record evidence shows that in recent years the Texas-New Mexico share of these markets has eroded under the pressure of shipments from competing producing areas. For example, since 1982, the market share for High Plains potatoes in its principal market, Dallas, has trended downward. The High Plains market share in New Orleans and Denver has also trended downward since 1983.

The record indicates that potato markets are somewhat finite and can only absorb a certain volume of supplies before conditions deteriorate. Therefore, one shipping area can increase its share of a market only at the expense of another area. Such competition is both normal and desirable, inasmuch as it rewards those handlers and areas with the best product and the most efficient marketing systems. However, when an industry begins to lose its share of a market, it indicates a problem which needs to be resolved if that industry is to continue its viability. In its essence, loss of market share means that a competing area has a product that is in some way more desirable for purchase.

The record indicates that at the same time the High Planes potato industry has lost market share, prices have declined and are lower than those received in other areas.

During the ten-year period 1977–86, the total crop value of High Plains potatoes ranged from $17.3 million in 1979 to $49.6 million in 1984. In 1986 the crop value was $32.1 million. During this ten-year period, the season average price to growers in Texas and New Mexico ranged from a low of $4.60 per hundredweight, or 47 percent of parity in 1979, to a high of $12.97 per hundredweight, or 130 percent of parity in 1980. Prices received for Texas and New Mexico summer crop potatoes were moderately to substantially below parity in nine of the last ten years. Season aveage prices for potatoes exceeded parity in 1980, but otherwise ranged from 39 to 90 percent of parity and averaged 71 percent for the period. Prices have trended downward relative to parity in the last few years.

Testimony indicates that potatoes marketed early in each season often are of poor quality, but they return higher prices than those marketed later when competition occurs with higher quality potatoes from other areas. Due to the shipment of poor quality potatoes at the beginnig of the season, and to increasing supplies, prices for all High Plains potatoes tend to decline as the season progresses until growers at times receive little for their potatoes.

In 1986, for example, shipping point prices for 50-pound cartons of Norgold potatoes grown in the High Plains averaged $17.00 per hundredweight in July, and declined to $15.90 in August. Prices received for similar potatoes grown in Washington were higher, averaging $21.00 in July and $20.34 in August. Colorado shippers during those same two months received $17.30 and $19.50 per hundredweight, respectively.

The record indicates that a large percentage of High Plains potatoes shipped to fresh markets is packed in 50 or 100-pound cartons or bags. These

potatoes are prepared for market by the usual commercial practices such as grading to eliminate inferior quality, sizing to achieve uniformity, and washing to eliminate adhering soil and decay-causing organisms and to improve appearance.

High Plains potatoes also move to market in bulk loads which are broken down into smaller packages by repackers for distribution. Bulk load shipments are of two basic types: potatoes that have been sized and graded, and field-run potatoes. Bulk loads that have been sized and graded account for a substantial part of the bulk load shipments. They are potatoes which are sorted during the normal grading process to remove those that are damaged, have defects such as irregular shape or mechanical injury, or are of a very small size. Such potatoes usually have a greater range of sizes and grades than packaged potatoes.

Bulk field-run potatoes are those loaded on trucks essentially as they come from the field. Some sorting may be done, but the typical field-run lots have a wider range of sizes, grades, and qualities. The record indicates that quality of such potatoes is generally below that of commercially graded and packaged potatoes.

At the hearing, representatives of the Texas-New Mexico High Plains potato industry identified the lack of consistent quality as a problem area that must be improved in both bulk loads and packed potatoes in order to maintain and regain lost market share and to increase returns to growers.

Experienced handlers testified that markets often are made and lost on buyer confidence, which is true with potatoes. Produce buyers place great value upon consistency, particularly with respect to quality. Consumers expect produce of a good quality at all times and in all seasons. Retailers are often under severe pressure to provide this consistency and tend to buy only from wholesalers who can supply the desired product. However, at the other end of the chain, the producer is faced with a crop as it naturally occurs consisting of all possible sizes and qualities.

Thus, in the normal course of business, in order to command the best price, it is necessary that the harvested potatoes be washed, sorted, sized and packed for market. Potatoes that do not meet fresh market requirements are typically moved to secondary markets such as chips or livestock feed. The standards to which the potatoes are graded and the care with which these tasks are performed help to establish an area's reputation for consistent quality. Witnesses testified that individual handlers and shippers in the High Plains area do this to varying degrees to enhance their business reputations. However, for an entire production area to earn and maintain such a reputation requires a concerted effort on the part of the entire industry. Conversely, if a few handlers lower their standards and ship less than acceptable quality, the reputation of the area as a whole suffers.

Handlers who ship ungraded, unsized potatoes of questionable quality may contribute to the generally unfavorable image of High Plains potatoes that currently exists.

On the other hand, developing and maintaining industry-wide quality requirements and shipping potatoes that consistently reflect these requirements can only enhance the image buyers have of potatoes from the High Plains. In fact, witnesses attributed the higher prices received for comparable potatoes grown in Washington and Colorado to the quality image earned through years of operating mandatory quality control programs similar to this one proposed for the Texas-New Mexico High Plains. Also, both Colorado and Washington provide promotional support which tends to enhance the image of their potatoes. Without similar tools, the record indicates High Plains shippers compete by offering lower prices, or discounting the product. Discounting is a method of dealing with competition common to all kinds of businesses. It is attractive to buyers for the obvious reason that they pay less for the product. Record evidence indicates that the seller, however, receives less for the product and this reduction is almost always passed on to the grower, the last in line. Thus, a quality control program that enables the product to compete in the market on the basis of quality ultimately yields higher returns at the grower level.

The record indicates that dealers of good quality potatoes in the market find it difficult to compete with dealers offering lower grades at discounted prices, and they must buy as cheaply as possible to compete successfully. Price adjustments are frequently requested on higher grade potatoes so that the receivers can move the potatoes into markets, depressed by lower prices of inferior grades. Thus, lower grade potatoes in the market depress market prices for better grade potatoes.

Witnesses testified that the marketing of low quality potatoes is not only detrimental to producers and shippers, but these potatoes, especially culls, are not as acceptable to consumers. The testimony indicated that these consumer preferences are reflected in reduced retail sales volume and lower prices that are passed back through distribution channels to shipping point. Because packing, transportation, wholesale handling, and retailer costs are about the same for lower grades or culls as for the the better grades, retail prices for low quality potatoes often are only slightly less than prices for top quality. However, grower prices for the lower grades often are only a small fraction of the price received for better grade potatoes.

Witnesses testified that without a mandatory industry-wide quality control program, it has been the practice for some members of the High Plains potato industry to offer and sell potatoes of poor or irregular quality at low prices, thereby having a detrimental effect upon the market and the price structure for all production area potatoes. Such disorderly maketing practices have been damaging to the industry as a whole. In the aggregate, the success of production area growers in the potato market is to a substantial degree dependent upon the quality of potatoes shipped, and any improvement in the growers' competitive economic situation requires the adoption of improved market practices. Therefore, the need exists to regulate the marketing of High Plains potatoes through grade, size, quality, pack, container, or marking standards, thereby improving quality which promotes more orderly marketing conditions and higher returns to producers with due regard to the interest of consumers.

The need also exists for research to improve quality by developing varieties better suited to the growing conditions typical of the proposed production area. Research should also include new production methods and materials as well as ways of improving grower returns by reducing production and marketing costs. Development of market research and promotion to complement the quality control program would enable the industry to better compete with other producing areas.

The need for a marketing agreement and order program, such as the proposed order, to eliminate certain price depressing practices with respect to potatoes grown in the production area is established in the record. The establishment of more orderly marketing conditions as may be brought about by the proposed marketing order and regulations that may be issued under its authority, will tend to improve prices to producers for potatoes grown in the production area.

(3) The term "potatoes" should be defined to specify the commodity covered by the proposed order and to which the terms and provisions of the proposed order are applicable. The term "potatoes" has a specific meaning to all producers of the commodity in the High Plains area, and to other parties who purchase, ship and distribute the commodity. Such term should be defined to include all varieties of Irish potatoes, classified botanically as Solanum tuberosum, which are currently grown or which may be grown within the production area.

A definition of the term "production area" should be included in the proposed order to fix the area in which potatoes must be grown before the handling thereof is subject to regulation under the proposed order. Such term should be defined to include the following counties in Texas: Bailey, Briscoe, Castro, Cochran, Dallam, Donley, Deaf Smith, Floyd, Gaines, Hale, Hall, Hartley, Hockley, Lamb, Lubbock, Motley, Oldham, Parmer, Swisher, Terry, and Yoakum. This term should also include the following counties in New Mexico: Chaves, Curry, De Baca, Eddy, Guadalupe, Lea, Roosevelt, Torrance, Union, and Quay.

These counties comprise what is known as the High Plains area of each State. They are contiguous and share essentially the same climatic, growing, harvesting and marketing conditions for potatoes. While potatoes are grown in other areas of Texas and New Mexico, these other areas are distinct, and have different characteristics from the proposed production area such as growing condition and shipping season. All counties in the proposed production area produce potatoes.

It is therefore determined that all territory included within the boundaries of the production area constitutes the smallest regional production area that is practicable, consistent with carrying out the declared policy of the Act, and this production area should be defined as hereinafter set forth.

(4) The term "handler" is synonymous with the term "shipper", and should be defined to identify the persons who would be subject to regulation under the order. Such term should apply to any person except a common carrier transporting potatoes owned by another person, who performs any of the activities within the scope of the term "handle" as hereinafter defined. The definition identifies persons who are responsible for meeting requirements of the order and the regulations issued thereunder, such as meeting grade and size requirements, paying assessments, and submitting reports.

Common or contract carriers transporting potatoes which are owned by another person should not be considered as handlers, even though they transport potatoes, because such carriers do not have control over the grade, size, quality or pack of the potatoes being transported. Nor are they the persons who cause the introduction of such potatoes into the stream of commerce. The only interest of common or contract carriers in such potatoes is to transport them for a service charge to destinations determined by others.

Growers who handle their own potatoes would be considered handlers. Growers who sell or otherwise market potatoes directly from the field would be handlers under the proposed order. Any person who purchases potatoes from growers and performs any other handling function such as grading and packing such potatoes would be a handler.

The term "handle" should be defined in the proposed order to establish the specific marketing functions which place potatoes in the current of commerce within the production area, or between the production area and any point outside thereof, and to provide a basis for determining which functions are subject to regulation under authority of the proposed order. "Handle" and "ship" are used synonymously and the definition should so indicate.

The Act provides that no order shall be applicable to producers in their capacity as producers. Growing potatoes, which involves the planting and care of potatoes in the field through growth to a commercially marketable product that is turned over to a handler by sale, contract, or other means, should be considered a producer function.

Proponents of the order testified that harvesting should be included in the definition of "handle". However, the act of removing the potatoes from the ground does not result in them being introduced into the stream of commerce and so does not constitute handling. For this reason "harvesting" should not be included in the definition of handle.

Most of the potatoes grown in the production area are marketed through established packing sheds. Before a producer's crop can be harvested, the vines are killed, either mechanically or by an herbicide, to stop growth and hasten maturity of the tubers. After the vines are sufficiently dried, the potatoes are dug by machine. It is usual for a producer to do some preliminary grading in the field when the potatoes are being dug. This preliminary grading includes the removal of stones, dirt clods, and defective potatoes. A conveyor belt on the harvester loads the potatoes onto a truck, and the potatoes are then hauled, in bulk, to a packing shed. At the packing shed, the potatoes are washed and prepared for market by separating them into marketable grades, sizes, maturity, and packs.

For the last few years, a substantial quantity of field-run potatoes have been marketed in bulk directly by some producers to receivers, or repackers outside the area. These field-run potatoes are being transported directly to market without going through a packing shed and over conventional type grading equipment, although some grading may take place in the field to prepare them for the market.

High Plains producers sell their potatoes in various ways. Most production area potatoes are handled by shippers for the grower's account. Under customary arrangements, producers may turn their fields over to shippers who supervise the harvesting, then grade, pack, and sell the potatoes and pay the producer the net proceeds after deducting handling charges. The growers retain title to the potatoes until they are sold for them by the shippers. Settlement is made with the grower on the net proceeds of the sale, whether the sale is made at shipping point or at a subsequent point in the marketing chain. In other cases, the growers may harvest the potatoes themselves or hire others to do it.

The shipper or packinghouse operator is responsible for preparing the potatoes for market. The shipper determines the grade, size, quality, and container to be used for the potatoes entering market channels. The shipper packs the potatoes, making them a part of the marketable supply which is the subject of offer, acceptance, and sale in the current of the commerce in the commodity. The shipper also ships the potatoes, thus transporting them in the current of commerce. Sale of any potatoes, either grades and sizes customarily acceptable in established terminal markets, or those of less or unacceptable grates and sizes, constitutes an act on handling.

Occasionally, producers sell potatoes in the field to a handler either in or outside the production area prior to harvest. The producer may harvest such potatoes on behalf of the handler, or harvesting may be done by the handler. The harvested potatoes may then be transported in bulk to a packinghouse for preparation for marketing. If the potatoes are shipped out of the production area the producer would be the first handler, since the producer sold the potatoes, which is a handling activity, and was responsible for placing

the potatoes in the stream of commerce. The transportation, sale or delivery of potatoes within the production area, however, for the propose of having such potatoes prepared for market would not constitute handling.

Some producers have their own packing facilities; they grow, harvest, grade, pack, sell, and ship their own potatoes. Some perform all of the foregoing functions except selling, which is done by a broker for a fee.

Seed potatoes are produced under special conditions to insure their positive qualities and freedom from disease and then are certified by an appropriate State agency. The marketing process for seed involves many of the same activities, especially sale and transportation, as for potatoes distributed as tablestock through institutional and retail outlets.

Each of the foregoing activities by itself is a handling operation and, as such, makes the person responsible for it a handler, subject to the rules and regulations issued under the order. However, the sale, transportation, or delivery of field-run potatoes to a packinghouse located in the production area, according to record evidence, should be excepted from the definition of "handle." In this case the potatoes have not yet been prepared for market nor are they in their existing condition being transported to market. Most sellers and buyers do not consider them as yet suitable or appropriate for commercial transactions and, as such, they have not yet entered the stream of commerce.

(5)(a) Certain terms should be defined for the purpose of designating specifically their applicability and limitations whenever they are used in the proposed order. The definition of terms discussed below is necessary and incidental to attain the declared policy and objectives of the order and Act.

"Secretary" should be defined to mean the Secretary of Agriculture of the United States, or any officer or employee of the United States Department of Agriculture who has been or who may be delegated the authority to act for the Secretary.

"Act" should be defined to provide the correct statutory citation for the Agricultural Marketing Agreement Act of 1937, as amended. This is the statute under which the proposed regulatory program would be operative, and this definition avoids the need to refer to the citation throughout the order.

"Person" should be defined to mean an individual, partnership, corporation, association, or any other business unit. This definition is the same as that contained in the Act and insures that it has the same meaning in the order as it has in the Act.

A definition of "seed potatoes" or "seed" should be included in the order because different regulations may be appropriate for such potatoes. Special regulation of seed potatoes is justified because they are produced for a specialized use, even though they may be used as tablestock. Potatoes legitimately produced for seed purposes should be identified as "seed potatoes" and defined to include potatoes that have been certified and tagged, or otherwise appropriately identified, by the official seed certifying agency of the State of Texas or the State of New Mexico, or such other agency as the Secretary may recognize.

The term "producer" should be synonymous with "grower" and should be defined to identify those persons who are eligible to vote for, and serve as, producer members and alternates on the committee and those who may vote in any referendum. The term should mean any person engaged in a proprietary capacity in the production of potatoes for market within the production area.

The term "producer" should include any person who owns or shares in the ownership of potatoes such as a landowner, landlord, tenant or sharecropper. A person who owns and farms land resulting in that person's ownership of the potatoes produced on such land should be considered a producer. The same is true for a person who rents and farms land resulting in ownership of all or part of the potatoes produced on that land. Likewise, a person who owns land which that person does not farm, but as a rental for such land obtains the ownership of a portion of the potatoes produced, should be regarded as a producer of that portion received as rent, and the tenant on such land should be regarded as a producer for the remaining portion produced on such land. In each of these situations the person involved in production, regardless of whether an individual, partnership, joint venture, association, corporation, or other business unit, should be considered as one producer entitled to one vote in referenda and committee nominations. A joint venture is one whereby several persons contribute resources to a single endeavor to produce and market a potato crop. In such venture, one party may be the farmer who contributes one or more factors, such as labor, time, production facilities, or cultural skills, and the other party may be a handler who contributes money and cultural, harvesting and marketing supervision. Normally, a husband and wife operation would be considered a partnership. One test to determine if a person is a producer should be whether or not the person, that is, the individual or other business unit, has title to the potatoes that are produced.

A number of producers in the High Plains area own or operate packing sheds. A producer who owns or operates a packing shed should not be precluded from qualifying as a producer under the proposed order. However, for the purpose of serving on the committee and participating in committee nominations, a producer-handler must choose whether to serve and vote as a producer or as a handler.

The term "fiscal period" should be defined to mean the annual period for which financial records of the committee are maintained. This period should be established so as to allow sufficient time prior to the time potatoes are first shipped for the committee to organize and develop its budget for the ensuing season. However, it should minimize incurring expenses during a fiscal period prior to the time assessment income is available to defray such expenses. The Notice of Hearing proposed that "fiscal period" mean the 12-month period beginning January 1 and ending the following December 31. However, record evidence indicates that fresh market shipments of potatoes grown in the High Plains area do not begin until about July 1. With a fiscal period beginning January 1, more than half the period would have elapsed before any assessment income was received. Further, such a period would require the committee to project assessable shipments for the upcoming season and recommend an appropriate assessment rate prior to the time planting begins in February. To eliminate these difficulties, hearing testimony supported the fiscal period being established for a 12-month period beginning June 1 and ending May 31 of the next year. However, if necessary to improve the committee's management or for other reasons, based on experience once the order is established, it may be desirable to establish a fiscal period other than one ending on the last day of May. Thus, authority should be included in the order to provide for the establishment of a different fiscal year if recommended by the committee and approved by the Secretary. In any event, the beginning date of any new fiscal period should be sufficiently in advance of the harvesting season to permit the committee to formulate its marketing policy and perform other administrative functions. Also, it should be recognized that if at some future date there is a change in the fiscal year, such change

would result in a transition year being more or less than 12 months. Also, if the order is issued after June 1, 1989, but is made effective in time to regulate the 1989 crop, the initial fiscal year should end on May 31, 1990, so that the subsequent fiscal period would begin June 1, 1990.

The term "Committee" should be defined to mean the administrative agency known as the Texas-New Mexico Potato Committee established under the provisions of the proposed order. Such a committee is authorized by the Act, and this definition is merely to avoid the necessity of repeating the full name each time it is used.

Definitions of "grade", "size" and "maturity" should be included in the proposed order to enable persons to determine the basis for application of grade and size limitations to the potatoes they handle. "Grade", "size" and "maturity" should be defined as encompassing the meanings assigned these terms in the United States Standards for Potatoes issued by the United States Department of Agriculture and found in Sections 51.1540 to 51.1556, inclusive, of Title 7 of the Code of Federal Regulations. Also, these definitions should include modifications or amendments to such standards, and any variations from such standards that may be used in regulations issued under the proposed order. In addition to the U.S. Standards, other standards could be used to define these terms. For example, it is conceivable that New Mexico or Texas could develop standards which would be more appropriate for High Plains potatoes. Regulations could then use such terms (grade, size and maturity) with the constant meanings given them in the applicable standards. Also the use of these terms in regulations may be varied by prescribing, for example, a percentage of a grade such as "85 percent U.S. No. 1." Federal and Federal-State inspectors are qualified to certify the grade, size and maturity of potatoes grown in the production area under the terms of the aforesaid standards, or as such standards may be amended or modified.

"Varieties" should be defined to mean and include all classifications or subdivisions of Irish potatoes according to those definitive characteristics recognized by the United States Department of Agriculture. The primary variety currently produced in the High Plains area is the Norgold Russet. Some red potatoes are also produced, such as the Red Lasoda and Viking varieties.

The term "pack" should be defined to mean a quantity of potatoes in any type of container, which falls within specific weight limits, numerical limits, grade limits, size limits, or any combination of these recommended by the Committee and approved by the Secretary. The term "pack" is commonly used throughout the production area and refers to a combination of these factors. For example, it is a common practice to refer to the 50-lb. or 100-lb. pack. Differences in packs are also recognized by grade, such as U.S. No. 1 pack or U.S. No. 2 pack. Packs may be recognized by particular sizes, such as Size A (minimum diameter of 1⅞") or Size B (1½" to 2¼"), or by the number of potatoes in a container, such as size 70 or 70 count per carton. It is essential that this term be defined in the proposed order so that appropriate regulations may be tailored to particular packs.

"Container" should be defined to mean a sack, bag, crate, box, basket, barrel or bulk load or any other receptacle used in the packaging, transportation, sale or other handling of potatoes. This definition serves as a basis for differentiating among the various receptacles in which potatoes move to market, and is necessary in the proposed authority to apply different regulations to different containers and to limit the types of containers that may be utilized. The principal containers used at present in marketing potatoes are burlap bags, paper bags, mesh bags, paper and mesh bags, polyethylene bags, boxes, pallets, and bulk loads.

A definition of the term "culls" was included in the Notice of Hearing. This term was used in connection with the section of the proposal establishing a general cull regulation. As discussed later, this Recommended Decision proposes the deletion of the general cull regulation. Therefore, it is unnecessary to define this term, and it should be deleted from the proposed order.

"District" should be defined in the proposed order to provide a basis for nomination and selection of committee members. It means each of the geographical divisions of the production area established pursuant to the order. The districts recommended to be initially established are discussed in material issue (5)(b), as is the proposed authority to reestablish these districts.

"Export" should be defined to mean any destination which is not within the 50 states or the District of Columbia of the United States. This definition is included because the proposed order authorizes exports to be regulated differently from domestic shipments.

(b) Pursuant to the Act, it is desirable to establish an agency to administer the order locally as an aid to the Secretary in carrying out the declared policy of the Act and to provide for effective and efficient operation of the order. The Texas-New Mexico Potato Committee should therefore be established and consist of 11 members (six producers, four handlers, and one public member). A committee composed of 11 members, with a like number of alternates, should provide adequate representation and should provide for reasonable judgment and deliberation with respect to recommendations made to the Secretary, and in the discharge of other committee duties. Because marketing orders benefit producers, it is appropriate that there be more producers than handlers on the proposed committee. However, since regulations under the proposed order would be imposed upon handlers, it is also appropriate and prudent for handlers to be represented on the committee.

The division of the production area into districts for the purpose of committee representation, and the number of members from each district were given thorough consideration by proponents of the proposed order. As later discussed, it is being recommended that two districts be established. One would encompass that part of the production area in the State of Texas, and the other that part in the State of New Mexico. In determining the number of representatives on the committee from each of the districts, consideration was given to potato acreage shown by the latest figures for each county within the district. Thus, the number of representatives for each district is related to such district's portion of the total potato acreage in the production area. According to acreage statistics for the past several years, approximately 66% of the acreage is located in District 1 (Texas) and 33% in District 2 (New Mexico). Accordingly, of the six producer members, four should be from District 1 and two should be from District 2. Three of the four handlers should represent District 1, and the remaining handler member should be from District 2. This should be a practicable and equitable method of allocating membership on the committee. Members would be familiar with supply and demand factors particularly affecting the sale of their potatoes and the effect of regulation upon such sales.

Each member and alternate selected to represent producers in a particular district should be an individual who is a producer, or an officer or employee of a corporate producer or other type of business unit engaged in producing potatoes in such district. Producer

members should also be residents of the production area.

Such persons would be expected to have a strong interest in the effects of committee decisions on potato producers in the proposed production area. As a resident of the production area, such person would be familiar with the problems and concerns of producers.

Each member or alternate selected to represent handlers in a particular district should be an individual who is a handler, or an officer or employee of a corporate handler or other type of business unit, engaged in handling such district's potatoes. Handler members should also be residents of the production area.

The Notice of Hearing provided that officers or employees of cooperative marketing organizations could serve only as handler representatives. Witnesses opposed this provision, however, because a majority of growers in the High Plains area are members of a marketing cooperative and those that serve as officers of the cooperative should be eligible to serve as grower members. Thus, such persons should not be precluded from serving as grower representatives, and paragraph (b) of § 949.20 should be revised accordingly. Producers who are members of or hold honorary or non-administrative positions with the cooperative would also be eligible to serve as grower members. However, employees of the cooperative who are not growers in their own right would not qualify as growers but would be eligible to serve as handler members only.

Inasmuch as handlers would be the persons regulated under the proposed order, handler members should have a direct interest in the handling of potatoes. Moreover, as residents of the production area, such persons could be expected to be familiar with the local problems encountered by the industry.

In the event that an individual qualifies to serve as both a grower and handler member, or as a representative from either district, such person should choose the classification and district to represent on the committee.

Record evidence supports public representation on the administrative committee. While the influence of consumers would be implicitly present in the deliberations of the producer and handler committee members and all meetings would be public, the appointment of a public member would offer many advantages. One would be the direct communication between industry members and the public member, who would have no connection with the industry and whose opinions on regulatory standards would represent the general public. Another would be to afford the industry an opportunity to discuss their problems and concerns with someone who would view these problems and concerns from outside the potato industry.

Public representatives should not be permitted to have either a direct financial interest or be closely associated with the commercial production, processing, financing, buying, packing, or marketing of potatoes except as a consumer, nor be a director, officer or employee of any firm so engaged. Such public representatives should be able to devote sufficient time and express a willingness to attend committee activities regularly and to familiarize themselves with the background and economics of the industry. Residence in the production area is not deemed close association with the production or marketing of potatoes and would not preclude such person from nomination as a public member or alternate. On the contrary, public members should be residents of the production area, since such persons could be expected to be familiar with and knowledgeable about industry problems and practices.

To insure that all portions of the production area are adequately represented in the conduct of the committee's business and that the continuity of operation is not interrupted, the proposed order should provide for alternate members with the same qualifications as their respective members. They would act in the place and stead of their respective members during temporary absences, or in the case of death, removal, resignation, or disqualification of the members. The alternate should serve as member until a new member is selected. Also, the committee should be permitted to request the attendance of alternates at any or all meetings regardless of whether the members are present. This would be desirable especially when the committee is considering important matters and when it is necessary to have a greater expression of industry opinion.

If both the member and alternate for a particular committee position are absent from a meeting, the member, the alternate, or the committee, in that order, should be empowered to designate another alternate from the same group (i.e., grower or handler) and district to act in the place of the absent member. This procedure would further insure the proper and efficient operation of the committee.

With the exception of initial members, the term of office of committee members and their respective alternates should be for three years and should begin as of January 1 and end the last day of December or for such other three year period as the committee may recommend and the Secretary approve. A three-year term is appropriate because it gives members sufficient time to become familiar with committee operations and enables them to make meaningful contributions at committee meetings. Furthermore, a three-year term enables establishment of a rotation so that approximately one-third of the committee membership will terminate each year. Staggered terms would lend continuity to the committee by insuring that some experienced members would be on the committee at all times. Therefore, the order should provide that the terms shall be so determined that approximately one-third of the total committee membership shall terminate each year.

The effective date of the proposed order, if issued, may not coincide with the specified beginning date of the terms of office of committee members and alternates. Therefore, a provision is necessary to adjust the initial terms of office. To accomplish this, the order should provide that the term of office of the initial members and alternates shall begin as soon as possible after the effective date of the order. Approximately one-third of the initial committee members and alternates should serve for a one-year term and approximately one-third of the initial committee members and alternates should serve for a two-year term. The remainder of the initial committee members and alternates should serve for a three-year term. One method for determining how the initial membership should be apportioned would be for the initial committee member nominees to draw lots to determine which of them would be appointed to serve the initial one, two and three year terms. This would also determine the rotation for their successor members. The order also should provide that members serving initial terms of one year or less may serve two additional consecutive three-year terms.

In order to prevent unnecessary vacancies from occurring on the committee, the order should provide that members and alternates shall serve in such capacity for the portion of the term of office for which they are selected, and until their respective successors are selected. However, so that there is a continual turnover in membership and infusion of new ideas, the order should provide that no member or alternate may serve more than two full

consecutive terms on the committee unless specifically exempted by the Secretary. After serving two consecutive terms, committee members who have served two terms should be eligible to serve as alternates, and alternates who have served two terms to serve as committee members.

As previously discussed, two districts should be established in the proposed order to provide a geographical basis for the selection of committee membership. District 1 should include all production area counties located within the State of Texas and District 2 should include all production area counties located within the State of New Mexico.

Redistricting authority is necessary in the proposed order to enable the committee and the Secretary to consider from time to time whether the basis for representation has changed or could be improved and how such improvement may be made. Future shifts in potato production in the Texas-New Mexico High Plains cannot be foreseen at the present time, since shifts may occur in the acreage planted from one year to another. As a result, the number of members allocated to a district may be disproportionate to the acreage or production in that district. Therefore, it is desirable to provide flexibility of operations so that if it would be in the best interests of the industry to reestablish districts or reapportion membership, the committee may so recommend and the Secretary may approve such action. Moreover, record evidence indicates that the committee should be required to consider district reestablishment and committee reapportionment at least every five years.

The guides and limitations set forth in the proposed order which should be considered in making changes in districts or reapportionment of members are appropriate and desirable. Recommendations for such changes should be made well in advance of the beginning of a new term of office. Changes should not be made effective less than 30 days prior to the date on which terms of office begin, and no recommendations for redistricting or reapportionment should be made less than six months prior to such date. These safeguards are desirable so that producers and handlers may become well acquainted with any redistricting or reapportionment of members prior to nominations.

The Secretary should have authority for the selection of the members and alternates of the committee, but the industry should have the responsibility for recommending nominees to the Secretary for selection. The nomination procedure outlined in the proposed order would provide a means of making available to the Secretary the names of prospective members and alternates desired by the industry to serve on the committee.

The order should provide that the Secretary conduct nomination meetings for initial committee members. At least one meeting should be held in each district. All growers and handlers in the production area should receive notice of such meetings in sufficient time to enable them to attend. Nominations will be received and voted upon at these meetings. The resulting nominations for each of the initial six grower and four handler members and their alternates will be promptly submitted to the Secretary.

The committee should be responsible for conducting subsequent nominations. These nominations may be conducted at meetings or with the approval of the Secretary through mail balloting. Nomination meetings may be held in conjunction with meetings of other industry organizations.

If meetings are held for nominating members and alternates of subsequent committees, they should be held no later than October 1 of each year or such other date as the Secretary may specify. Inasmuch as the term of office begins January 1 of each year, nomination meetings should be held in sufficient time to assure that nominations for members and alternates will be supplied the Secretary so appointments may be made prior to the beginning of each new term of office.

The committee should also be authorized to conduct nominations by mail. Procedures for such nominations would be recommended by the committee and would require approval by the Secretary.

Nominations should be supplied in such manner and form as the Secretary may prescribe. At least one nominee should be designated for each position which is to be filled the following January 1. Sufficient information about each nominee should be provided so the Secretary is able to determine if such person is qualified for position for which nominated.

Only producers should participate in designating nominees for producer members and alternates, and only handlers should participate in designating handler nominees. Such persons should be growers or handlers within the district in which they so participate. If a person produces or handles potatoes in more than one district, such person should elect the district within which such person wishes to participate in electing nominees for committee members and alternates. Likewise, a person who both grows and handles potatoes should choose whether to participate in nominations for grower or handler representatives. Each person would thereby have the same voice in the nomination of committee members.

Regardless of the number of districts in which a person produces or handles potatoes, each person is entitled to cast only one vote. This provision is deemed necessary as an appropriate safeguard for the protection of all growers and handlers participating in nominations, irrespective of the size of an individual's operations. This limitation, however, is construed to mean that one vote may be cast for each member and alternate member position which is to be filled in the district and classification that person has chosen to participate.

Provisions also should be made for the nomination and selection of a public member and alternate. The record indicates that nominees for the public member and alternate should be selected by the incumbent committee and should be forwarded to the Secretary no later than November 1 or such other date recommended by the committee and approved by the Secretary. The nominees would be selected under procedures recommended by the committee and approved by the Secretary. It is also reasonable to require that the names of nominees for the initial public member and alternate be submitted to the Secretary as soon as possible but not later than 90 days after the first regular meeting of the initial producer and handler members of the committee.

The order should provide that the members of the committee shall be selected by the Secretary from persons nominated or from among other qualified persons. In the event nominations are not made within the time and in the manner hereinafter specified in the recommended order, the Secretary may select members and alternates without regard to nominations. Such selection should be from qualified persons as provided in the order. Each person to be selected by the Secretary as a member or as an alternate member of the committee shall, prior to such selection, qualify by advising the Secretary that such person agrees to serve in the position for which nominated.

The order should provide a method for promptly filling any vacancies on the committee for the unexpired term. There may be vacancies caused by the death, removal, resignation, or disqualification of a member or alternate. The Secretary should be authorized to name a

successor to fill an unexpired term from unselected nominees on the current nominee list or from nominations made in the same manner as provided for nominating all other members and alternates. Any nomination meetings for the purpose of filling vacancies should be held within a reasonable amount of time after the vacancy occurs.

Committee members and alternates will necessarily incur some expense while on committee business. Reasonable expenses, which may include travel, meals and lodging, should be reimbursed so as to avoid personal financial loss to members while attending committee meetings or performing other duties under the order. Therefore, the order should provide that members and alternates, when serving as members of the committee, shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under the order. Since the committee should be authorized to request the attendance of alternate members at meetings, even though the members may be present, the order should also authorize the committee to pay their expenses.

The order should specify a procedure for the committee to conduct its meetings. It should provide that a majority of all members of the committee shall be necessary to constitute a quorum or to pass any motion or approve any committee action. Accordingly, six members of the eleven member committee must be present in order to constitute a quorum and enable the committee to conduct a meeting. Six affirmative votes would be required to pass any motion or approve any committee action.

There may be times when it will be impossible to assemble the committee promptly to meet an emergency situation. Therefore, the order also should enable committee members, and alternate members when acting as members, to vote by mail, telegraph, telephone or other means of communication, provided that any vote cast orally be confirmed promptly in writing. If an assembled meeting is held, all votes should be cast in person. When voting is to take place at other than an assembled meeting, a reasonable effort should be made to contact each member or alternate. Records of such votes should indicate the efforts made to contact members, extent and tenor of discussion, and written confirmation of each vote cast. Each motion to be voted on or action to be taken should be explained fully and identically to each member or alternate member. The majority quorum and voting requirements should still apply when voting by mail, telegraph, telephone or other means of communication.

The committee should be given those specific powers which are set forth in section 608(7)(C) of the Act. Such powers are granted by the enabling statutory authority and are necessary for an administrative agency, such as the Texas-New Mexico Potato Committee, to carry out its proper functions.

The committee's duties as set forth in the proposed order are necessary for the discharge of its responsibilities. These duties are generally similar to those specified for administrative agencies under other programs of this nature. They pertain to specific activities authorized under the order, such as investigating potato marketing conditions, and to the general operation of the order including other activities relating to compliance as discussed in material issue (5)(h). They are reasonable and necessary if the committee is to function in the manner prescribed under the Act and the proposed order. It should be recognized that the duties specified are not necessarily all inclusive, and it may develop that there are other duties which the committee may need to perform which are incidential to, and not inconsistent with, these specified duties.

(c) The committee should be authorized under the order to incur such expenses as the Secretary finds are reasonable and likely to be incurred, during each fiscal year. Such a provision is necessary to assure the maintenance and functioning of the committee as well as finance production research and market promotion programs. Necessary expenses would include, but would not be limited to, such items as: Employee salaries and benefits; establishment of an office and equipping such office; telephone and mail services; and business related transportation for the committee staff. Expenses incurred by committee members and alternates in attending committee meetings should also be reimbursed as another expense. All such expenses would be incurred on an ongoing basis.

The committee should be required to prepare a budget showing estimates of income and expenditures necessary for the administration of the proposed order during a fiscal year. The budget, including an analysis of its component parts, should be submitted to the Secretary sufficiently in advance of each fiscal period to provide for the Secretary's review and approval. Such timely submission should include a recommendation to the Secretary of a rate of assessment designed to secure the income required for such fiscal year.

The Act authorizes the Secretary to approve the incurring of expenses by the administrative agency established under an order and states that the order must contain provisions requiring handlers to pay their pro rata share of such expenses.

The rate of assessment should be established by the Secretary on the basis of the committee's recommendation and other available information. In the event that an assessment rate is established which does not generate sufficient income to pay for the approved expenses, the committee should be authorized to recommend to the Secretary an increase in the rate of assessment in order to secure sufficient funds.

The Secretary may approve an assessment rate increase, and such increase should be applicable to all potatoes handled during the fiscal year to which that assessment rate applies.

The order should provide for the payment of assessments for maintenance and functioning of the committee throughout the time the order is in effect, irrespective of whether particular provisions of the order are suspended or are inoperative.

Witnesses estimated that the initial assessment rate would likely fall between one and three cents per cwt. When applied to 1986 production of 4,044,600 cwt., assessment income of $40,446 to $121,338 would be generated and would be sufficient to cover anticipated program expenses. Witnesses stated they were unable to foresee more precisely what the initial rate or volume of production would be.

It was proposed that the committee submit its budget 90 days prior to the beginning of each fiscal period. With such period proposed to begin June 1, the committee would therefore be required to submit its budget by March 1. Since planting of the potato crop in the High Plains continues until early April, proponents testified that an accurate estimate of production would be impossible to make this early in the year. Because crop production is a vital component used in formulating an assessment rate, a 60 day period prior to the fiscal period was supported. Section 949.41 should be revised accordingly. However, the Secretary should be authorized to specify an alternative time period if experience deems it necessary or desirable.

The proponents recommended a provision that would allow the establishment of a continuing assessment rate that would be carried over to the next fiscal period and remain the same until amended. However, this request is not consistent with Departmental policy, which is to require annual assessment rate and budget recommendations be submitted by marketing order administrative committees. Departmental review and approval prior to each fiscal period promotes good fiscal practices and responsibility. Therefore, the provision proposed at the hearing to add a paragraph (h) to section 949.42 to allow an established assessment rate to continue in effect indefinitely is not being recommended for inclusion in the proposed order.

If a handler does not pay any assessment by the date it is due, the order should provide that the late assessment may be subject to a late payment charge or an interest charge at a rate set by the committee with the Secretary's approval. This interest charge or late payment charge would encourage timely payments. The time frame in which payments would be required to be remitted should be recommended by the committee and approved by the Secretary.

The committee should be authorized to accept advanced payment of assessments so that it may pay expenses which become due before assessment income is received. This would give the committee more flexibility in paying obligated expenses, particularly in the first part of a fiscal year before assessment funds are received.

The committee should also be able to borrow money to meet administrative expenses that would be incurred before assessment income is enough to defray such expenses. However, the committee should not borrow money to pay obligations if sufficient funds already exist in committee reserve funds or in other committee accounts.

The committee should also be authorized to receive voluntary contributions from persons other than those assessed under the order for the payment of production research or promotional marketing activities as described in the order. Such contributions should be received by the committee without any obligations to the donor, and the expenditure of such funds should be under the complete control of the committee. The committee should not receive a voluntary contribution from any person if that contribution could represent a conflict of interest.

With the approval of the Secretary, the committee should be authorized to carry over any excess assessment income into the following fiscal period as a reserve. If such excess income is not carried over as a reserve, handlers should be entitled to a refund proportionate to the assessments each handler paid. The reserve should not be allowed to exceed approximately two fiscal years' expenses.

One purpose of the reserve fund would be to provide stability in administration of the order in the case of a low crop year. Also, establishing a reserve should minimize the necessity of the committee borrowing money or raising the assessment rate during a season of less than anticipated production.

Finally, reserve funds could be used to cover necessary liquidation expenses in the event the order is terminated. Upon such termination, any funds not needed to defray liquidation expenses should be disposed of as determined by the Secretary. To the extent possible, however, these funds should be returned pro rata to the handlers from whom they were collected.

All funds collected by the committee through assessments or any other provision of the proposed order should be used only for the purposes set forth in the proposed order. The Secretary should at all times have authority to require the committee, its members and alternates, and its employees and agents to account for all receipts, disbursements, property or records of the committee for such person has been responsible. Likewise, when any such person ceases to act in the aforesaid positions, that person should account for all receipts, disbursements, property or records of the committee for which such person has been responsible. In the event the order is terminated or inoperative, the committee should appoint with the approval of the Secretary, one or more trustees for holding records, funds or other property of the committee.

(d) The proposed order should authorize the committee to establish and provide for the establishment of production research, marketing research, and market development projects, not including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of potatoes. Funding for these programs should come from any authorized receipts of the committee, including assessment income, donations and miscellaneous income such as interest.

Testimony indicated that public funds for research are becoming scarcer and more difficult to obtain. Proponents of the marketing order proposal believe that the High Plains potato industry needs to finance research in the areas of breeding and cultural practices, as is conducted in most other important potato producing areas in the United States.

One specific area of research needed is the development of a potato variety better able to withstand the heat stress and other climatic conditions of the High Plains area. Currently, most seed potatoes used for planting in the production area originate in northern producing areas. These potatoes have not been developed with the specific needs of the High Plains producer in mind. Other areas of possible production research projects are the reduction of production costs and conservation of resources.

The record also supports the need for marketing research and promotion projects. Research would enable the High Plains potato industry to identify and analyze its current markets and find ways of regaining lost markets and developing new ones.

Expanding markets for production area potatoes could be accomplished by promotion activities to acquaint wholesalers, retailers and consumers with the high quality product available from the High Plains. Record evidence indicates that the establishment of quality standards for High Plains potatoes would complement such a promotion program.

The committee should distinguish between those types of promotion activities allowed under the Act, and paid advertising, which is not authorized for potatoes. Activities under the proposed order would therefore be limited to such things as distributing point-of-purchase materials to retailers, providing nutrition information to institutional outlets.

The committee should be authorized to conduct these types of activities itself, or to contract with other organizations to conduct them on its behalf. For example, it was indicated that the committee could contract with the State universities in Texas and New Mexico to conduct production and marketing research. Likewise, the committee could contract with the Texas Citrus and Vegetable Association or other organizations to conduct its promotion activities.

All research and promotion projects to be conducted under the proposed order in a given fiscal year would be submitted by the committee to the Secretary for approval prior to being undertaken. This will ensure that all

projects are appropriate given the order's authority, and that sufficient funds will be available for their funding. Further, the committee should be required to report at least annually on the progress of each project and at the conclusion of each project. Such reports should be available to growers and handlers and to the Secretary.

(e) The declared policy of the Act is to establish and maintain such orderly marketing conditions for potatoes, among other commodities, as will tend to establish parity prices to growers and be in the public interest. The regulation of the handling of potatoes by grade, size, maturity, quality, pack, or container, or any combination thereof, as authorized in the proposed order, would provide a means of carrying out such policy.

The procedures and methods outlined in the proposed order for the development of marketing policies provide a practical basis for the committee to obtain and compile appropriate and adequate information relating to potato marketing problems. As a prerequisite to making recommendations with respect to limitations of shipments in accordance with the proposed order, including any minimum grade and size regulation in effect on a continuous basis, the committee should be required to annually consider and develop a marketing policy for the handling of potatoes.

A marketing policy should set forth the over-all plan for the committee for orderly marketing of potatoes during the ensuing season, including, to the extent practical, the kinds of regulations that may be desirable. The committee should be required to publicly announce the submission of its marketing policy, and copies should be made available to producers and handlers in the production area in order to give them ample time to familiarize themselves with proposed regulations and plan their individual operations accordingly. Marketing policies should be submitted to the Secretary for review and for use in evaluating the committee's recommendations for regulations.

The factors set forth in the proposed order which the committee should consider in developing its marketing policy are necessary for a proper evaluation of the market outlook. The committee should have available all of the latest supply and price information for its area and competing areas. It should know, from information available and from the informed members themselves, the condition and quality of the crop in its area as well as in competing areas. The committee members themselves will be informed concerning problems peculiar to the area, such as prospective quality and maturity of the crop, and will be able to consider these factors in determining its marketing policy.

If the marketing policy should need to be amended or modified during a season, the committee should be authorized to do so and the Secretary should receive a report regarding the revised policy. The committee should give the same publicity to each revised policy report as is given to the initial report to notify producers and handlers of the changes.

The Texas-New Mexico Potato Committee, as the local administrative agency under the proposed order, should be authorized to recommend such grade, size, maturity, quality, pack and container regulations as are authorized by the proposed order, and as will tend to effectuate the declared policy of the Act. It is essential to the successful operation of the proposed marketing program that the committee should have such responsibility. The committee should reflect the thinking of the industry, and the committee should present to the Department its views and recommendations for promoting more orderly marketing conditions so as to improve growers' returns for production area potatoes. The committee should, therefore, have authority to recommend such regulations as are authorized whenever such regulations would, in the judgment of the committee, tend to improve returns to producers. With each recommendation for regulation, the committee should be required to submit to the Secretary the data and information on which its recommendation is predicated and such other information as may be requested by the Secretary.

Witnesses at the hearing supported including a general cull regulation in the proposed order (§ 949.52) to establish minimum quality and size standards. As established in that section this cull regulation would require that potatoes shipped to the fresh market meet a minimum grade of U.S. No. 2 and a minimum size of 1½ inches in diameter. The record indicates that these would be appropriate standards to impose initially to keep potatoes of undesirable quality and size off the market. The general cull regulation would apply on a continuous basis, unless suspended or modified, and as proposed in the notice of hearing, there would be no requirement that the committee review it in its annual marketing policy considerations.

While witnesses supported the cull regulation, they also supported including authority for that regulation to be modified or suspended upon recommendation of the committee and approval of the Secretary. Such recommendation would be based upon the committee's assessment of current and prospective growing and marketing conditions. For example, it was indicated that there may be seasons of adverse growing conditions that would result in a reduction of general quality and a higher portion of the crop that would not meet the requirements of the cull regulation. In such a situation, suspension of the regulation would appear appropriate.

Likewise, recommendations for modification of the cull regulation would also be based upon an appraisal of supply and demand conditions. Modifications could be recommended to either loosen or tighten the U.S. No. 2, 1½ inch requirements. For example, changes in consumer demand could necessitate allowing smaller sized potatoes of one or more varieties to be shipped to fresh market. On the other hand, it may be desirable to strengthen the minimum standards. For example, the standards for a U.S. No. 2 grade potato do not include a maturity requirement, which the industry may conclude is necessary.

The types of considerations that would lead to a modification or suspension of the proposed cull regulation are essentially the same as those required to be given in the committee's marketing policy.

Additionally, paragraph (a)(4) of § 949.53 of the proposed order would provide authority to establish in terms of grades, sizes, or both, minimum standards of quality and maturity recommended by the committee and established by the Secretary.

The record indicates that one reason the inclusion of a cull regulation in the proposed order was supported was that it would authorize continuance of grade and size requirements in the event season average prices were expected to exceed parity. The Act specifically prohibits any regulatory action that has as its purpose the maintenance of prices above the parity level. However, it provides that the Secretary may continue regulations for the remainder of a marketing season in an above parity situation if the Secretary finds that such regulations are necessary to provide for orderly marketing and are in the public interest. In the event of an over-parity situation, the Secretary would need to review current and prospective conditions to make the required findings to continue regulations. The inclusion of the proposed cull regulation would not,

therefore, guarantee the maintenance of the U.S. No. 2, 1½ inch minimum regulatory requirements, as proposed at the hearing. For this reason, as well as those previously discussed, the cull regulation and all references to it should be deleted from the proposed order as being redundant, unnecessary and inconsistent with other provisions of the proposed order. However, to carry out the intent of the proponents, paragraph (a)(4) of § 949.53 should be revised to authorize minimum standards of quality and maturity when season average prices are expected to exceed the parity level.

Section 949.53 of the proposed order should authorize the Secretary, on the basis of committee recommendations or other available information, to issue various grade, size, quality, maturity, pack, and container regulations which are necessary for the improvement of marketing conditions for production area potatoes.

Such regulations could:

(1) Regulate the handling of particular grades, sizes, qualities, maturities, or packs of any or all varieties of potatoes, or any combination of the foregoing during any period;

(2) Regulate the handling of particular grades, sizes, qualities, maturities or packs of potatoes differently, for different varieties, for different containers, for different packs, for different purposes under § 949.55 or for any combination of the foregoing, during any period;

(3) Fix the size, capacity, weight, dimensions, pack or labeling of the container or containers which may be used in the packaging or handling of potatoes, or both.

The grade, size, quality, maturity, and pack of potatoes which are shipped to market at any particular time have a direct effect on returns to producers. Record evidence shows that the marketing of low quality potatoes harms the reputation of production area potatoes, thus decreasing the demand for them. The result is lower returns to all producers, even for the better grades and sizes.

By having authority to regulate shipments of potatoes by grade, size, quality, maturity and pack during any period, the shipment of low quality and undesirable sizes of potatoes could be restricted to the extent deemed necessary by the committee and in accordance with the particular preferences of buyers for grades, sizes, or packs during any period. This should enhance the reputation of Texas-New Mexico High Plains potatoes and result in higher returns for production area potatoes.

The proposed order should also authorize the Secretary to fix, through rules and regulations, the size, weight, capacity, dimensions, pack or marking of the containers that may be used in handling potatoes. Such rules could promote orderly marketing by standardization of packs and elimination of improper or misleading packaging techniques.

The proposed order should, however, specifically provide that nothing in the order shall authorize any regulation eliminating shipments of potatoes in bulk. As previously discussed, bulk shipments of potatoes to repackers outside the production area are important in the marketing of High Plains potatoes. While this type of movement should not be prohibited, bulkload shipments should be required to meet the same size and quality standards as are imposed upon other shipments. This provision, contained in paragraph (d) of § 949.54 of the notice of hearing, has been redesignated as paragraph (c) of § 949.53 to clarify that it applies to the issuance of all regulations.

At this point it is impossible to predict what kind of regulations would be recommended by the committee to the Secretary. However, a minimum grade of U.S. No. 2 and a minimum size of 1½ inches in diameter would be likely, given the cull regulation supported at the hearing. At the outset, the regulatory recommendations may be minimal, but standards could increases over subsequent marketing seasons as the committee gains experience and has the opportunity to study the marketing situation and reevaluate the types of regulations needed to solve the production area's potato marketing problems. The committee should have the broad spectrum of authority in the proposed order available to enable it to deal effectively with those problems.

The Secretary should not be precluded from using any available information which may or may not have been provided by the committee for consideration in issuing such regulations. Also, when the Secretary determines that any regulation no longer tends to effectuate the declared policy of the Act, the proposed order should provide authority to amend or terminate that regulation.

The proposed order should provide for prompt notification of the committee by the Secretary whenever action is taken with respect to regulations, and the committee should promptly notify all handlers of such actions. This requirement is appropriate and necessary for the proper and efficient administration of the program. This provision contained in paragraph (d) of § 949.54 has been redesignated as paragraph (b) of § 949.53 to clarify that it applies to the issuance of all regulations.

The proposed order should provide for the amendment, modification, suspension or termination of regulations by the Secretary whenever such action is warranted upon recommendation of the committee or other available information. The need for this authority is obvious in that flexibility is required to adjust regulations to effectuate the declared policies of the Act.

The proposed order is intended to improve marketing conditions with respect to commercial shipments, mainly carlots or truck lots, of potatoes going into fresh markets. However, some smaller shipments are occasionally made which constitute a very minor percentage of the total movement and are much smaller in volume than what is normally considered a commercial shipment. Regulation of such small volumes may not be necessary or cost effective. Therefore, authority should be contained in the proposed order to relieve such shipments from regulations, assessments, or inspection when such is in the best interest of the program.

The Secretary should be authorized upon the basis of the recommendations and information submitted by the committee to modify, suspend or terminate regulations with respect to the handling of potatoes for purposes other than for disposition in normal trade channels. Potatoes moving to or serving such outlets are usually handled in a different manner, or such outlets usually accept different grades, sizes, qualities, packs, and containers, or different prices are returned, or combinations of such considerations may apply. Such shipments usually do not have any appreciable effect on the marketing of the great bulk of potatoes handled in commercial markets. The proposed order should provide authority for the committee to give appropriate consideration to the handling of potatoes for such purposes so that every opportunity may be taken to facilitate such handling and improve marketing conditions for potatoes thereby tending to increase total returns to potato growers in the production area.

Such outlets would include relief, charity, livestock feed, export, seed, and other purposes which may become apparent in the future and which would be specified by the committee and approved by the Secretary. Shipments intended for relief or charity are usually by the way of donation, and the committee should have authority to recommend waiving of the requirements in regard to these shipments since they

do not interfere with regular commercial movement. The same is true for potatoes utilized as livestock feed. Most of these are low quality potatoes, and should not be disposed of in fresh market outlets. Some export markets may accept or prefer certain grades or sizes which normally are discounted for domestic markets. The proposed order should provide for appropriate modification, suspension or termination of regulations with respect to movement of potatoes to export outlets so that these demands can be met and the sale of the potatoes grown in the production area will continue to such markets.

Seed potatoes are produced under special conditions to insure their positive qualities and freedom from disease. If properly qualified, these potatoes are certified by an appropriate State agency. Because of the difficulty in assuring that uncertified seed potatoes would be used for that purpose, the exemption authority in § 949.55 should apply only to such potatoes sold to a producer exclusively for planting within specific geographic limits.

The authority for modifying, suspending or terminating grade, size, quality, assessment, or inspection regulations should be accompanied by additional administrative authority for the committee to recommend, and the Secretary to prescribe, adequate safeguards to prevent shipments for such purposes from entering market channels contrary to provisions of such special regulations. Authority for the establishment of safeguards should include such limitations or appropriate qualifications on shipments which are necessary and incidental for proper and efficient administration of the proposed order.

(f) The record evidence is that inspection and certification of potato shipments are necessary and are the most practicable way to assure that the handling of potatoes complies with the regulations that may be issued pursuant to the proposed order. The Federal-State Inspection Service has inspectors in the production area and has operated in the High Plains area for many years. Potato producers and handlers throughout the production area are well acquainted with the Service and with the inspection they offer on shipments of potatoes. Inspection is available at potato packing sheds throughout the entire production area, and would be available for bulk shippers, either at central locations or at the bulk shipper's premises.

Inspection and certification requirements are necessary so that growers, shippers, the committee and other interested persons may determine if shipments comply with the regulations in effect. Effective regulation of the handling of potatoes grown in the production area requires evidence that each shipment is in compliance with regulations issued under the order. The provision for inspection and certification affords a practical means of establishing whether shipments comply and can be so identified. Compliance and identification of regulated potatoes are necessary for proper administration of the proposed order.

Responsibility for obtaining inspection would generally fall primarily upon the person who first handles regulated potatoes since that handler is usually responsible for the grade, size, quality, and pack of the potatoes being shipped.

It was testified that inspected potatoes subject to regulation may be regraded, resorted, or repacked, and that it may not always be possible to identify such potatoes with the applicable inspection certificate. Those lots could take on a whole new identity, and could not be identified with a previous inspection certificate obtained by a previous handler. Any handling of these lots should be in compliance with the requirements of the order. Otherwise, effective regulation would not be obtained, as there would be no assurance that order requirements were not circumvented. Therefore, the committee, with approval of the Secretary, should be authorized to issue rules requiring inspection on regraded, resorted or repacked lots, or providing for special inspection requirements or relief therefrom to cover situations when positive lot identity has not been maintained.

To facilitate monitoring compliance, the committee may find it necessary to require that potatoes which have been inspected and certified be identified by some means to indicate that such potatoes were inspected. Therefore, upon recommendation of the committee and approval by the Secretary, any or all potatoes inspected and certified should be identified by appropriate seals, stamps or tags to be affixed to the container by the handler under the direction and supervision of a Federal or Federal-State Inspector or the Committee. Master containers should be required to be so identified, and not each individual container within a master container. Since the purpose of this authority is to help the committee exercise surveillance over the shipment of potatoes from the production area and ascertain compliance with the inspection and certification requirements of the order, it is not necessary that individual containers within a master container be so identified. This should reduce the cost of identifying those shipments.

Although some potatoes can be stored for long periods of time, they are perishable in nature. Even those that are stored under optimum conditions undergo some changes, including deterioration and sprouting. Therefore, an inspection certificate may not reflect the true quality of a lot of potatoes which has been held for some time after it was inspected. Because of the necessity of valid representation by inspection certificates, the committee should be authorized to establish, with the approval of the Secretary, a length of time for which an inspection certificate is valid.

Promptly after inspection and certification, each handler would submit, or cause to be submitted, to the committee a copy of the certificate of inspection issued with respect to such potatoes. The certificate would verify that the potatoes meet the order requirements. Although the testimony is that the Inspection Service should be required to submit the certificates to the committee, it should be the handler's responsibility to do so. However, the handler may arrange with the Inspection Service for it to send in the certificates on behalf of the handler.

The committee should be authorized to recommend for the Secretary's issuance, regulations requiring that potatoes transported by motor vehicle or any other means be accompanied by a copy of the inspection certificate issued thereon or by other approved evidence of inspection. Such certificate or document shall be surrendered to such authority as may be designated. The committee is authorized under the proposed order to administer its terms and provisions and this procedure would enable the committee to apply the regulations in connection with the movement of potatoes through any compliance check points which may be set up along the boundaries of the production area.

(g) The committee should have authority, with the approval of the Secretary, to require that handlers submit to it such reports and information as are needed to perform its functions. It is difficult to anticipate every type of report, or kind of information, which the committee may need in administering the program, but it should have the authority, subject to the approval of the Secretary, to request reports and information if needed, of the type set forth in the proposed order. At the hearing, witness testimony modified the information collection list to include information on the number of acres by

variety and approximate dates planted. Such information would provide the committee with the data necessary to help formulate its marketing policy and recommend a budget and assessment rate by enabling more accurate production forecasts.

The record evidence is that in the normal course of business, handlers have the necessary information in their possession and based on the experience of similar orders now in effect, the requirement that they furnish it to the committee in the form of reports should not constitute an undue burden. Reports are needed by the committee for such purposes as: Collecting assessments; collecting statistical data for use in marketing policy development and recommendations for regulations; and determining whether handlers are complying with order requirements.

Reports furnished to the committee should be submitted in such manner and at such times as the committee, with approval of the Secretary, may designate. Such reporting procedures should be in accord with the needs and requirements of the committee which are essential to administration of the order because changing conditions may warrant changes in the forms and methods of reporting.

Since it is possible that a question may arise with respect to compliance with the proposed order, each handler should maintain complete records of the handling and disposition of potatoes for a period of not less than two years after the end of each crop year.

In order to determine handlers' compliance with the proposed order and regulations issued thereunder, the committee with approval of the Secretary should be authorized to prescribe through rules and regulations, the kinds of records and documents which shall be maintained by each handler with respect to each sale of potatoes. Such authorization should include authority for requiring proof or evidence of sale for each lot of potatoes sold, including the date of sale, the name of the buyer, the quantity, price, grade and size, the buyer's confirmation and record of payment, and other pertinent information which may be required by the committee. This information should be available for inspection by an authorized agent of the committee or the Secretary.

All reports and records submitted for committee use by handlers shall remain confidential and be disclosed to none other than persons authorized by the Secretary except as required by law. Such reports would become part of the committee's and the Secretary's records. Any reported information released to the industry should be on a composite basis, and no information should be released under the Act that would disclose either the identity of an individual handler or that person's operations.

(h) No handler should be permitted to handle potatoes, the handling of which is prohibited by the proposed order or by regulations issued under the proposed order. If the program is to be effective, compliance with its requirements is essential, and no handler should be permitted to evade any of its provisions. Any such evasion on the part of even one handler, could be demoralizing to those handlers who are in compliance and would tend to impair the effective operation of the program.

The Notice of Hearing included a second paragraph in § 949.81 which pertained to the committee's authority to inspect handler records for compliance purposes. However, this authority is provided in the provision of the proposed order regarding reports and recordkeeping (§ 949.80), and therefore it should be deleted from § 949.81 as redundant and unnecessary.

(i) The provisions of §§ 949.82 through 949.92 of the order as contained in the Notice of Hearing and hereinafter set forth in the recommended order, are common to marketing agreements and orders now operating. All such provisions are incidental to and not inconsistent with the Act and are necessary to effectuate the other provisions of the recommended marketing order and marketing agreement and to effectuate the declared policy of the Act. The record evidence supports inclusion of each such provision as proposed in the Notice of Hearing, with the exception of § 949.84 as discussed below. Those provisions which are applicable to both the marketing agreement and the marketing order, identified by section number and heading are as follows: § 949.82 Right of the Secretary; § 949.84 Termination or suspension; § 949.85 Proceedings after termination: § 949.86 Effect of termination or amendment; § 949.87 Duration of immunities; § 949.88 Agents; § 949.89 Derogation; § 949.90 Personal liability; § 949.91 Separability; and § 949.92 Amendments. Those provisions applicable to the marketing agreement only are: § 949.97 Counterparts; § 949.98 Additional Parties; and § 949.99 Order with marketing agreement.

The order should provide that the Secretary conduct a periodic referendum every six years with the initial referendum conducted within six years of the effective date of the recommended order.

The Secretary of Agriculture has determined that continuance referenda are an effective means for ascertaining whether producers favor continuance of marketing order programs. The Act provides that the Secretary shall terminate a marketing order whenever, through the conduct of a referendum, it is indicated that a majority of all producers favor termination and such majority produced more than 50 percent of the commodity for market during a representative period.

Since less than 50 percent of all producers usually participate in a referendum, it is difficult to determine overall producer support or opposition to termination of an order. Thus, to provide a basis for determining whether producers favor continuance of the order, authority for continuance referenda should be included. Continuance should be based upon the affirmative vote of two-thirds of the producers voting or producers of two-thirds of the volume of potatoes represented in the referendum.

Hearing testimony favored the concept of conducting continuance referenda, but opposed a two-thirds vote requirement to continue the marketing order. It was stated that one-third of the industry should not determine the fate of the program, and that a majority vote would be more equitable.

The Act requires that in the promulgation or amendment of a marketing order, at least two-thirds of the producers voting, by number or volume represented in the referendum, must favor the issuance or amendment of a marketing order. Continuance referenda requirements are based on the same standard of industry support. The Secretary would consider termination of the order if less than two-thirds of the producers voting in the referendum or producers of less than two-thirds of the volume of potatoes represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary should not only consider the results of the referendum but also should consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to producers, handlers and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act. In this regard, in the event of an adverse vote by producers in a continuance referendum, the Secretary may solicit input from the public through meetings, press releases, or other means.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate the order whenever the Secretary finds that the majority of all producers favor termination, and that such majority produced more than 50 percent of the commodity for market. To be effective, termination of the order resulting from any referendum should be announced on or before the last date of the then current fiscal year. This date precedes the beginning of the committee's operations for a new fiscal year and is considered to be an appropriate time to terminate the operations of the program.

The Secretary's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" provide for periodic referenda to allow producers the opportunity to indicate their support for or rejection of a marketing order. It is the position of the Department that periodic referenda ensure that marketing order programs continue to be accountable to producers, obligate producers to evaluate their programs periodically, and involve them more closely in their operation. The record evidence supports these goals.

### Rulings on Briefs of Interested Parties

At the conclusion of the hearing the Administrative Law Judge fixed June 1, 1988, as the final date for interested persons to file proposed findings and conclusions, and written arguments or briefs based upon the evidence received at the hearing. No briefs were filed.

### General Findings

Upon the basis of the evidence introduced at the hearing, and the record thereof, it is found that:

(1) The marketing agreement and order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The said marketing agreement and order regulate the handling of potatoes grown in the production area in the same manner as, and are applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement and order upon which a hearing has been held;

(3) The said marketing agreement and order are limited in their applicability to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are not differences in the production and marketing of potatoes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of potatoes grown in the production area, as defined in said marketing agreement and order, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

### List of Subjects in 7 CFR Part 949

Marketing agreements and orders, potatoes, Texas, New Mexico.

### Recommended Marketing Agreement and Order

The following marketing agreement and order are recommended as the detailed means by which the foregoing conclusions may be carried out. Those sections identified with an asterick (*) apply only to the proposed marketing agreement and not to the proposed marketing order.

Therefore, Title 7, Chapter IX is proposed to be amended by adding Part 949 to read as follows:

## PART 949—IRISH POTATOES GROWN IN THE HIGH PLAINS AREA OF TEXAS AND NEW MEXICO



**Authority:** Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.

### Definitions

#### § 949.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or who may hereafter be delegated the authority to act for the Secretary.

#### § 949.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended [Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*].

#### § 949.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

#### § 949.4 Production area.

"Production area" means the counties of: Bailey, Briscoe, Castro, Cochran, Dallam, Donley, Deaf Smith, Floyd, Gaines, Hale, Hall, Hartley, Hockley, Lamb, Lubbock, Motley, Oldham, Parmer, Swisher, Terry, and Yoakum located in the State of Texas, and the counties of Chaves, Curry, De Baca, Eddy, Guadalupe, Lea, Roosevelt,

Torrance, Union, and Quay located in the State of New Mexico.

**§ 949.5 Potatoes.**

"Potatoes" means and includes all varieties of *Solanum tuberosum*, commonly known as Irish potatoes, grown in the production area.

**§ 949.6 Seed potatoes.**

"Seed potatoes" or "seed" means any potatoes have been certified by the official seed certification agency of the States of Texas or New Mexico, or other seed certification agencies recognized by the Secretary, and which bear the official tags, seals, or other appropriate identification indicating such certification.

**§ 949.7 Handler.**

"Handler" is synonymous with "shipper" and means any person, except a common or contract carrier of potatoes owned by another person, who handles potatoes or causes potatoes to be handled.

**§ 949.8 Handle or ship.**

"Handle" or "ship" means to grade, package, sell, transport, or in any other way to place potatoes grown in the production area, or cuase such potatoes to be placed, in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery within the production area of field-run potatoes to storage or to a person for the purpose of having such potatoes prepared for market.

**§ 949.9 Producer.**

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of potatoes for market.

**§ 949.10 Fiscal period.**

"Fiscal period" means the 12-month period beginning on June 1 and ending May 31 of the following year, or such other period that may be recommended by the committee and approved by the Secretary.

**§ 949.11 Committee.**

"Committee" means the administrative committee known as Texas-New Mexico Potato Committee established pursuant to § 949.20.

**§ 949.12 Grade, size and maturity.**

"Grade" means any of the officially established grades of potatoes, "Size" means any of the officially established sizes of potatoes, and "Maturity" means any of the stages of development or condition of the outer skin (epidermis) of potatoes, as defined in the United States Standards for Potatoes issued by the United States Department of Agriculture [§§ 51.1540 to 51.1556, inclusive of this title], including amendments, modifications, or variations thereof, or, such other grades, sizes, and maturities as may be recommended by the committee and approved by the Secretary.

**§ 949.13 Varieties.**

"Varieties" means all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

**§ 949.14 Pack.**

"Pack" means a quantity of potatoes in any type of container, which falls within specified weight limits, numerical limits, grade limits, size limits, or any combination of these recommended by the committee and approved by the Secretary.

**§ 949.15 Container.**

"Container" means a sack, bag, crate, box, basket, barrel, or bulk load or any other receptacle used in the packaging, transportation, sale or other handling of potatoes.

**§ 949.17 District.**

"District" means each of the geographic divisions of the production area initially established pursuant to § 949.23 or as reestablished pursuant to § 949.24.

**§ 949.18 Export.**

"Export" means the shipment of potatoes to any destination which is not within the 50 States, or the District of Columbia, of the United States.

**Committee**

**§ 949.20 Establishment and membership.**

(a) There is hereby established a committee, consisting of 11 members, to administer the terms and provision of this part. Six members shall be producers, 4 members shall be handlers, and 1 shall be a public member. Each committee member shall have an alternate who shall have the same qualifications as the member.

(b) Each member, other than the public member, shall be an individual who is, prior to selection and during such term of office (1) a resident of the production area, and (2) a producer or handler, or an officer or employee of a producer or handler.

(c) Four members shall be producers from District 1 and 2 members shall be producers from District 2. Three members shall be handlers from District 1 and 1 member shall be a handler from District 2. Any person who operates in more than one district or is engaged in both producing and handling potatoes shall elect one classification, and one district from which to be represented on the committee.

(d) The public member shall be a resident of the production area and be neither a producer nor a handler and shall have no direct financial interest in the commercial production, financing, buying, packing and marketing of potatoes, except as a consumer, nor shall such person be a director, officer or employee of any firm so engaged.

**§ 949.21 Alternates.**

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate, during such member's absence or when designated to do so by such member. In the event both a member of the committee and that member's alternate are unable to attend a committee meeting, the member, the alternate, or the committee, in that order, may designate another alternate from the same district and the same classification (handler or producer) to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, that member's respective altenate shall serve until a successor of such member is selected and has qualified. The Committee may request the attendance of alternates at any or all meetings, notwithstanding and expected or actual presence of the respective members.

**§ 949.22 Term of office.**

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three years and shall begin as of January 1 and end the last day of December or for such other three-year period as the committee may recommend and the Secretary approve. Members and alternates shall serve in such capacity for the portion of the term of office for which they are selected, and until their respective successors are selected. No member or alternate may serve more than two consecutive terms on the committee unless specifically exempted from this requirement by the Secretary.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this subpart. As determined by the Secretary, approximately one-third of the initial committee members and alternates shall serve for a one-year

term and approximately one-third of the initial committee members and alternates shall serve for a two-year term. The remainder of the initial committee members and alternates shall serve for a three-year term. Those member serving initial terms of one year or less may serve two additional, consecutive three-year terms.

**§ 949.23 Districts.**

To determine a basis for selecting committee members, the following districts of the production area are hereby initially established:

*District 1:* All production area counties located within the State of Texas and;

*District 2:* All production area counties located within the State of New Mexico.

**§ 949.24 Redistricting and reapportionment.**

At least every five years the committee shall review the geographic distribution of potato production in the production area and, if warranted, recommend to the Secretary the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the Committee shall give consideration to:

(a) Shifts in potato acreage within the districts and within the production area during recent years;

(b) The importance of new production in its relation to existing districts;

(c) The equitable relationship of committee membership and districts; and

(d) Other relevant factors. No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than 6 months prior to such date.

**§ 949.25 Nominations.**

(a) Initial members. The nomination process for the initial committee shall be conducted by the Secretary. The nominations for each of the 6 initial producer and 4 initial handler members of the committee, together with the nominations for the initial alternate members for each position, shall be made as soon as practicable after the effective date of this subpart. The nominee for the initial public member shall be submitted to the Secretary not later than 90 days after the first meeting of the committee.

(b) Successor members. (1) The committee shall hold or cause to be held not later than October 1 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of producers and handlers in each district for the purpose of designating at least one nominee for each position as member and for each position as alternate member of the committee. In the alternative, the committee may conduct nominations by mail in a manner recommended by the committee and approved by the Secretary.

(2) The names of nominees shall be submitted to the Secretary at such time and in such manner and form as may be prescribed;

(3) Only producers may participate in designating producer nominees and only handlers may participate in designating handler nominees to the committee;

(4) Only producers and handlers who are present at such nomination meetings, or represented at such meetings by a duly authorized employee, may participate in the nomination and election of nominees for members and their alternates.

(5) Any person who operates in more than one district or is engaged in both producing and handling potatoes shall elect the classification, and the district in which to participate in designating nominees.

(6) Regardless of the number of districts in which a person produces or handles potatoes, such persons are entitled to cast only one vote for each position to be filled in the district and classification in which the person is eligible and elects to vote in designating nominees for committee members and alternates. Such vote would be cast on behalf of the voter, the voter's agents, subsidiaries, affiliates, and representatives.

(c) The public member shall be nominated by the members of the committee. The committee may establish procedures for receiving names of persons to be considered for nomination as the public member. The name of the person nominated as the public member shall be submitted by the incumbent committee to the Secretary by November 1, or such other date recommended by the committee and approved by the Secretary, of the year the term expires together with information deemed pertinent by the committee or as requested by the Secretary.

**§ 949.26 Selection.**

Committee members and alternates shall be selected by the Secretary on the basis of representation provided for in § 949.20 or as modified pursuant to § 949.24.

**§ 949.27 Failure to nominate.**

If nominations are not made within the time and manner prescribed in § 949.25, the Secretary may, without regard to nominations, select the members and alternates on the basis of the representation provided for in § 949.20 or as modified pursuant to § 949.24.

**§ 949.28 Acceptance.**

Any person prior to selection as a member or alternate member of the committee shall qualify by filing with the Secretary a written acceptance within the time period specified by the Secretary of the person's willingness to serve.

**§ 949.29 Vacancies.**

To fill any vacancy caused by the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 949.25, from previously unselected nominees on the current nominee list, or from other eligible persons.

**§ 949.30 Expenses.**

Members and alternates, when serving as members of the committee, shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part: Provided, that the committee at its discretion may request the attendance of one or more alternates at any or all meetings notwithstanding the expected, or actual, presence of the respective members and may pay expenses as aforesaid.

**§ 949.31 Procedure.**

(a) A majority of all members of the committee shall be necessary to constitute a quorum or to pass any motion or approve any committee action.

(b) The committee may provide for the members thereof, including the alternate members when acting as members, to vote by mail, telegraph, telephone, or other means of communication, provided that any such vote cast orally shall be confirmed promptly in writing. If any assembled meeting is held all votes shall be cast in person.

**§ 949.32 Powers.**

The committee shall have the following powers:

(a) To administer the provisions of this subpart as specified herein;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

**§ 949.33 Duties.**

The committee shall have, among others, the following duties:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees, to adopt such rules, regulations, and bylaws for the conduct of its business as it deems necessary, and to recommend nominees for the public member and alternate;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the compensation and define the duties of each such person, and to protect the handling of committee funds.

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to potatoes;

(f) To recommend research and development projects to the Secretary in accordance with this part;

(g) To notify handlers of each meeting of the committee to consider recommendations for regulations and of all regulatory actions taken, and to provide such notification to producers through appropriate news releases or such other means as may be available to the committee;

(h) To give the Secretary the same notice of meetings of the committee and its subcommittee(s) as is given to its members;

(i) To prepare a marketing policy;

(j) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative. Mintues of each committee meeting shall be reported promptly to the Secretary;

(k) Prior to the beginning of each fiscal period, to submit to the Secretary a budget of projected income and expenses for such fiscal period, together with a report thereon;

(l) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to producers and handlers for examination at the office of the committee;

(m) To prepare and submit to the Secretary, an annual report, and make a copy available to each producer and grower who requests it. This annual report shall contain at least:

(1) A complete review of the regulatory operations during the fiscal period;

(2) An appraisal of the effect of such regulatory operations upon the potato industry; and

(3) Any recommendations for changes in the program.

(n) To cause the books of the committee to be audited by a certified public accountant at least once each fiscal period and at such other times as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of such report shall be furnished to the Secretary. A copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; however, confidential information shall be removed from the report; and

(o) To consult, cooperate, and exchange information with other marketing order committees and other individuals or agencies in connection with all proper activities and objectives under this part.

**Expenses and Assessments**

**§ 949.40 Expenses.**

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for purposes determined to be appropriate for administration of this part. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expenses shall be proportionate to the ratio between the total quantity of potatoes handled by such handler as the first handler thereof during a fiscal period and the total quantity of potatoes handled by all handlers as first handlers thereof during such fiscal period.

**§ 949.41 Budget.**

Sixty days prior to the beginning of each fiscal period, or at such other time as may be specified by the Secretary, the committee shall prepare an estimated budget of income and expenditures necessary for its administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall submit such budget to the Secretary with an accompanying report showing the basis for its calculations. An amended budget may be submitted as provided in § 949.42(c).

**§ 949.42 Assessments.**

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart or from voluntary contributions for projects pursuant to § 949.48. Each person who first handles potatoes under this part shall pay assessments to the committee which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's budget, recommendations, and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the established rate of assessment.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(e) The committee may impose a late payment charge or an interest charge on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

(f) In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the committee may accept advance assessments and may also borrow money for such purpose. Advance assessments received from a handler shall be credited toward assessments levied against that handler during the fiscal year.

**§ 949.43 Accounting.**

(a) If, at the end of a fiscal period, the assessments collected are in excess of

expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided*, That the reserves are less than approximately two fiscal period's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any provisions of this part are suspended or are inoperative; (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified herein. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in such member's possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for such committee.

**Research and Development**

**§ 949.48 Research and development.**

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and development projects, not including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of potatoes. The expenses of such projects shall be paid from funds collected pursuant to § 949.42

**Regulation**

**§ 949.50 Marketing policy.**

Prior to beginning of each fiscal year, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Additional reports shall be submitted if it is deemed advisable by the committee to adopt a new marketing policy because of changes in the demand or supply situation with respect to potatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

(a) Supply of potatoes by grade, size, quality, and maturity in the production area;

(b) Estimates of supplies of potatoes in the production area and in competing areas;

(c) Estimates of supplies of other competing commodities;

(d) Market prices by grades, sizes, containers, and packs;

(e) Anticipated marketing problems;

(f) Level and trend of consumer income; and

(g) Other relevant factors.

**§ 949.51 Recommendations for regulations.**

(a) Whenever the committee's marketing policy considerations deem it advisable to regulate the handling of any variety or varieties of potatoes in a manner provided in §§ 949.53, 949.54, or 949.55 it shall recommend to the Secretary grade, size, quality, maturity, or pack regulation, or any combination thereof, or amendment thereto, or modification, suspension, or termination thereof.

(b) In arriving at its recommendations for regulation pursuant to (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for potatoes during the period or periods when it is proposed that such regulations should be effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

**§ 949.53 Issuance of regulations.**

(a) The Secretary shall issue regulations on the handling of potatoes whenever the Secretary finds from recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit the handling of particular grades, sizes, qualities, maturities, or packs of any or all varieties of potatoes, or any combination of the foregoing during any period.

(2) Limit the handling of particular grades, sizes, qualities, maturities or packs of potatoes differently, for different varieties, for different containers, for different packs, for different purposes under § 949.55, or for any combination of the foregoing, during any period.

(3) Fix the size, capacity, weight, dimensions, pack or marking of the container or containers which may be used in the packaging or handling of potatoes, or both.

(4) Establish in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level.

(b) The Secretary shall notify the committee of each regulation issued pursuant to this section. The committee shall give reasonable notice thereof to handlers.

(c) Nothing in this subpart shall authorize any regulation eliminating shipment of potatoes in bulk.

**§ 949.54 Modification, suspension, or termination of regulations.**

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 949.53 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments in order to effectuate the declared policy of the act,

the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

**§ 949.55 Handling for special purposes.**

(a) Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary, may modify, suspend, or terminate requirements in effect pursuant to § 949.42 or §§ 949.51 to 949.53 inclusive, or § 949.60 or any combination thereof, to facilitate handling of potatoes for:

(1) Relief or charity;

(2) Livestock feed;

(3) Export;

(4) Seed;

(5) Potatoes, other than certified seed, sold to a producer exclusively for planting within specific geographic limits;

(6) Other purposes recommended by the committee and approved by the Secretary.

(b) The committee, with the approval of the Secretary, shall prescribe rules and regulations to prevent potatoes handled pursuant to this section from entering trade channels other than those authorized by regulations and by such rules as may be necessary and incidental thereto.

**Inspection**

**§ 949.60 Inspection and certification.**

(a) During any period in which the handling of potatoes is regulated pursuant to §§ 949.53 and 949.55, inclusive, no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the Federal or a Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved of such requirements by §§ 949.54, 949.55, or 949.60(b).

(b) The committee may, with the approval of the Secretary, issue rules requiring inspection on regraded, resorted or repacked lots, or providing for special inspection requirements or relief therefrom. Such rules may provide distinctions, insofar as practical, between handling at shipping point and handling in receiving markets within the production area.

(c) Upon recommendation of the committee and approval by the Secretary, any or all potatoes so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the container by the handler under the direction and supervision of a Federal or Federal-State Inspector or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When potatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

(f) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of potatoes by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or other evidence of inspection acceptable to the Secretary such as a Positive Lot Identification stamp, to indicate that such inspection has been performed. Such certificate or document shall be surrendered to such authority as may be designated.

**Reports and Recordkeeping**

**§ 949.80 Reports and recordkeeping.**

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and form and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The quantities of potatoes received by variety by a handler during any or all periods of a season;

(2) The quantities disposed of by the handler, segregated as to quantities subject to regulation, and where necessary, segregated as to types of outlets and special or modified regulations applicable to alternative outlets, and including quantities not subject to regulation;

(3) The date of each such disposition and the identification of the carrier transporting such potatoes;

(4) Information essential to identification of any or all specific quantities, lots, and disposition or potatoes handled under §§ 949.53 to 949.55, inclusive, which may include identification of inspection certificates, exemption certificates, certificates of privilege, or other appropriate identification, including the destination of each special shipment, where necessary.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of an individual handler identity or operations.

(c) Each handler shall maintain for at least 2 succeeding years such records and documents on potatoes received by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

(d) for the purpose of assuring compliance with recordkeeping requirements and verifying reports of handlers, the Secretary and the committee, through their duly authorized employees or agents, shall have access to any premises where applicable records are located, and where potatoes are handled, and at any time during reasonable business hours shall be permitted to inspect such handler's premises and any potatoes held by such handler and examine any and all records of such persons with respect to matters within the purview of this part.

**Compliance**

**§ 949.81 Compliance.**

No person shall handle potatoes except in conformity with the provisions of this subpart and the regulations issued thereunder.

**Miscellaneous Provision**

**§ 949.82 Right of the Secretary.**

The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

**§ 949.84 Termination or suspension.**

(a) The Secretary may terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(b) Producer referendum. (1) The Secretary shall terminate in accordance with section 8(c)(16)B of the Act, the provisions of this part at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of producers, who during a representative period, as determined by the Secretary have been engaged in the production of potatoes for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such potatoes produced for market: *Provided further*, That termination shall be announced before the beginning of the ensuing fiscal period.

(2) The Secretary shall conduct a referendum every sixth fiscal year with the first such referendum to be conducted within 6 years from the effective date of this section, to ascertain whether continuance of this subpart is favored by producers. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of potatoes in the production area. Such termination of the part shall be announced on or before the end of the fiscal year.

(c) The provisions of this part shall in any event terminate whenever the provisions of the Act authorizing them cease to be in effect.

**§ 949.85 Proceedings after termination.**

(a) Upon the termination of the provisions of this part the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee of all funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this part.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committees and upon the said trustees.

**§ 949.86 Effect of termination or amendment.**

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart; or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart; or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

**§ 949.87 Duration of immunities.**

The benefits, privileges and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

**§ 949.88 Agents.**

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

**§ 949.89 Derogation.**

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

**§ 949.90 Personal liability.**

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct or gross negligence.

**§ 949.91 Separability.**

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance or thing shall not be affected thereby.

**§ 949.92 Amendments.**

Amendments to this subpart may be proposed from time to time by the committee or by the Secretary.

**Marketing Agreement**

***§ 949.97 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

***§ 949.98 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 949.99 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of potatoes in the same manner as is provided for in the agreement.

Dated: January 25, 1989.

**J. Patrick Boyle,**

*Administrator.*

[FR Doc. 89-2108 Filed 1-30-89; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Parts 959 and 980**

**[FV-89-010]**

## Onions Grown in South Texas and Onions Imported Into the United States; Proposed Change in Effective Period of Handling Regulation and Import Regulation

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would advance the effective period of the handling regulation for onions grown in South Texas to March 1 through May 20. The current period is from March 10 through June 15 of each season with all but container requirements terminating on May 31. A corresponding change in the dates for the import regulation would also need to be made. Earlier maturing varieties have enabled producers and handlers to harvest and ship earlier to take advantage of generally higher prices in early spring. The committee believes changing the effective period of quality requirements would help to maintain the quality of such early shipments. Terminating the handling regulation on May 20 would relieve restrictions on handlers during the latter part of the season. The onion import regulation also would be amended to make appropriate conforming changes.

**DATE:** Comments must be received by February 15, 1989.

**ADDRESS:** Interested persons are invited to submit written comments concerning this proposal. Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the date and page number of this issue of the **Federal Register.**

**FOR FURTHER INFORMATION CONTACT:** Robert F. Matthews, Marketing Order Adminstration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone (202) 447–5331.

**SUPPLEMENTARY INFORMATION:** This rule is proposed under Marketing Agreement No. 143 and Marketing Order No. 959 (7 CFR Part 959), both as amended, regulating the handling of onions grown in designated counties of South Texas. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

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

There are approximately 35 handlers of South Texas onions subject to regulation under the marketing order, and approximately 75 onion producers in the South Texas production area. Also, there are about 25 onion importers subject to the requirements of the onion import regulation. The Small Business Administration [13 CFR 121.2] has defined small agricultural producers as those having annual gross revenue for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas onions and importers of onions may be classified as small entities.

The South Texas Onion Committee met on October 19, 1988, and unanimously recommended a change on the effective period of the handling regulation. The regulation currently begins March 10 and ends June 15 of each season, with all but container requirements terminating on May 31.

The committee has proposed beginning the effective period 10 days earlier, on March 1 of each season. In recent years, several new varieties of onions have been developed that mature slightly earlier than older varieties in general use. The Texas spring crop provides the first new-crop onions for each season, previous shipments being drawn from storage stocks. Because of this, prices at the beginning of the spring season tend to be higher than later in the season. Thus, earlier maturing varieties can give shippers a competitive advantage by providing them with a product to ship when prices are the highest.

Moreover, because of a university-conducted selective onion breeding program that has been carried on for over a decade, even earlier varieties may soon be developed. Although early March shipments are not usually heavy relative to mid-season volume, they are, nevertheless, significant. The committee believes that the marketing order standards of quality should apply especially to early onions to forestall shipments of poorer quality produce.

The committee also recommended changing the termination date of all provisions of the regulation from June 15 to May 20. This would be of particular benefit to the late shippers, principally from the Laredo and Winter Garden districts. The early and mid-season crop is produced in the Lower Rio Grande Valley, which generally accounts for about 85 percent of the total. Shipments in the 1987–88 season totaled 5,731,267 fifty-pound equivalent bags. The remaining crop, generally 15 percent, is produced in the Laredo and the Winter Garden districts. Shipments in the 1987–88 season from those districts totaled 915,278 fifty-pound equivalent bags. These are the last regulated shipments to leave the production area each season. Shipments made toward the end of the season tend to bring lower, and sometimes much lower, prices, hence lower returns to growers. Moreover, inspection costs tend to be higher due to the distance of the Laredo and Winter Garden districts from Federal-State inspection facilities. It is believed that relieving handling restrictions during the latter part of the season when prices are generally low will be of benefit to late producers and handlers and is not expected to adversely affect the overall objectives of the program.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including onions, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area.

In the case of onions, the current onion import regulation [7 CFR 980.117],

specifies that import requirements be based on those in effect for onions produced in designated counties in Idaho and Malheur County, Oregon [7 CFR Part 958] during the period June 1 through March 9 and on those produced in South Texas [7 CFR Part 959] during the period March 10 through May 31 of each year.

Changing the beginning date of the handling regulation would have no effect on the import regulation, 7 CFR 980.117. Although the South Texas handling regulation would begin March 1, it is found that onions from Idaho and Eastern Oregon would continue to be predominant in the marketplace and in direct competition with imported onions from mostly Mexico from March 1 through March 9 each season. Accordingly, no change to the import regulation is necessary based upon the earlier South Texas handling regulation.

However, since this change would terminate the South Texas handling regulation on May 20, it is found that imports are in most direct competition with Idaho and Eastern Oregon onions for the period May 21 through March 9 and South Texas onions for the period March 10 through May 20. Accordingly, onion import requirements would change to those grade and size requirements established under the marketing order regulating certain designated counties in Idaho and Malheur County, Oregon, 7 CFR Part 958, for the period May 21 through March 9 each year, and to those grade and size requirements established under the marketing order regulating onions grown in South Texas, 7 CFR Part 959, for the period March 10 through May 20 each year.

A change would therefore be required in the language of § 980.117 and paragraph (h) *Applicability to imports* of § 959.322.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 15-day comment period is deemed adequate to allow interested persons sufficient time to respond to this proposal. This amendment, if adopted, should become effective by March 1, the proposed beginning of the handling regulation, to be of maximum benefit to the industry. The action was recommended by the committee at a well-publicized, open meeting and area handlers are aware of it.

**List of Subjects**

*7 CFR Part 959*

Marketing agreements and orders, Onions, South Texas.

*7 CFR Part 980*

Vegetables, Import regulations, Onions.

For the reasons set forth in the preamble, it is proposed that 7 CFR Parts 959 and 980 be amended as follows:

1. The authority citation for 7 CFR Parts 959 and 980 continues to read as follows:

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

## PART 959—ONIONS GROWN IN SOUTH TEXAS

2. Section 959.322 is amended by revising the introductory paragraph and the first sentence of paragraph (i) to read as follows:

**§959.322 Handling regulation.**

During the period beginning March 1 and ending May 20, no handler shall package or load onions on Sunday, or handle any onions, except red varieties, unless they comply with paragraphs (a) through (d) or (e) or (f) of this section.

* * * * *

(i) *Applicability to imports.* During the period beginning March 10 and ending May 20 of each year * * *

## PART 980—VEGETABLES; IMPORT REGULATIONS

3. Section 980.117 is amended by revising paragraphs (a)(2) and (b) (1) and (2) to read as follows:

**§ 980.117 Import regulations; onions.**

(a) * * *

(1) * * *

(2) Therefore, it is hereby determined that: Imports of onions during the May 21 through March 9 period are in most direct competition with the marketing of onions produced in designated counties of Idaho and Malheur County, Oregon, covered by Marketing Order No. 958, as amended (7 CFR Part 958), and during the march 10 through May 20 period the marketing of imported onions is in most direct competition with onions produced in designated counties in South Texas covered by Marketing Order No. 959, as amended (7 CFR Part 959).

(b) * * *

(1) During the period May 21 through March 9 of each marketing year, whenever onions grown in designated counties in Idaho and Malheur County, Oregon, are regulated under Marketing Order No. 958, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

(2) During the period March 10 through May 20 of each marketing year, whenever onions grown in designated counties in South Texas are regulated under Marketing Order No. 959, imported onions shall comply with the grade, size, quality, and maturity requirements imposed under that order.

* * * * *

Dated: January 26, 1989.

**William J. Doyle,**

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89–2223 Filed 1–30–89; 8:45 am]

BILLING CODE 3410–02–M

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**7 CFR Part 979**

**[FV–89–013]**

## Melons Grown in South Texas; Proposed Amendment To Advance Termination Date of Handling Regulation

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

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would advance the annual termination date for the South Texas melon handling regulation from June 30 to June 20. The current period is from May 1 through June 30 of each season. Late season melon shipments are from the Laredo-Coastal Bend district of the production area. Advancing the termination date would relieve restrictions on handlers during the latter part of the season.

**DATE:** Comments must be received by March 2, 1989.

**ADDRESSES:** Comments should be sent to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2085–S, Washington, DC 20090–6456. Three copies of all written material should be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. Comments should reference the date and page number of this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone (202) 447–2431.

**SUPPLEMENTARY INFORMATION:**

This rule is proposed under Marketing Agreement No. 156 and Marketing Order

No. 979 (7 CFR Part 979), regulating the handling of melons grown in South Texas. This order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

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

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

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

There are approximately 35 handlers of melons subject to regulation under the South Texas Melon Marketing Order and approximately 75 melon producers in the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of South Texas melons may be classified as small entities.

The South Texas Melon Committee in a telephone vote completed on November 10, 1988, unanimously recommended a change in the effective period of the handling regulation. The handling regulation currently is in effect from May 1 through June 30 of each season. Current requirements for cantaloups are a minimum of U.S. Commercial grade with not more than eight percent serious damage. For honeydew melons, at least 50 percent of each lot must be U.S. Commercial grade or better with a 20 percent tolerance for serious damage. Honeydew melons are also required to have a minimum of eight percent sugar. Container and marking requirements are also in effect.

The production area covered by the marketing order consists of two districts—the Lower Valley and the Laredo-Coastal Bend areas. By far, the larger portion of the crop is grown in the Lower Valley. During the 1988 season, this district shipped about 5.9 million cartons of cantaloups and 3.9 million cartons of honeydew melons, accounting for over 95 percent of the total volume of melons shipped from the production area. Harvest begins about the first of May, with peak volume from May 15 through June 20.

The Laredo-Coastal Bend district, in the northern part of the production area, has a somewhat later shipping season, with the bulk of its movement occurring in late June. Harvest begins about the first of June, with peak volume from June 15 through June 30.

South Texas is typically the first domestic supplier of cantaloups and honeydew melons each year, and for a brief period early in the season there is virtually no competition from other domestic sources. Later in the season, however, large volumes of melons are available from California and Arizona, as well as from the Trans-Pecos and Winter Garden areas of Texas.

The increased availability of melons is reflected in the prices received by South Texas shippers. According to the committee's 1988 annual report, for example, the f.o.b. price for a 15-count container of cantaloups averaged $22.00 during the week of May 9–15, and had declined to an average of $9.00 during the week of June 13–19. For the same two weeks, the average f.o.b. price for 8-count cartons of honeydew melons was $8.33 and $3.03 respectively.

Due to its later shipping season, the Laredo-Coastal Bend district faces a more competitive marketplace and generally receives lower prices for its melons than does the Lower Valley. At the same time, inspection costs tend to be higher due to distance of the Laredo-Coastal Bend district from Federal-State inspection facilities.

To recognize the different marketing situation existing in late June, the committee recommended ending the handling requirements (including mandatory inspection) on June 20. This action should enable late season shippers to compete more effectively and should improve returns to growers. In addition, not imposing the quality requirements on shipments made after June 20 should not have an adverse effect on the overall effectiveness of the program, because a relatively small volume (less than five percent in 1988) of melons is shipped after that date.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons sufficient time to respond to this proposal. All written comments timely received in response to this request for comments will be considered before a final determination is made on this matter.

**List of Subjects in 7 CFR Part 979**

Marketing agreements and orders, Melons, Texas.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 979 be amended as follows:

## PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR Part 979, Melons Grown in South Texas, continues to read as follows:

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

2. Section 979.304 is amended in the introductory paragraph by revising the following text to read as follows:

**§ 979.304 Handling regulation.**

During the period beginning May 1 and ending on June 20 of each season* * *

* * * * *

Dated: January 26, 1989.

**William J. Doyle,**

*Associate Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 89–2221 Filed 1–30–89; 8:45 am]

BILLING CODE 3410–02–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### 8 CFR Part 103

**[INS Number 1117–88]**

### Availability of Decisions and Interpretive Material Under the Freedom of Information Act

**AGENCY:** Immigration and Naturalization Service (INS), DOJ.

**ACTION:** Proposed rule.

**SUMMARY:** INS proposes to eliminate the requirement to maintain a Public Reading Room at each district office. Since public use has been minimal, INS proposes to maintain a reading room only at its Central Office.

**DATES:** Comments must be received by March 2, 1989.

**ADDRESS:** Comments should be in triplicate to the Director, Policy Directives and Instructions, Room 2011, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:** Russell Powell, Chief, FOIA/PA Section, Immigration and Naturalization Service, 425 I Street NW., Room 5056, Washington, DC 20536, (202) 633–1722 (FTS 633–1722).

**SUPPLEMENTARY INFORMATION:** To comply with the (a)(2) requirements of the Freedom of Information Act, INS promulgated regulations requiring maintenance of public reading rooms at Central Office and all district offices in the United States. The Act does not, however, mandate such a requirement and INS is the only component within the Department of Justice that maintains public reading rooms at offices other than it's headquarters. INS conducted a survey of public reading room use at thirty-three district offices nationwide during the first quarter of 1987. There were only three district offices that had more than nine visitors during this three month period. Since public use has been minimal, INS proposes to maintain a reading room only at its Central Office.

INS continues to provide copies of reading room material to the American Immigration Lawyers Association (AILA) who make this information available to the public for a nominal fee. In addition, the American Council For Nationalities Service (ACSN) publishes Interpreter Releases, an information service on immigration, naturalization and related matters. INS also created a collection of taped messages to answer public inquiries regarding immigration and citizenship. "Ask Immigration" Telephone Systems are located in more than two dozen metropolitan areas nationwide. Therefore, INS has determined that the cost of manhours duplicating, preparing, filing and auditing reading room material at district offices where public use has been negligible is not cost beneficial to the public. A complete INS public reading room will be maintained at the Central Office and individuals who desire information that is not available through AILA, ACNS and "Ask Immigration" may submit a Freedom of Information Act request to any INS office.

In accordance with 5 U.S.C. 606(b) the Commissioner of Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in acccordance with E.O. 12612.

**List of Subjects in 8 CFR Part 103**

Administrative practice and procedure, Archives and records, Freedom of Information Act, Organization.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

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

1. Authority citation for Part 103 continues to read as follows:

**Authority:** 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301–1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; EO 12356; 3 CFR 1982 Comp., p. 166; OMB Circular A–25.

2. In § 103.9, paragraphs (b), (d) and (e) are revised to read as follows:

**§ 103.9 Availability of decisions and interpretive material under the Freedom of Information Act.**

* * * * *

(b) *Unpublished decisions.* The Central Office will maintain copies on a national basis of all unpublished Service decisions.

* * * * *

(d) *Statements of policy, interpretations, manuals, instructions to staff.* Statements of policy, interpretations and those manuals and instructions to staff (or portions thereof), affecting the public, will be made available at Central Office with an accompanying index of any material which is issued on or after July 4, 1967.

(e) *Public reading rooms.* The Central Office will provide a reading room where the material described in this section will be made available in the Public Reading Room, include the immigration and nationality laws, Title 8 of the United States Code Annotated, Title 8 of the Code of Federal Regulations—Chapter I, a complete set of the forms listed in Part 299 of this chapter, and the Department of State Foreign Affairs Manual, Volume 9—Visas. Fees will not be charged for providing access to any of these, but fees in accordance with § 16.10 of 28 CFR will be charged for furnishing copies.

* * * * *

Dated: September 19, 1988.

**Elizabeth Chase MacRae,**

*Associate Commissioner, Information Systems, Immigration and Naturalization Service.*

[FR Doc. 89–2203 Filed 1–30–89; 8:45 am]

BILLING CODE 4410–10–M

**8 CFR Part 214**

**[INS NUMBER: 1122–88]**

## School Approval and Withdrawal Regulations

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule requires that schools approved by the Service for attendance by foreign students report any significant changes made to their names, addresses, or curricula to ensure effective monitoring of the Student School Program. The Service will withdraw the approval of a school on notice for failure to comply with this reporting requirement. This proposed rule also updates the regulation regarding withdrawal of school approval to reflect current school transfer procedures for F–1 nonimmigrant students.

**DATES:** Written comments must be submitted on or before March 2, 1989.

**ADDRESS:** Please submit comments in triplicate to the Director, Office of Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street NW., Room 2011, Washington, DC 20536.

**FOR FURTHER INFORMATION CONTACT:** Pearl B. Chang, Senior Examiner, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–3946.

**SUPPLEMENTARY INFORMATION:** Regulations regarding the approval of schools for attendance by foreign students require that approved schools keep records of information about each of the F–1 or M–1 students enrolled on campus. Approved schools are also required to report the status of each of the enrolled F–1 or M–1 students on Form I–721 which is a computer generated form issued annually by the Service to all approved schools for updates of the student-school data base. Due to technical deficiencies, no Form I–721 was issued between 1985 and 1987. The Service resumed the issuance of Form I–721 in April, 1988. The recent issuance has brought to the Service's attention the fact that many schools have neglected to notify the Service of changes made to their names or addresses. Therefore, the Form I–721 were not deliverable. Since the Service relies on the currency of the student-school data base for effective monitoring of the student-school program, it is critical that the Service have the current name and address of all approved schools.

Section 214.3 also provides that the approval of a school is contingent on the school's ability to continue its program in the manner represented in the petition for approval. To ensure that approved schools continue to meet eligibility requirements after obtaining approval, material changes in an approved curriculum must be reviewed by the Service. Schools are required to report any addition of work components or deletion of academic programs that will materially change the approved curriculum. Changes that are within the parameters of the regulations for school approval will automatically be included in the approval. Only when a change could adversely affect the school's eligibility for continued approval will the school be asked to submit a Form I–17 for determination of continued approval. Approval of the school will be withdrawn on notice in accordance with § 214.4 should an approved school fail to report any significant changes made to its name, address, or curriculum.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control number for these collections are contained in 8 CFR 299.5.

**List of Subjects in 8 CFR Part 214**

Administrative practice and procedure, Aliens, Employment, Schools, Student.

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

## PART 214—NONIMMIGRANT CLASSES

1. The authority citation for Part 214 continues to read as follows:

**Authority:** 8 U.S.C. 1101, 1103, 1184, 1186a.

2. In § 214.3, paragraphs (e)(2) and (h) are revised to read as follows:

**§ 214.3 Petitions for approval of schools.**

* * * * *

(e) * * *

(2) *General.* Upon approval of a petition, the district director shall notify the petitioner. An approved school is required to immediately report to the district director having jurisdiction over the school any material modification to its name, address or curriculum for a determination of continued eligibility for approval. The approval of a school is valid as long as the school operates in the manner represented in the petition. The approval is valid only for the type of program and student specified in the approval notice. The approval may be withdrawn in accordance with the provisions of 214.4.

* * * * *

(h) *Review of school approvals.* The district director may periodically review the approval of a school in his or her jurisdiction for compliance with the reporting requirements of paragraph (g)(2) of this section and for continued eligibility for approval pursuant to paragraph (e) of this section. The district director shall also, upon receipt of notification, evaluate any changes made to the name, address, or curriculum of an approved school to determine if the changes have affected the school's eligibility for approval. The district director may require the school under review to furnish a currently executed Form I–17 without fee along with supporting documents, as a petition for continuation of school approval when there is a question about whether the school still meets the eligibility requirements. If upon completion of the review, the district director finds that the approval should not be continued, he or she shall institute withdrawal proceedings in accordance with 214.4(b).

* * * * *

3. In § 214.4, paragraph (a)(1)(iii) is revised, and paragraph (a)(1)(xviii) is added to read as follows:

**§ 214.4 Withdrawal of school approval.**

(a) * * *

(1) * * *

(iii) Failure of a designated school official to notify the Service of the attendance of an F–1 transfer student as required by § 214.2(f)(8)(ii).

* * * * *

(xviii) Failure of a designated school official to notify the Service of material changes to the school's name, address, or curriculum as required by § 214.3(e)(2).

* * * * *

Dated: November 4, 1988.

**Richard E. Norton,**

*Associate Commissioner, Examinations, Immigration and Naturalization Service.*

[FR Doc. 89–2204 Filed 1–30–89; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 91

**[Docket No. 88–188]**

### Ports Designated for Exportation of Animals; Olympia, WA

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the "Inspection and Handling of Livestock for Exportation" regulations by adding Olympia, Washington, to the list of ports designated as ports of embarkation and by adding the Port of Olympia Facility as the export inspection facility for that port. The effect of this action would be to add an additional port through which animals may be exported. The agency believes that the facility meets the requirements of the regulations to be included in the list of export inspection facilities.

**DATE:** Consideration will be given only to comments postmarked or received on or before April 3, 1989.

**ADDRESSES:** Send an original and two copies of written comments to Helene R. Wright, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88–188. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. M.J. Gilsdorf, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, Room 763, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436–8383.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR Part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations) prescribe conditions for exporting animals from the United States. We are proposing to amend § 91.14 by adding Olympia, Washington, to the list of ports designated as ports of embarkation and by adding the Port Olympia Facility as the export inspection facility for that port. With certain exceptions, all animals exported

are required to be exported through ports designated as ports of embarkation.

To receive approval as a port of embarkation, a port must have export inspection facilities available for inspecting, holding, feeding and watering animals prior to exportation in order to ensure that the animals meet certain requirements specified in the regulations. The regulations provide that approval of each export inspection facility shall be based on compliance with specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

The agency believes that the Port of Olympia Animal Export Facility meets the requirements of § 91.14(c). The facility is located at 915 Washington Street NE., Olympia, Washington 98507–0827. Therefore, we propose to add Olympia, Washington, to the list of ports designated as ports of embarkation. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule.' Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

There would be minimal economic effect because there are only about 6 ocean shipments a year out of the Northwest United States. This proposal would only affect owners exporting animals through the port of Seattle, Washington, or the port at Portland, Oregon, by giving these exporters another port from which to ship their animals.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

**List of Subjects in 9 CFR Part 91**

Animal diseases, Animal welfare, Exports, Livestock and livestock products, Transportation.

## PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, 9 CFR Part 91 would be amended as follows:

1. The authority citation for Part 91 would continue to read as follows:

**Authority:** 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 91.14 would be amended by adding new paragraphs (a)(15)(iii) and (a)(15)(iii)(A) to read as follows:

**§ 91.14 Ports of embarkation and export inspection facilities.**

(a) * * *

(15) *Washington.*

* * * * *

(iii) Olympia—ocean port.

(A) Port of Olympia Animal Export Facility, 915 Washington Street NE., Olympia, Washington 98507–0827, (206) 586–6150.

* * * * *

Done in Washington, DC, this 26th day of January 1989.

**James W. Glosser,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 89–2224 Filed 1–30–89; 8:45 am]

BILLING CODE 3410–34–M

## FEDERAL RESERVE SYSTEM

**12 CFR Part 225**

**[Regulation Y; Docket No. R–0652]**

### Bank Holding Companies and Change in Bank Control; Rescission of Existing Regulation Regarding Investments in Voting Shares of Nonbanking Companies by State Banks Owned by Bank Holding Companies

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

**ACTION:** Extension of public comment period and postponement of informal public hearing.

**SUMMARY:** On December 5, 1988, the Federal Reserve Board published for public comment a proposal to rescind a provision of Regulation Y that permits holding company state banks to acquire the shares of nonbank companies engaged in activities that the bank may conduct directly. 53 FR 48915 (December 5, 1988). The notice provided that the comment period regarding this matter would expire on January 30, 1989. The Board also proposed to hold an informal hearing at which members of the public could make presentations regarding this matter on February 3, 1989. The Board has received several requests from commenters to extend the public comment period and postpone the informal hearing regarding this matter in order to enable the public to prepare adequate comments on the proposal in writing and at the hearing. In response to these requests, the Board has decided to extend the public comment period on this matter until April 28, 1989. The Board has also determined to postpone the informal hearing regarding this matter until April 7, 1989.

**DATES:** The comment period has been extended, and now expires April 28, 1989. The informal hearing has been rescheduled for April 7, 1989. The hearing will begin at 10 a.m.

**ADDRESSES:** All comments, which should refer to Docket No. R–0652, should be mail to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B–2222, 20th and Constitution Avenue NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B–1122 between 8:45 a.m. and 5:15 p.m. weekdays.

The location of the informal hearing is Dining Room E, Fifth Floor of the Board's Martin Building, 20th and C Streets, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** J. Virgil Mattingly, Deputy General Counsel (202/452-3430), Scott G. Alvarez, Assistant General Counsel (202/452-3583), Legal Division; or Sidney M. Sussan, Assistant Director (202/452-2638), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing imparied *only*, Telecommunications Service for the Deaf, Ernestine Hill or Dorothea Thompson (202/452-3544).

Board of Governors of the Federal Reserve System, January 25, 1989.

**William W. Wiles,**

*Secretary of the Board.*

[FR Doc. 89-2115 Filed 1-30-89; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 88-NM-195-AD]**

### Airworthiness Directives; Boeing Model 767 Series Airplanes

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposed a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, which would require inspection and replacement, if necessary, of the wing outboard leading edge slat control rods. This proposal is prompted by reports of fractures of the wing outboard leading edge slat control rods. Fracture of both control rods on one slat would result in loss of ability to control the position of the affected slat, which could adversely affect the controllability of the airplane.

**DATES:** Comments must be received no later than March 29, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-195-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 Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanton R. Wood, Airframe Branch, ANM-120S; telephone (206) 431-1924. Mailing address: 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-195-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### Discussion

There have been numerous reports of cracked outboard wing leading edge slat control rods on Boeing Model 767 series airplanes. The cracks initiated at machining marks at the swaged ends of the rod. Fracture of two control rods on any slat would result in the inability to control the affected slat's position, which, in turn, would adversely affect the controllability of the airplane.

The FAA has reviewed and approved Boeing Service Bulletin 767-57-0021, dated August 25, 1988, which describes procedures for inspection of the control rods for cracks, and replacement, if necessary.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the control rods, and replacement, if necessary, in accordance with the service bulletin previously mentioned.

There are approximately 132 Model 767 series airplanes of the affected design in the worldwide fleet. It is estimated that 60 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,200.

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 767 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 767 series airplanes, listed in Boeing Service Bulletin 767–57–0021, dated August 25, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracks in the outboard wing leading edge slat control rods, accomplish the following:

A. Within the next 1,200 landings of 9 months, whichever occurs first after the effective date of this AD, unless accomplished within the last 800 landings of 6 months, whichever occurs later, visually inspect the wing outboard leading edge slat control rods in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57–0021, dated August 25, 1988.

1. If the date of manufacture (stamped on the control rod) is June 1983 or later, no further action is required.

2. If the date of manufacture is illegible or is prior to June 1983, ultrasonically inspect the control rods in accordance with Figure 1 of Boeing Service Bulletin 767–57–0021, dated August 25, 1988. If cracks or fractures are detected, replace prior to further flight, in accordance with Figure 2 of the service bulletin. Repeat the ultrasonic inspection of the control rods manufactured prior to June 1983 at intervals not to exceed 2,000 landings or 15 months, whichever occurs first.

B. Installation of control rods manufactured June 1983 or later, terminates the inspection requirements of paragraph A.2., above.

C. 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.

D. 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 20, 1989.

Leroy A. Keith,

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 89–2150 Filed 1–30–89; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 162

## Proposed Customs Regulations Amendments Relating to the Liability of Common Carriers for Failure To Exercise the Highest Degree of Care and Diligence To Prevent Unmanifested Narcotics and Marijuana

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes amendments to the Customs Regulations relating to the liability of common carriers to penalties, seizure and forfeiture for unmanifested narcotic drugs or marijuana. The proposed changes would add to the regulations the statutory standard for the highest degree of care and diligence on the part of common carriers in preventing unmanifested drugs and marijuana. The changes further set forth specific duties and procedures by which the standard is defined and against which compliance with the standard can be determined. These duties and procedures include such security measures as background investigations of employees, access restrictions to cargo areas, use of lighting in storage areas, and other similar measures.

**DATE:** Comments must be received on or before April 3, 1989.

**ADDRESS:** Comments (preferably in triplicate) may be submitted to and inspected at the Regulations and Disclosure Law Branch, Room 2324, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Harriett D. Blank, Penalties Branch, Office of Regulations and Rulings, U.S. Customs Service (202) 566–5746.

**SUPPLEMENTARY INFORMATION:** Under 19 U.S.C. 1584(b) penalties are authorized for unmanifested narcotic and controlled drugs and marijuana found on vessels, vehicles and aircraft unless the master or person in charge could not have known by the exercise of the "highest degree of care and diligence" of the presence of such merchandise. Section 3124 of the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570) extended the highest-degree-of-care-and-diligence standard to apply in connection with seizures and forfeitures of aircraft and other common carriers resulting from unmanifested narcotic drugs or marijuana in amendments to 19 U.S.C. 1594. In Senate Report No. 100–160, 100th Congress, 1st Session (September 17, 1987), the Senate Committee on Appropriations noted that there was no definition of the highest-degree-of-care-and diligence standard by which an airline can measure whether its precautions have satisfied the standard of care prescribed by statute. It was further indicated that the Customs Service should attempt to define the standard by specifying procedures and specific duties for airlines to follow.

The proposed changes would add the standard to the regulations and include specific duties and procedures against which compliance with the standard can be determined. These duties and procedures include such security measures as background investigations of employees, access restrictions to cargo areas, use of lighting in storage areas, and similar measures. The requirements are made equally applicable to sea and vehicular carriers as well as to air carriers, and are applicable with respect to seizures and forfeitures as well as penalties.

Section 162.65, Customs Regulations (19 CFR 162.65) relates to penalties under 19 U.S.C. 158(b) for failure to manifest narcotic drugs and marijuana. Inclusion of the highest-degree-of-care-and-diligence standard and the specific duties and procedures under which that standard may be defined and against which compliance may be determined are proposed to be set forth as amendments to § 162.65. It is further proposed to add a new § 162.67 to make the standard applicable to seizures and forfeitures under 19 U.S.C. 1595a and the definition for the standard applicable to 19 U.S.C. 1594(c).

Before adopting this proposal, consideration will be given to any written comments (preferably in triplicate) that are submitted to the Customs Service. Commenters are requested to address the clarity of the guidelines on security measures, the ability of common carriers to apply them in a standardized manner, other factors that should be taken into account, and the relative importance of individual factors. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. At the Regulations and Disclosure Law Branch, Room 2324, Customs Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

**Executive Order 12291**

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), It is certified that the regulation amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements 5 U.S.C. 603 and 604.

**Paperwork Reduction Act**

These amendments do not provide for a collection of information as defined by 5 CFR 1320.7(c), and, therefore, the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(b)) are not applicable.

**Drafting Information**

The principal author of this document was James C. Hill, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 162**

Customs duties and inspection, Law enforcement, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures.

**Proposed Amendments**

It is proposed to amend Part 162, Customs Regulations, as set forth below:

## PART 162—RECORDKEEPING, INSPECTIONS, SEARCH, AND SEIZURE

1. The general authority citation for Part 162 is amended by the addition of further specific authority for §§ 162.65 and 162.67 in proper numerical sequence as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1624; * * *.

Sec. 162. 65 also issued under 19 U.S.C. 1584, 1594, 21 U.S.C. 960, 961;

Sec. 162.67 also issued under 19 U.S.C. 1594, 1595a;

2. It is proposed to amend § 162.65 by redesignating paragraphs (c) through (e) as paragraphs (e) through (g) respectively.

3. It is proposed to further amend § 162.65 by inserting new paragraphs (c) and (d) to read as follows:

**§ 162.65 Penalties for failure to manifest narcotic drugs or marijuana.**

* * * * *

(c) *Liability of common carriers.* Common carriers are liable for the payment of penalties prescribed in 19 U.S.C. 1584 for failure to manifest narcotic drugs or marijuana unless the master or other person in charge of the conveyance, or the officers, or the owner of the conveyance can establish that they did not know and could not have known, by the exercise of the highest degree of care and diligence, that narcotic drugs were on board.

(d) *Highest degree of care and diligence.* The burden of proving that it has exercised the highest degree of care and diligence is on the common carrier. The determination as to whether or not a common carrier has carried this burden of proof will be made by Customs on a case-by-case basis. It will reflect the individual facts and circumstances, and will take into account measures taken at the foreign lading location, on board the conveyance while en route, and upon arrival in the United States. Depending on the particular facts and circumstances surrounding a carrier's failure to manifest narcotic drugs or marijuana, that carrier must submit evidence that it performed security measures such as, but not limited to, the following:

(1) Investigating background of each employee to determine whether the employee has engaged in criminal activities, activities related to narcotics smuggling, or has a standard of living which is inconsistent with the salary being paid by the carrier.

(2) Knowing identities of representatives of companies delivering merchandise to the foreign port of lading for shipment, and identities of company employees receiving cargo at the foreign port of lading. Special attention should be paid to first-time and infrequent shippers.

(3) Maintenance of a secure facility, including locking of doors and windows and maintenance of a secure perimeter.

(4) Restricting access to the cargo area to authorized personnel only, by use of such measures as uniforms, badges, or a card key system.

(5) Maintenance of 24-hour security by use of guard details and/or an alarm system to alert officials in the event the perimeter is violated when the facility is closed.

(6) Maintenance of adequate lighting in work areas and storage facilities.

(7) Maintenance of inventory control including serially numbered bills of lading and control of seals.

(8) Routine inspection of the facility or conveyance by management and security personnel, and the taking of appropriate action on the basis of observed deficiencies.

(9) Operation of a program to insure that narcotic drugs and marijuana are not concealed in the conveyance, e.g., sealing or securing compartments within a conveyance, such as rope lockers, chain lockers, or compartments within the lavatory, where this will not affect safety or operation of the conveyance.

(10) Prompt disclosure to Customs and other law enforcement officials of information which would lead directly or indirectly to the detection of narcotics.

(11) Operation of a program designed to insure that all packages and containers are manifested and that the marks, numbers, weights and quantities on the packages and containers agree with the manifest.

4. It is proposed to amend Part 162 by adding a new § 162.67 to read as follows:

**§ 162.67 Seizures of common carriers.**

For the purpose of seizure and forfeiture of a common carrier pursuant to 19 U.S.C. 1595a(a) as a result of the carrying of unmanifested narcotic drugs, controlled substances, or marijuana, or assisting in the carrying of such merchandise, the common carrier will be held to the same standard of the highest degree of care and diligence required under section 1594(c). The definition for that standard in § 162.65(d) of this part shall apply under either provision.

**William Von Raab,**

*Commissioner of Customs.*

Approved: October 5, 1988.

**Salvatore R. Martoche,**

*Assistant Secretary of the Treasury.*

[FR Doc. 89-2198 Filed 1-30-89; 8:45 am]

BILLING CODE 4820-02-M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### 29 CFR Part 530

### Employment of Homeworkers in Certain Industries

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Department of Labor.

**ACTION:** Revised schedule of public hearings.

**SUMMARY:** The Department of Labor has declined to revise the schedule and expand the locations of public hearings on the employment of homeworkers in

the women's apparel industry which were announced in the **Federal Register** on December 30, 1988. The public hearings previously scheduled for San Antonio, Texas, for March 2–3, 1989, and Chicago, Illinois, for March 8–9, 1989, will be held as planned. The public hearings previously scheduled for Miami, Florida for February 22–23, 1989, will be rescheduled for a later date. The Department also will schedule additional hearings in the New York City and Los Angeles, California, areas. Another **Federal Register** notice will be published shortly to provide information on the dates, times, and locations for the hearings in Miami, New York and Los Angeles. The purpose of these hearings is to gather information about the characteristics of this industry and the kinds of enforcement mechanisms appropriate for a new regulation governing women's apparel homework.

**DATES:** The public hearings will be held in San Antonio, Texas, on March 2–3, 1989, and Chicago, Illinois, on March 8–9, 1989. The hearings will begin at 9:30 a.m. local time. Interested parties who wish to testify in person should so notify the Wage and House Administrator in writing no later than February 17, 1989. Oral testimony will be kept to a maximum of twenty minutes unless different arrangements are made in advance with the Administrator. However, persons testifying are free to submit more extensive written statements for inclusion in the hearing record. Also, such persons are asked to advise the Administrator on their need, if any, for translators.

All interested parties are invited to submit written comments on this matter to the Administrator on or before April 14, 1989.

**ADDRESSES:** The locations for the San Antonio and Chicago public hearings are as follows:

Institute of Texan Cultures, 801 South Bowie, Hemisfair Plaza, San Antonio, Texas 78206

2525 Ceremonial Courtroom, Everett McKinley Dirksen Federal Building, 219 South Dearborn, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523–8305. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** On December 30, 1988, the Department of Labor published in the **Federal Register** an advance notice of proposed rulemaking and notice of hearings on regulations at 29 CFR Part 530. (See 53 FR 53344). These regulations prohibit the employment of homeworkers in the women's apparel industry. That notice advised the public of hearings scheduled for Miami, Florida, San Antonio, Texas, and Chicago, Illinois. Interested parties who wished to testify at the hearings were asked to so advise the Administrator by February 2, 1989.

Decisions have been made to hold additional hearings in New York and California. Also, because of the workload implications in adding these hearings to the schedule, it has been necessary to reschedule the Miami, Florida, hearing for a later date. The Department will shortly publish a further notice on these three hearings.

The hearings planned for San Antonio, Texas, and Chicago, Illinois, will be held as previously scheduled. However, those persons who wish to testify at these hearings are now asked to so advise the Administrator by February 17, 1989. Also, the closing date for submitting written comments has been changed to April 14, 1989.

Persons who do not advise the Administrator that they wish to testify at the hearings will be heard as time permits following those who have been scheduled, but they may be limited to ten minutes each for their presentation.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, U.S. Department of Labor.

**List of Subjects in 29 CFR Part 530**

Employment, Investigation, Labor, Law enforcement, Minimum wages, Wages, Licenses.

Signed at Washington, DC on this 26th day of January, 1989.

**Alan C. McMillan,**

*Acting Assistant Secretary for Employment Standards.*

**Paula V. Smith,**

*Administrator, Wage and Hour Division.*

[FR Doc. 89–2237 Filed 1–30–89; 8:45 am]

**BILLING CODE 4510–27–M**

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 761

### Areas Unsuitable for Mining; Areas Designated by Act of Congress; Applicability of the Prohibitions of the Surface Mining Act to the Surface Impacts of Underground Coal Mining; Public Hearings

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of public hearings.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) has previously published a proposed rule which addresses the circumstances which constitute valid existing rights (VER) to mine in areas where Congress has otherwise prohibited mining under section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (the Act). The proposed rule also contained provisions on the applicability of the prohibitions in section 522(e) of the Act to subsidence resulting from underground mining. OSMRE has received requests to hold public hearings on the proposed rule and has scheduled public hearings as specified below.

**DATES:** Public hearings have been scheduled in Denver, Colorado; Pittsburgh, Pennsylvania; St. Louis, Missouri; Washington, D.C.; Lexington, Kentucky; and Knoxville, Tennessee on February 16, 1989.

Combined hearings on the proposed rule and Environmental Impact Statement will begin at 9:00 a.m. local time in all places.

**ADDRESSES:** Public hearings are scheduled at the following locations:

Brooks Towers, Second Floor Conference Room, 1020 15th St., Denver, Colorado

The Parkway Center Inn, 875 Greentree Road, Pittsburgh, Pennsylvania

Park Terrace Airport Hilton, 10330 Natural Bridge Road, St. Louis, Missouri

First Floor Auditorium, South Interior Building, 1915 Constitution Avenue, NW., Washington, DC

The Kentucky Inn, 525 Waller Avenue, Lexington, Kentucky

The Holiday Inn Convention Center, Henley Street and Clinch Avenue, Knoxville, Tennessee

**FOR FURTHER INFORMATION CONTACT:** Patrick Boyd, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone 202–343–4561 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:** OSMRE published a proposed rule on December 27, 1988 (53 FR 52374) which would amend those portions of its permanent program regulations at 30 CFR Part 761 which address the circumstances which constitute VER to mine in areas where Congress has otherwise prohibited mining under section 522(e) of the Act. OSMRE undertook this action in response to a district court's decision in Round III of the litigation on OSMRE's permanent program regulations.

Specifically, OSMRE proposed for review and comment two different options for the standard for VER: (1) VER exists when an applicant for a permit to conduct surface coal mining operations has, or had made a good faith effort to obtain, all necessary permits, or (2) VER exists when an applicant has a legal right to mine by the method intended, as determined by State law. The proposed rule would also reorganize the existing rule for clarity.

OSMRE also proposed for review and comment a rulemaking proposal on the applicability of the prohibitions in section 522(e) of the Act to subsidence resulting from underground mining. Section 522(e) prohibits surface coal mining operations on certain lands and within specified distances of certain structures and facilities.

Requests for hearings on these proposals have been received. OSMRE will also be conducting hearings at the same time on the Environmental Impact Statement (EIS) prepared for the proposed rule. The hearings on the proposed rule and the EIS have been combined for the convenience of the public and will begin at 9:00 a.m. local time in all places.

To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at the hearings give the transcriber a copy of their testimony.

Dated: January 25, 1989.

**Robert H. Gentile,**

*Director, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 89-2181 Filed 1-30-89; 8:45 am]

BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[A-1-FRL-3512-1]

### Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for General Electric Co. Pittsfield, MA

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a proposed State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compound (VOC) emissions from the General Electric Company in Pittsfield, Massachusetts. The intended effect of this action is to propose approval of a source specific RACT determination made by the Commonwealth of Massachusetts in accordance with commitments of its approved 1982 ozone attainment plan. This action is being taken under section 110 of the Clean Air Act.

**DATE:** Comments must be received on or before March 2, 1989. Public comments on this document are requested and will be considered before talking final action on these SIP revisions.

**ADDRESSES:** Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203 and the Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, 8th Floor Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Nam Nguyen (617) 565-3249; FTS 835-3249.

**SUPPLEMENTARY INFORMATION:** On February 4, 1988, the Massachusetts Department of Environmental Quality Engineering (DEQE) submitted a proposed revision to its State Implementation Plan (SIP) for the General Electric Company (General Electric) located in Pittsfield, Massachusetts. The revision consists of a proposed Plan Approval, dated January 21, 1988, imposing requirements to reduce VOC emissions from three operations at General Electric which are not subject to RACT under Massachusetts SIP regulations developed pursuant to EPA's Control Technique Guildlines (CTGs).

Massachusetts requested and was granted an extension until December 31, 1987 to come into attainment with the National Ambient Air Quality Standard (NAAQS) for ozone. Pursuant to EPA policy, the SIPs of all extension States must require RACT on all non-CTG sources with the potential to emit 100 TPY or ore of VOCs. EPA approved Massachusetts Regulation 310 CMR 7.18 (17), "Reasonably Available Control Technology (RACT)," on November 9, 1983 (48 FR 51480) as part of the Commonwealth of Massachusetts' 1982 ozone attainment plan. In a November 17, 1982 letter to EPA, the DEQE committed to submit each of the individual 100 TPY RACT determinations it made to EPA for incorporation into the Massachusetts SIP as source-specific SIP revisions.

#### Background

General Electric's Pittsfield facility is a large, multi-operation stationary source of VOCs. The majority of its VOC-emitting processes are subject to RACT under Massachusetts SIP regulations developed and approved in accordance with EPA's CTGs. However, General Electric has three non-CTG processes that have total potential VOC emissions in excess of 100 TPY. Those manufacturing processes are referred to as follows:

The Large Transformer Croup
The Ordnance Systems Division
The Plastics Business Group

While the total, pre-RACT potential to emit of these three processes equals 502.9 TPY, the majority of those emisisons, 444 TPY, are methylene chloride emissions from the Plastic Business Group's laminating resins manufacturing operations. Although EPA has stated that methylene chloride, because of negligible photochemical reactivity, can be exempted from control as a VOC in any SIP (44 FR 32042 and 45 FR 32424), the State of Massachusetts did not include methylene chloride as an exempt solvent in the definition of "volatile organic compounds" in its federally-approved Ozone Attainment Plan. Therefore, a source in Massachusetts which uses methylene chloride is subject to the same control requirements for that solvent as it is for its photochemically reactive VOCs. Therefore, DEQE's proposed Plan Approval Imposed RACT, in accordance with SIP regulation 310 CMR 7.17(17), on General Electric's Plastics Business Group's operations to control methylene chloride in addition to the Large Transformer Group's and Ordnance Systems Division's operations which emit reactive VOCs.

#### *Summary of DEQE's RACT Determination*

DEQE's January 21, 1988 proposed Plan Approved imposes requirements which reduce VOC emissions from 502.9 TPY to 117.4 TPY (a 76.7% reduction) at General Electric's three non-CTG manufacturing processes as follows:

| | Pre-RACT potential levels (TPY) | Post-RACT levels (TPY) |
|---|---|---|
| Large transformer group | 15.0 | 7.5 |
| Military ordnance division | 10.6 | 8.3 |

| | Pre-RACT potential levels (TPY) | Post-RACT levels (TPY) |
|---|---|---|
| Plastics business group | 477.3 | [2] 101.6 |
| Totals | [1] 502.9 | [2] 117.4 |

[1] 444 TPY are methylene chloride.
[2] 84 TPY are methylene chloride.

The DEQE First issued a conditional RACT Plan Approval to General Electric for its non-CTG processes on May 15, 1986. That Plan Approval was subsequently amended by the DEQE on June 17, 1986, October 17, 1986, and July 7, 1987. DEQE amended the Plan Approval on January 21, 1988 to incorporate changes in emissions calculated from the Plastic Business Group and to include the provisions of a Consent Agreement negotiated between the DEQE and General Electric regarding painting operations in the Ordnance Systems Division. The requirements of the DEQE's January 21, 1988 amended proposed Plan Approval are summarized below.

*Large Transformer Group*

The proposed Plan Approval requires the installation of a front panel and pot lid on the Gasket Dipping/Drying operation by September 1, 1986 to reduce process and fugitive emissions.

*Ordnance System Division*

1. The proposed Plan Approval requires General Electric to modify the Casting Impregnation process by September 1, 1986 to eliminate the use of kerosene and the hot oil cure bath. It further requires that any substitution for the kerosene and hot oil cure bath must be a non-VOC containing formulation.

2. The proposed Plan Approval requires that General Electric use low/no VOC formulations or a level of control equivalent to low/no VOC by December 31, 1991 for all existing Department of Defense (DoD) specified Ordnance coating operations. The Plan Approval further specifies that low/no VOC formulations means paints and coatings with less than 6.68 pounds of VOC per gallon of solids as applied.

3. The proposed Plan Approval requires that General Electric use low/no VOC formulations or a level of control equivalent to low/no VOC by December 31, 1987 for all non-DoD specified coating operations. Again, the Plan Approval specifies that low/no VOC formulations means paints and coatings with less than 6.68 pounds of VOC per gallon of solids applied.

4. The proposed Plan Approval restricts the total annual VOC emissions from the coating operations of the Ordnance Systems Division (regardless of whether the coatings used are DoD-specified or not) to 8.3 TPY.

5. The proposed Plan Approval requires that General Electric verify the use of low/no VOC coatings as required in 2 and 3, above, by January 12, 1992. The Plan Approval further specifies that General Electric perform the verification according to EPA Reference Test Method 24 as contained in Appendix A of 40 CFR Part 60, and submit a report summarizing the test results by March 1, 1992.

6. The proposed Plan Approval requires General Electric to track the coatings used in the Ordnance Division's RACT-subject operations. General Electric must maintain records of monthly and year-to-date total VOC emissions and VOC emissions expressed in pounds of VOC per gallon of solids applied for each coating. The Plan Approval further requires that each annual coating record be retained at General Electric's Pittsfield facility for at least two years, and be made available to DEQE upon request.

7. The proposed Plan Approval requires General Electric to continue to provide bimonthly reports, which began on September 1, 1986 to the DEQE which update progress made toward converting to low/no VOC coatings. These reports must include any communications General Electric has with DoD, EPA, suppliers, contractors, manufacturers, etc. regarding low/no conversion.

Further, the Plann Approval requires that these reports include a list of currenct coatings and the respective ratio of VOC to solids as applied, availability of low/no VOC substitutes, coating trials and results, expected dates of conversion, and final conversion dates.

*Plastics Business Group*

1. The proposed Plan Approval requires that General Electric install a carbon absorber by December 31, 1986 to control methylene chloride emissions from the condenser stack serving the laminating resins manufacturing operation. The Plan Approval specifies that the carbon adsorber be operated so that, minimally, a 90% recovery efficiency and a 90% system capture efficiency are achieved. Overall, an 81% capture and recovery efficiency ($0.9 \times 0.9 = 81\%$) must be achieved.

2. The proposed Plan Approval requires General Electric to install inlet and outlet test ports on the carbon absorber by December 31, 1986 which will allow for VOC emission testing according to EPA Reference Test Method 18 or 25A as contained in Appendix A of 40 CFR Part 60. The Plan Approval further specifies that General Electric will be required to test at the discretion of DEQE of EPA.

3. The Plan Approval requires that General Electric develop and implement a Leak Detection and Repair Program for controlling VOC emissions from the Plastics Business Group's manufacturing operations. A DEQE-approved Leak Detection and Repair Program shall be implemented by September 1, 1986 for the laminating resins operations of control methylene chloride emissions and by December 15, 1986 for the remainder of the Plastics Business Group's operations.

4. The Plan Approval requires that General Electric discontinue the manufacture of METHYLON resins no later than December 31, 1986.

**EPA's Evaluation of DEQE RACT Determination**

EPA has reviewed the proposed Plan Approval and supporting documents submitted as a SIP revision for parallel processing. EPA generally agrees with the DEQE RACT requirements to reduce VOC emissions from General Electric. However, EPA is requiring the DEQE to address the items identified below in the final, formal SIP revision submitted to impose RACT on General Electric to provide additional documentation to ensure that the RACT requirements are technically supportable and enforceable.

1. Standard operating procedures for the front panel cover and pot lid on the Large Transformer Group's Gasket Dipping/Drying operations must be required and made part of the Plan Approval to insure that the 50% reduction will be achieved and maintained.

2. The Leak Detection and Repair Program for controlling VOCs from the Plastic Business Group's manufacturing operations must specify a schedule for requiring monitoring of leaks that can only be repaired when the unit is shutdown.

3. The Plan Approval states that, as of December 31, 1987, General Electric may not exceed the current VOC content(s) of its applicable, existing DoD-specified coatings (an attachment to the Plan Approval provides the current VOC content of each existing coating in pounds of VOC per gallon of solids applied). The Plan Approval further requires that General Electric's DoD-specified coatings must all meet an emission rate of 6.68 pounds of VOC per gallon of solids as applied no later than December 31, 1991. In effect, DEQE has determined RACT for General Electric's DoD-specified coatings as their current VOC content(s) in pounds of VOC per

gallon of solids applied. EPA has conferred with DoD, and that Agency provided information indicating that manufacturers of their ordnance equipment could comply with the use of low/no formulated coatings by December 31, 1987. Therefore, the DEQE's submittal must contain further justification for determining the current VOC content(s) of their DoD-specified coatings as RACT. Otherwise, DEQE must amend the Plan Approval to require General Electric to use DoD-specified coatings which meet 6.68 pounds VOC per gallon of solids applied by December 31, 1987.

4. The Plan Approval should require that the 8.3 TPY annual total VOC emission limitation, imposed on the Ordnance Systems Division RACT-subject painting/coatings operations, must be met over every consecutive twelve (12) month time period. The Plan Approval should clarify the final compliance date for this annual limit.

5. The Plan Approval must specifically require that the emission rate of 6.68 pounds of VOC per gallon of solids as applied be met on a continuous basis. This will prevent General Electric from using an emissions bubble to meet this emission rate until and unless the company is approved to do so.

These amendments to the Plan Approval must be addressed in the version of that document which is formally submitted as a revision to EPA for final approval and incorporation into the SIP. EPA is proposing to approve this SIP revision for General Electric in Pittsfield, which was submitted on February 4, 1988, if the DEQE makes the changes specified in this notice. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the *Addresses* section of this notice.

This revision is being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by Massachusetts and submitted formally to EPA for incorporation into the SIP.

### Proposed Action

EPA is proposing to approve the DEQE's proposed RACT determination as imposed in the January 21, 1988 Conditional Plan Approval (Amended). EPA is proposing approval with the understanding that the DEQE's formal SIP revision submittal will adequately address the items indicated in this notice.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

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

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: September 29, 1988.

**Michael R. Deland,**

*Regional Administrator Region I.*

[FR Doc. 89–2185 Filed 1–30–89; 8:45 am]

BILLING CODE 6560–50–M

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## 40 CFR Part 261

[FRL–3512–2]

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Extension of Comment Period

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** EPA is extending the comment period on a proposed delisting decision for Fisher Guide, formerly Fisher Body Division of General Motors Corporation, Flint, Michigan, which appeared in the **Federal Register** on December 16, 1988 (53 FR 50550). The RCRA Docket will be closed to the public from January 30, 1989 through February 3, 1989, during its relocation from LG–100 to M2427 at EPA Headquarters, 401 M Street, SW., Washington, DC 20460. This extension is provided to allow the public an adequate opportunity to review all information used to support the Agency's decision.

**DATE:** EPA will accept public comments on the previously proposed decision until February 6, 1989. This date reflects the period of time the RCRA Docket will be closed. Comments postmarked after the close of the extended comment period will be stamped "late".

**ADDRESSES:** Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS–343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. All comments must be identified at the top with docket number "F–88–FGDP–FFFFF".

The public docket where the information can be viewed for the proposed rule is located in the sub-basement of the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. As of February 6, 1989, the RCRA Docket will be located in M2427 of the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** RCRA Hotline, toll free at (800) 424–9346 or at (202) 382–3000. For technical information, contact Scott Maid, Office of Solid Waste (OS–343), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382–4783.

**SUPPLEMENTARY INFORMATION:** On December 16, 1988, EPA proposed to deny a petition submitted by Fisher Guide, formerly Fisher Body Division of General Motors Corporation, Flint, Michigan, to exclude certain solid wastes generated at its facility from the list of hazardous wastes contained in 40 CFR 261.31 and 261.32. See 53 FR 50550–50556. This proposal was made pursuant to 40 CFR 260.20 and 260.22. The RCRA Docket will be closed from January 30, 1989, through February 3, 1989, to facilitate its relocation from the sub-basement (LG–100) to M2427, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Agency is hereby extending the public

comment period for a period equal to the time the RCRA Docket will be closed.

The public comment period for the proposed rule was originally scheduled to end on January 30, 1989. Today's notice extends the public comment period for the proposed rule to allow the public an opportunity to review all information used to support the Agency's decision on Fisher Guide's delisting petition. The Agency will not accept public comments on the proposed rule until February 6, 1989.

Date: January 24, 1989.

**Sylvia K. Lowrance,**

*Director, Office of Solid Waste*

[FR Doc. 89-2186 Filed 1-30-89; 8:45 am]

BILLING CODE 6560-50-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Child Support Enforcement

### 45 CFR Part 305

### Child Support Enforcement Program Audit

**AGENCY:** Office of Child Support Enforcement (OCSE), HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** OCSE is proposing to amend the Child Support Enforcement program regulations governing the audit of State Child Support Enforcement (IV-D) Programs and the imposition of financial penalties for failure to substantially comply with the requirements of title IV-D of the Social Security Act (the Act). This proposal would improve and expedite the current process for auditing State and local IV-D programs by consolidating the criteria evaluated during the course of an audit and making other changes to the current requirements to allow flexibility in the audit approach. These changes are being proposed in order to simplify the current audit process by incorporating lessons learned since promulgation of the existing audit regulations, to ensure the initiation of audits as close as possible to the time period audited, and to shorten the elapsed time from audit initiation to issuance of a final report. For a detailed discussion of the changes, see **SUPPLEMENTARY INFORMATION.**

**DATE:** Consideration will be given to written comments and suggestions received by April 3, 1989.

**ADDRESS:** Address comments to: Associate Deputy Director, Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade, SW., Washington, DC 20447. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5:00 p.m. in the Department's office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Betsy Matheson, (202) 252-5362.

**SUPPLEMENTARY INFORMATION:**

#### Background

As a result of the enactment of Pub. L. 98-378, the "Child Support Enforcement Amendments of 1984," OCSE published final audit regulations on October 1, 1985, which affect the audits of State IV-D programs for FY 1984 and beyond. Section 9 of Pub. L. 98-378, and the implementing regulations, require that OCSE conduct an audit of the effectiveness of State Child Support Enforcement programs at least once every three years; require that OCSE use a substantial compliance standard to determine whether each State has an effective IV-D program; provide that any State found not to have an effective IV-D program in substantial compliance with the requirements of title IV-D of the Act be given an opportunity to take the corrective action necessary to achieve substantial compliance with those requirements; provide for the use of a graduated penalty of not less than 1 nor more than 5 percent of a State's Aid to Families with Dependent Children (AFDC) program funds if a State is not in substantial compliance; and specify the period of time during which a penalty is effective.

In order to be found to have an effective program in substantial compliance with the requirements of title IV-D of the Act, a State must meet the State plan requirements contained in 45 CFR Part 302. Under current regulations, there are separate audit criteria for each of the State plan requirements. The current regulations list 30 criteria (which include numerous related subcriteria) governing procedural requirements relating to the administration of the IV-D program which are evaluated to determine compliance with the State plan requirements. These procedural criteria must be fully met for a finding of substantial compliance. In addition, the regulations list 26 functional, or service-related, criteria which include numerous related subcriteria for purposes of evaluating State performance.

The required procedures under these service-related criteria must be used in 75 percent of the cases reviewed for the State's program to be found in substantial compliance. In accordance with the statute, a State's failure to fully comply with any of the audit criteria will result in a finding that the State failed to substantially comply with title IV-D requirements unless such finding is of a technical nature which does not adversely affect the performance of the State IV-D program.

OCSE auditors have followed this audit process in conducting audits beginning with FY 1984. The experience gained clearly indicates that a more efficient and more expeditious approach to the audit of State IV-D programs is necessary. The average audit under the current approach has taken 21 months, from the end of the period to be audited to issuance of the final report. One contributory factor has been the numerous requirements which must be individually evaluated. Combined with the statutory requirement for a triennial audit and the allowance for a corrective action period of up to one year, the current approach is unwieldy at best and postpones engaging the attention of State and local program administrators, and the accomplishment of remedial action to correct deficiencies noted, until much too long after the close of the time period subject to audit. We have found that in order to comply with the statutory requirement for a triennial audit, auditors must occasionally go back into a State to conduct a new audit even before that State has completed corrective action indicated by the prior audit.

OCSE has already taken administrative steps to ease this process but they do not go far enough in alleviating the problems. After extensive evaluation and analysis of operational experience encompassing better than three years, OCSE has determined that the regulatory changes proposed herein are necessary. The proposed rule will consolidate the current audit criteria by major program function. Thus, instead of auditing each criterion separately, two or more will be grouped under one performance standard for evaluation. This will allow the objective of the audit to be met in a less complex, more expeditious manner while maintaining the reliability and integrity of the audit. In addition, in the audit regulations published October 1, 1985 (50 FR 40120), we stated that additional performance indicator components measuring paternity establishment and cost avoidance would be added to the performance measurement portion of the audit. Those indicator components are included in this proposed regulation. To correspond with the additional indicator components, we are proposing a revised scoring system. We are also strengthening the standard by which we judge State performance on the three current performance indicator

components which measure AFDC and non-AFDC cost effectiveness and AFDC cost recovery. The current standard for those performance indicator components was based on State performance during fiscal year 1983. We believe the proposed standard takes into consideration the significant improvements that have been made in the operation of State programs since fiscal year 1983 as a result of changes made in response to the "Child Support Enforcement Amendments of 1984."

This proposed rule is to be an interim step in perfecting the audit approach. We anticipate further revising the audit process at such time as standards for the provision of program services currently under development are implemented in final regulatory form. Therefore, these proposed rules present the most practical solution for immediate improvement of the audit process.

**Statutory Authority**

These proposed regulations are published under the authority of sections 1102, 402(a)(27), 452(a)(4) and 403(h) of the Act. Section 1102 authorizes the Secretary of HHS to publish regulations not inconsistent with the Act which may be necessary to efficiently administer the Secretary's functions under the Act. Section 402(a)(27) requires each State to operate a child support program in substantial compliance with the title IV–D State plan and section 452(a)(4) requires the audit of each State IV–D program to assure compliance with title IV–D requirements at least once every three years (or not less often than annually in the case of any State which is being penalized, or is operating under a corrective action plan). Finally, section 403(h) provides for the imposition of an audit penalty of not less than one nor more than five percent of a State's AFDC funding for any State which fails to substantially comply with title IV–D requirements, with an allowance for a corrective action period.

**Regulatory Provisions**

OCSE proposes to revise Part 305 of the current regulations governing the audit of State child support programs to provide flexibility in the timing of the audits; to streamline the evaluation criteria through consolidation of related criteria and elimination of duplicative and extraneous subcriteria; and to make other changes to strengthen and improve the audit process.

*Audit Period*

The current regulations at § 305.11 require audits of State child support programs to be conducted on a fiscal year basis. To provide greater flexibility in scheduling the audits and follow-up reviews, we propose to replace the current requirement that the audit cover the period of October 1 through September 30, of each fiscal year audited with a requirement that the audit cover a period comprised of not more than 12 nor less than three consecutive months. In addition, we propose to revise the current requirement that the follow-up review conducted in States operating under corrective action plans with respect to State plan criteria cover the first full quarter after the corrective action period with a requirement that such audits cover the first three-month period beginning after the corrective action period. With respect to the performance indicator, the follow-up review would cover the first full Federal fiscal year following the date on which the penalty notice was issued.

We propose to make a technical correction to the last sentence of this paragraph by replacing the provision that the audit may cover a shorter period at State request with the proviso that the audit may, at State request, be conducted prior to the end of the one-year period prescribed under section § 305.10(b).

*State Comments*

Current regulations at § 305.12(a) include a provision for informing the IV–D agency during the audit entrance conference of those political subdivisions of the State that will be audited. We propose to replace this provision with more general language indicating that any necessary arrangements for conducting the audit will be made at the audit entrance conference.

*State Cooperation*

States are required to cooperate with OCSE in the conduct of Federal audits by providing such records and documentation as requested, under current regulations at § 305.13(a). Paragraph (b) of the current regulation provides that a State,s failure to comply with the requirement for cooperation may necessitate a finding that the State has failed to comply with the particular criterion being audited.

The requirement for State cooperation has taken on increased importance because of program instructions (OCSE–AT–87–7), issued August 31, 1987, which made procedural changes relating to the preparation for State IV–D program audits. Under OCSE–AT–87–7, OCSE instituted a centralized audit approach whereby, effective for all program results audits and follow-up reviews initiated after October 1, 1987, States must provide a complete and accurate listing of all active and inactive IV–D cases. The IV–D case listing is used as a universe from which to randomly select case files for review. OCSE–AT–87–7 also requires States to submit, to a central location(s), copies of complete case files and related documentation for all sample cases selected for review.

State cooperation in the preparation for an audit, including compliance with the requirements of OCSE–AT–87–7, is essential for OCSE auditors to determine whether the State has an effective IV–D program which is in substantial compliance with Federal requirements. Therefore, we propose to revise paragraph (b) to indicate that failure to comply with the requirement for State cooperation in the conduct of the audit *will* necessitate a finding that the State has failed to substantially comply with title IV–D requirements. Such a finding could result in imposition of the audit penalty. Reference to the revised § 305.13(b) would be added to the list of criteria at § 305.20(a) which must be fully met as a condition of substantial compliance.

*Effective Support Enforcement Program*

Current regulations at § 305.20 provide the criteria which are evaluated to measure State compliance with the IV–D State plan requirements contained in part 302. Regulations at § 305.20(a) list selected criteria and related subcriteria that must be fully met or under which the procedures involved must be used in at least 75 percent of the cases reviewed for audits conducted in fiscal year 1984. Additional criteria and related subcriteria incorporated into the audit of State child support programs for audit periods subsequent to FY 1984 because of changes in title IV–D of the Act are listed in § 305.20 (b), (c), and (d). In total, the regulations list 30 operational criteria which must be fully met and 26 functional criteria where the required procedures must be used in 75 percent of the cases reviewed. Each of the 30 ? operational criteria must be reviewed separately and each of the 26 functional criteria must be reviewed and evaluated separately.

Experience from audits conducted using the above substantial compliance criteria revealed that the current audit process is cumbersome and inordinately time-consuming. Many of the criteria evaluated overlap, resulting in unnecessary, duplicative efforts and unavoidable delays in conducting the audits and issuing the findings.

*Operational and Functional Criteria*

To streamline and expedite the audit process, consistent with reliability and audit integrity, we are proposing to replace the current contents of § 305.20 (a) through (d) with new paragraphs (a), (b) and (c).

I. Operational Criteria

Paragraph (a) would list operational criteria which States must fully meet for audits conducted for any period beginning after publication of this regulation in final form. Operational criteria and related subcriteria are, with the exception of Expedited Processes, requirements which are procedural in nature.

The ten operational criteria proposed are:

(1) State Cooperation, under which the requirement for cooperating with the Office in the conduct of an audit under § 305.13 would be evaluated;

(2) Statewide Operation, under which the requirement for uniform statewide operation of the IV–D program under § 305.21 (a) and (c), publicizing child support enforcement services under § 305.44 and entering into cooperative arrangements under § 305.34 would be evaluated;

(3) Single and Separate Organizational Unit, under which the requirement for a single and separate unit to administer the State IV–D plan under § 305.23 would be evaluated;

(4) Reports and Maintenance of Records, under which the requirements for maintaining records, case files and required reports under § 305.35 (a), (b), and (c) would be evaluated;

(5) Financial Accountability, under which the following requirements would be evaluated as appropriate: collection and reporting of interest and all appropriate fees (including those provided under § 303.69(e), § 303.72(i), § 303.100 (d)(2)(iii) and (e)(3), § 303.102(f), § 303.105(c), § 305.31(b), § 305.33(b), § 305.48(b)(3), and § 305.55); fiscal policies and accountability under § 305.36; bonding of employees under § 305.37; separation of cash handling and accounting functions under § 305.38; and payment of incentives under § 305.46;

(6) Medical Support, under which the requirement for furnishing information to the State Medicaid Agency under § 305.56(b) would be evaluated;

(7) Child Support Guidelines, under which the requirement for guidelines under § 305.47 would be evaluated;

(8) Expedited Processes, under which the requirement to have and use an expedited process system for processing child support orders under § 305.50 would be evaluated;

(9) Interstate Cooperation, under which the requirements for cooperation with other States under § 305.32 (a) and (f) through (h) would be evaluated; and

(10) Continuation of Services, under which the requirement for providing services to former AFDC families under § 305.31(c) would be evaluated.

II. Functional Criteria

The proposed paragraph § 305.20(b) would provide functional criteria, under which, beginning with audits conducted for any period beginning after publication of this regulation as a final rule, as a condition for a finding of substantial compliance, States must use the required procedures for the criterion in at least 75 percent of the cases reviewed which required such service. Functional criteria and related subcriteria are service-oriented requirements which are evaluated through case review. Because separate efficiency rates are computed for each functional criterion, for any case reviewed, a State could receive credit for taking appropriate action under certain criteria and fail other criteria in which it took no action.

The five functional criteria proposed are:

(1) Paternity, under which the following requirements would be evaluated, as appropriate: The requirement for having and using procedures for obtaining the identity of the putative father and establishing paternity under § 305.24 (a) and (b), interstate paternity establishment under § 305.32(c) and providing location services under § 305.33(c);

(2) Support Obligations, under which the following requirements would be evaluated, as appropriate: establishment of a support order under § 305.25 (a) and (b), interstate cooperation in establishing a support order under § 305.32(d), location services under § 305.33(c), establishing a medical support order under § 305.56(a) and prohibition from retroactive modification of child support arrearages under § 305.57;

(3) Enforcement, under which the following requirements would be evaluated: providing enforcement services under § 305.26 (a), (b), and (c), interstate enforcement services under § 305.32(e), location services under § 305.33(c), spousal support enforcement under § 305.42, medical support enforcement under § 305.56(a) and making information available to consumer reporting agencies under § 305.54 and, when appropriate, use of one or more of the specialized enforcement techniques (withholding of unemployment compensation benefits under § 305.39 (b), (c), (d), and (e), Federal income tax refund offset under § 305.40, State income tax refund offset under § 305.51, imposition of liens under § 305.52, and posting security, bond or guarantee of support under § 305.53);

(4) Collection/Distribution, under which the following requirements would be evaluated, as appropriate: Support payments to the IV–D agency under § 305.27 (a), (b), and (c), distribution of support payments under § 305.28, payments to the family under § 305.29, collecting and forwarding interstate collections under § 305.32(e), recovery of direct payments under § 305.41, annual notice of collection of assigned support under § 305.45(a), and payment of support through the IV–D agency or other entity under § 305.48 (a) and (b) (1) and (2);

(5) Wage or income withholding, under which the requirements for carrying-out a program for withholding under § 305.49 would be evaluated.

Under this proposal, location, interstate cooperation and medical support enforcement functions are included under each separate functional criterion, i.e., paternity establishment, support order establishment and enforcement. In addition, provision of services to non-AFDC families are reviewed under each functional criterion.

Although wage withholding is an enforcement technique, we have made it a separate functional criterion because, while States have discretion with respect to the use of other enforcement techniques as long as there is compliance with Federal regulations, State written procedures and State guidelines, wage withholding must be implemented in all cases which meet the conditions for withholding. Therefore, if case circumstances meet the requirements for implementation of wage withholding and the State implements wage withholding for the case in accordance with Federal requirements, the State would meet the functional audit criterion for Wage Withholding in that case. However, if the case circumstances also met the State's guidelines for use of State tax refund offset but the case was not submitted, the State would not meet the functional audit criterion for Enforcement in that case. On the other hand, if the State's guidelines for posting security, bond or other guarantee of support indicate that it is inappropriate to post security, etc., if the case is under wage withholding, the State would not fail the Enforcement criterion in that

case if it failed to post security, bond or other guarantee of support, in accordance with those guidelines. Therefore, while wage withholding must be implemented in all cases which meet the conditions for withholding in order to meet the Wage Withholding criterion, States must use the enforcement techniques included under the Enforcement criterion only when appropriate as determined by Federal regulations, State written procedures and State guidelines.

The rationale for deleting, retaining or consolidating the current criteria and related subcriteria is discussed in detail under each specific State plan requirement at § 305.21 through § 305.56.

The new paragraph (c) would require the criteria referred to in proposed § 305.98 (e) and (f) relating to the performance indicator in proposed paragraph (d) of that section to be fully met beginning with the fiscal year beginning after publication of the final rule.

*State Plan Requirements*

1. Statewide Operation

Current regulations at § 305.21 (a) through (d) provide four subcriteria evaluated to determine compliance with the State plan requirement for Statewide Operation under § 302.10.

We propose to delete paragraph (b) of the current regulations which requires that the State establish and utilize methods of informing staff of State policies, standards, procedures and instructions. This requirement is integral to the current requirement at paragraph (a) which provides for the uniform administration of the plan throughout the State and paragraph (d) which requires that the service and functions required by the plan are made available throughout the State.

In addition, under current regulations only the provision of paragraph (d) is a substantial compliance subcriterion. Under the proposed rule, paragraph (a) would also be a substantial compliance subcriterion under a separate criterion evaluating Statewide Operation under § 305.20(a). This is an important evaluation criterion which should be strengthened because compliance problems with this State plan requirement can lead to widespread service deficiencies.

2. State Financial Participation

Current regulations at § 305.22 provide subcriteria evaluated to determine compliance with the State plan requirement for State financial participation under § 302.11. We propose to make a technical change to paragraph (a) by deleting the specific percentage of program administrative costs representing the State share. We believe that inclusion of these percentages is superfluous as paragraph (a) requires the State to incur the applicable share of program costs. In addition, we propose to consolidate the current requirement at paragraph (b) regarding the nature of the funding of the State share of costs with the requirement at paragraph (a).

Under current regulations, subcriteria included under paragraph (a) and (b) of § 305.22 must be fully met under a separate operational criterion at § 305.20 for a substantial compliance finding. Under the proposed regulation § 305.22 would no longer be included as a substantial compliance criterion because State financial participation is routinely evaluated under the financial management function and problems of compliance are rarely identified.

3. Single and Separate Organizational Unit

Existing regulations at § 305.23 provide three subcriteria evaluated to determine compliance with the State plan requirement for a single and separate organizational unit to administer the plan found at § 302.12.

The first of these subcriteria, found at paragraph (a), requires that a State must have a unit which is responsible and accountable for the operation of the IV–D plan and no other program or activity. We propose to revise this provision by deleting the prohibition from operating other programs or activities. This change is being sought to allow the IV–D agency to track and monitor support payments for non-IV–D cases as authorized under § 302.57, and to take into consideration activities which are related to the enforcement of child support but which do not fall under the realm of the State plan. Such activities are allowable provided the State has a system for adequately allocating the costs of activities performed outside the State plan.

In addition, we are proposing to delete the current requirement under paragraph (c) for having staff perform the specified functions, as the requirements under paragraphs (a) and (b) for a single and separate organizational unit to administer the IV–D plan inherently include having personnel perform the necessary activities.

The criterion for a single and separate organizational unit is being retained under the operational criteria which must be fully met in order to achieve a finding of substantial compliance at § 305.20(a).

4. Establishing Paternity

Current regulations at § 305.24 include seven subcriteria evaluated to measure State compliance with the State plan requirement for establishing paternity under § 302.31(a) and § 302.33.

Under the proposed regulation only the subcriteria currently included under § 305.24 (a) and (b) would be retained.

The current paragraph (c) requires States to utilize procedures to establish the paternity of any child born out of wedlock whose paternity has not been previously established. We propose to delete this requirement because it is already covered under paragraph (b), which requires States to have and utilize written procedures to establish the paternity of any child at least until the child's 18th birthday.

Under the current paragraph (d), States must identify and list laboratories which perform acceptable tests and provide such lists to courts, law enforcement officials and the public. Current paragraph (e) requires the identification of State statutes for establishing paternity. Paragraph (f) requires attorneys to be available to work paternity cases and paragraph (g) requires the availability of additional personnel. We are proposing to delete these requirements for purposes of the audit because compliance problems with these subcriteria would be revealed in the evaluation of the State's actual performance in establishing paternity.

To correspond with these changes, we are also proposing to delete the corresponding operational subcriteria which must be fully met for a substantial compliance finding at § 305.20 under the current audit. Paragraphs (a) and (b) of the proposed regulation would remain functional subcriteria under the separate criterion evaluating Paternity at the proposed § 305.20(b).

5. Support Obligations

Current regulations at § 305.25 provide subcriteria evaluated to determine State compliance with the State plan requirement to establish support obligations found under § 302.50 and § 302.53.

Regulations at § 305.25(a) require States to establish and utilize procedures for establishing a child support obligation for any child: (1) With respect to whom there is an assignment under AFDC or Foster Care, or with respect to whom there is an application for services, and (2) who has not previously had a legally enforceable support obligation established. We

propose to delete subparagraph (a)(1) to provide consistency with other requirements in Part 305 and because, unless otherwise stated, the requirements in Part 305 apply to the review of all IV–D cases. We also propose to delete subparagraph (a)(2) because States should modify existing orders under appropriate circumstances and the present rule could be construed as implying that such action was not required once an order was established.

In addition, we are proposing to delete § 305.25 (c) and (d) as both paragraphs prescribe staffing requirements which are not necessary because the requirement to establish support obligations inherently includes having the staff available to perform the necessary functions.

Regulations at § 305.25 (a) and (b) will remain functional subcriteria under the criterion evaluating Support Obligation at § 305.20(b), wherein a State must take appropriate action to establish a support obligation in at least 75 percent of the cases reviewed. Additional subcriteria to evaluate the location function with respect to cases requiring support order establishment, establishment of medical support orders, establishment of support orders with respect to interstate cases and prohibition from retroactive modification of child support arrearages will be added to the criterion evaluating Support Obligations at § 305.20(b). Under current regulations, these requirements are evaluated separately.

6. Enforcement of Support Obligation

Current regulations at § 305.26 provide the subcriteria evaluated to determine compliance with the State plan requirement for enforcing support obligations under § 302.31(b).

Under the current regulations at § 305.26(c), States are required to have identified and established written procedures to enforce support obligations. We propose to revise § 305.26(c) to require States to have established and be utilizing written procedures to enforce support obligations because the requirement to establish written procedures assumes that they must first be identified. In addition, adding the requirement for utilization of procedures would provide consistency with the wording of other criteria under Part 305. We would also delete § 305.26(e), which requires that appropriate action be taken using the State's procedures.

We are also proposing to delete paragraphs (f) and (g) under § 305.26. Both represent staffing requirements which are already implied under the functional requirements to enforce support obligations at (a), (b), and (c).

To correspond with these changes, we are proposing to delete the current operational subcriteria at § 305.26 (c) and (d) which must be fully met under § 305.20 for a substantial compliance finding with respect to the State plan requirement for enforcing support obligations. The proposed paragraph (c) would become a functional subcriterion along with paragraphs (a) and (b) under the operational criterion evaluating Enforcement. Additional subcriteria under the proposed Enforcement criterion at § 305.20(b) would be added to address the use of certain enforcement techniques and enforcement services pertaining to interstate, medical support and spousal support orders. Under the current regulations each of these services is a separate evaluation criterion.

7. Support Payments to the IV–D Agency

Current regulations at § 305.27 provide subcriteria evaluated to determine compliance with the State plan requirement of support payments to the IV–D agency under § 302.32.

Current regulations at § 305.27 (a) and (b) require States to have established and utilize procedures for the receipt of support payments by the IV–D agency with respect to cases where there is an AFDC or Foster Care assignment of support rights and with respect to cases where a non–AFDC application has been made, respectively. We propose to delete from paragraph (a) all that follows the word agency, which provides that the requirement applies to AFDC and Foster Care cases, and to delete paragraph (b) in its entirety, which provides that the requirement applies to non-AFDC cases except as provided under subparagraphs (1) and (2). We are proposing this change for consistency with other requirements in Part 305 and because, unless otherwise stated, the requirements in Part 305 apply to the review of all IV–D cases. In addition, the exceptions to the requirement for receipt of non-AFDC child support payments under (b) (1) and (2), which allow direct payments to the family if the State does not recover costs and if the State has an approved system for reporting the collections, respectively, are outdated. State IV–D agencies must have and utilize procedures for the receipt of child support collections made on behalf of *all* IV–D cases (emphasis added). Paragraphs (c) and (d) would be redesignated as paragraphs (b) and (c), respectively.

In addition, paragraph (e), which requires staff to perform these functions, would be deleted because the requirement to utilize procedures inherently includes having staff perform the necessary functions.

Under the revised regulation, paragraphs (a), (b), and (c) would be included as functional subcriteria under the criterion evaluating Collection/Distribution at § 305.20(b). Paragraphs (a), (b), and (d) are currently evaluated under a separate criterion of support payments to the IV–D agency.

8. Distribution of Support Payments

Regulations at § 305.28 provide subcriteria evaluated to determine compliance with the State plan requirement for distributing child support collections under §§ 302.51, 302.52 and § 302.32.

Current requirements at § 305.28(a) require States to have written procedures which if properly applied would result in proper distribution. Paragraph (b) of these regulations requires that States make distribution in accordance with the procedures established. We propose to revise paragraph (a) to require States to have and utilize procedures for the distribution of collections in accordance with regulations. This would be consistent with other audit evaluation criteria included under Part 305 and would consolidate two separate subcriteria. Accordingly, paragraph (b) would be deleted.

We are also proposing to delete the requirement at paragraph (c) which requires the State to have personnel distributing support collections. The requirement to utilize procedures for distributing collections inherently includes a requirement that staff perform the necessary functions.

We propose to delete the operational criterion of § 305.28 which must be fully met under the current § 305.20 as a condition of a substantial compliance finding. Because casework will reveal compliance problems, the procedural requirement is not necessary. Section 305.28 will become a functional subcriterion under the criterion evaluating Collection/Distribution at § 305.20(b) as proposed, wherein support payments must be properly collected and distributed in at least 75 percent of the cases reviewed. Under the current regulation this is a single evaluation criterion which is evaluated separately.

9. Payments to the Family

Current regulations at § 305.29 provide subcriteria evaluated to determine compliance with the State plan requirements for distributing payments to the family under §§ 302.32 and 302.51. Current requirements at § 305.29 would remain unchanged. However, for

purposes of evaluating substantial compliance under § 305.20, the criterion would be consolidated as a functional subcriterion under the criterion evaluating Collection/Distribution wherein support must be properly collected and distributed in at least 75 percent of the cases reviewed. Under current regulations this criterion is evaluated separately.

10. Individuals Not Otherwise Eligible

Current regulations at § 305.31 provide subcriteria evaluated to determine compliance with the State plan requirement for providing services to individuals not otherwise eligible (non-AFDC applicants) under § 302.33.

Under the current paragraph (b), States must have established and be utilizing written procedures for providing all appropriate services under the State plan to non-AFDC applicants including locating absent parents, establishing paternity and securing support. We propose to delete this evaluation subcriterion as the provision of appropriate services for non-AFDC families is included under each specific service and need not be re-evaluated under a separate criterion. Paragraph (c) would accordingly be redesignated as paragraph (b).

We are proposing to add a new paragraph (c) to require that States have and utilize written procedures for providing appropriate title IV–D services to former AFDC families in accordance with § 302.51(e). This change would also be reflected in the introductory sentence by adding reference to § 302.51(e) following the reference to § 302.33. We are proposing this change because the requirement for continuing to provide services to former AFDC families is more appropriately evaluated under the requirement for non-AFDC services than under the requirement for distribution where it is currently evaluated.

In addition, we are proposing to delete the current requirement at paragraph (d), which requires that personnel perform support enforcement services for non-AFDC families. The requirement for States to provide such services inherently includes having personnel perform the required functions.

Under the current regulations at § 305.20, paragraphs (a), (b), and (c) of § 305.31 are functional subcriteria under a separate criterion for providing services to individuals not otherwise eligible. We propose to delete the separate review of services to individuals not otherwise eligible because each subcriterion is currently reviewed under the appropriate criterion: Paternity; Support Obligation; Enforcement: Collection/Distribution; Wage or Income Withholding; and Expedited Processes.

The requirement for the collection of fees and recovery of costs under the newly designated paragraph (b) would be reviewed under the proposed criterion at § 305.20(a) evaluating Financial Accountability. Paragraph (c), as proposed, would become a separate operational criterion evaluating Continuation of Services under the proposed § 305.20(a).

11. Provision of Services in Interstate IV–D Cases

Current regulations at § 305.32 provide subcriteria evaluated to determine compliance with the State plan requirement for interstate cooperation under § 302.36.

We propose to amend these regulations by deleting paragraphs (i) and (j). Both requirements pertain to staffing requirements which are inherent in utilizing the required procedures.

Under the current regulations at § 305.20, paragraphs (a) through (h) of § 305.32 are functional subcriteria under a separate criterion for providing services in interstate cases, wherein the required procedures must be utilized in at least 75 percent of the cases reviewed for a substantial compliance finding. We propose to delete the current separate functional criterion for providing interstate services and consolidate the current subcriteria at § 305.32 (c), (d), and (e) with the applicable service-related criterion under § 305.20(b): Paternity, Support Obligation, Enforcement and Collection/Distribution. In addition, we propose to add a new operational criterion under § 305.20(a) which would require that a State fully meet the requirements of paragraphs § 305.32 (a) and (f) through (h) in order to be found in substantial compliance.

The requirement at § 305.32(b) for locating absent parents in interstate cases has not been included as a subcriterion as the locate requirements under § 305.33 apply to interstate and intrastate cases and would, under the proposed regulation, be added to each of the service-related criteria.

12. State Parent Locator Services (PLS)

Current regulations at § 305.33 provide subcriteria measured to determine compliance with the State plan requirement for a parent locator service under § 302.35.

Current regulations at § 305.33(a) require States to have and utilize a central PLS office as required by § 302.35(a). Regulations at paragraph (e) further provide that States have procedures for accepting applications to use the PLS from authorized persons. We propose to delete paragraph (e) and to consolidate those requirements under paragraph (a) to provide that States must have and be utilizing a State PLS as required by § 302.35 (a) and (c).

Paragraph (b) of the current regulations requires a State to identify and utilize major local data sources. Current paragraph (c) requires the State to identify and utilize major State data sources. Current paragraph (d) requires the use of the Federal PLS when necessary. We propose to delete all three paragraphs because the requirements are included under current paragraph (g) which requires the State to use the names and identifying information of absent parents, the State and local locate data sources and the Federal PLS in an attempt to determine the whereabouts of the absent parent. Current paragraphs (f) and (g) would be redesignated as paragraphs (b) and (c), respectively. We propose to insert in proposed paragraph (c), after State and local locate data sources, the phrase, "such as those listed in § 303.3 of this chapter."

In addition, we propose to delete current paragraph (h) which provides staffing requirements because the requirement to use procedures and take action inherently includes a requirement to have personnel performing the required functions.

Under current regulations the requirements at paragraph (e) must be fully met under § 305.20 to substantiate a finding of substantial compliance. The current requirements at paragraph (a) and (c) are reviewed under a separate functional requirement wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to delete both the operational and functional criteria for the State PLS from § 305.20 because the location function, except with respect to a minimal number of cases, is the initial step to providing all other major program services, i.e., paternity establishment, support order establishment and enforcement. Therefore, cases requiring absent parent location will be evaluated under the major service required for the case. Thus if a case required paternity services and the absent parent's whereabouts were unknown, the State must take all appropriate action to locate the absent parent. If the State did not take appropriate action to locate the absent parent and establish paternity, this would be counted against the State in computing the efficiency rate for paternity establishment. The requirement under the proposed

paragraph (b) for collecting necessary fees would be reviewed under the proposed criterion at § 305.20(a) for evaluating Financial Accountability.

13. Cooperative Arrangements

Regulations at § 305.34 require as a measure of compliance with the State plan requirement for cooperative arrangements under § 302.34, that a State must enter into written cooperative agreements with appropriate courts and officials when necessary to provide required services. This proposed rule would not change this evaluation criterion for management purposes but would delete it at a separate operational criterion which must be fully met under § 305.20. We propose to consolidate this requirement as a subcriterion under the operational criterion evaluating Statewide Operation under the proposed § 305.20(a).

14. Reports and Maintenance of Records

Regulations at § 305.35 provide subcriteria evaluated to determine compliance with the State plan requirement for reports and maintenance of records under § 302.15.

We propose to add a new paragraph (b) to require States to utilize procedures for establishing and maintaining case file records containing all information pertaining to the case, in accordance with § 303.2. We are proposing this change because the establishment of a case file at intake and the proper documentation and maintenance of case file records is essential to providing appropriate services. In addition, unless a case is properly documented, auditors will not be able to identify what services are needed or what action has been taken. It is, therefore, in the State's best interest to ensure that all relevant information is included in the case file.

We propose to delete § 305.35(c), the requirement that the State have personnel performing the necessary functions, as the requirement to utilize procedures and maintain case files inherently includes that personnel perform the necessary functions.

In addition, the new paragraph (b) would be added, along with the requirements of paragraphs (a) and (c), as operational subcriteria under the operational criterion evaluating Reports and Maintenance of Records at § 305.20(a) which must be fully met as a condition of a substantial compliance finding.

15. Fiscal Policies and Accountability

Current regulations at § 305.36 provide subcriteria evaluated to determine compliance with the State plan requirement for fiscal policies and accountability under § 302.14.

We propose to delete § 305.36(b), the requirement that the State have personnel performing the functions specified in this section, as the requirement in paragraph (a), that the State establish and utilize an accounting system, assumes that the State will have personnel performing the required functions.

In addition, we propose to delete the operational criterion for fiscal policies under § 305.20 and to consolidate the requirement as a subcriterion under the new criterion evaluating Financial Accountability at § 305.20(a), as proposed.

16. Bonding of Employees

Regulations at § 305.37 provide subcriteria evaluated to determine compliance with the State plan requirement for bonding of employees under § 302.19. Paragraph (a) requires written procedures for ensuring that all appropriate personnel are covered by a bond and paragraph (b) requires that the State have written procedures for obtaining a bond in an adequate amount. Paragraph (c) requires the State to use the procedures referred to in paragraphs (a) and (b).

We propose to delete the requirements under paragraphs (a) and (b) for written procedures and to consolidate the requirements of paragraphs (a), (b), and (c) into one paragraph under § 305.37. The revised § 305.37 would require States to ensure that every person who has access to or control over funds collected under the program is covered by a bond in an amount the State deems adequate to indemnify the State IV–D program for loss resulting from employee dishonesty. We are proposing this change because the emphasis should be on whether employees were covered by a bond not on the State's procedures to do so.

In addition, we are proposing to delete the separate criterion for bonding of employees at § 305.20 and add the requirement as an operational subcriterion under the proposed criterion evaluating Financial Accountability at § 305.20(a).

17. Separation of Cash Handling and Accounting Functions

Regulations at § 305.38 provide subcriteria evaluated to determine compliance with the State plan requirement for the separation of cash handling and accounting functions under § 302.20.

Under paragraph (a), States are required to have written procedures, designed to assure (1) the separation of cash handling and accounting functions and (2) use of generally accepted accounting procedures. Paragraph (b) provides that the requirement under paragraph (a) does not apply to States which have been granted waivers under § 302.20(c) and paragraph (c) requires States to use the written procedures specified in paragraph (a).

We propose to revise § 305.38 to delete the requirement for written procedures under paragraph (a)(1), to delete paragraph (a)(2) in its entirety and to consolidate the remaining requirements under one paragraph. As revised, § 305.38 would require States to ensure that persons responsible for handling cash receipts of support do not participate in accounting or operating functions which would permit them to conceal the misuse of support payments except with respect to sparsely populated geographic areas granted a waiver under § 302.20(c) of this chapter. We are proposing this change because the emphasis should be placed on the actual separation of cash handling and accounting functions and not on the State's written procedures to do so.

In addition, we are proposing to delete the separate criterion for separation of cash handling and accounting functions at § 305.20 and add the requirement at § 305.38 as an operational subcriterion under the criterion evaluating Financial Accountability.

18. Withholding of Unemployment Compensation

Regulations at § 305.39 provide subcriteria evaluated to determine compliance with the State plan requirement for the withholding of unemployment compensation under § 302.65.

We propose to amend § 305.39 (b) through (h) by adding at each paragraph the requirement to use the procedures required. Under the current regulation, paragraph (i) requires the use of all procedures specified under § 305.39. However, because we propose to review only paragraphs (b), (c), (d) and (e) for purposes of determining substantial compliance under § 305.20, separate requirements for utilizing procedures are necessary in each paragraph. To correspond with this change paragraph (i) would be deleted.

In addition, we are proposing to delete § 305.39(j) which requires that staff perform the activities described throughout § 305.39 because the use of staff is inherent in the requirement to use procedures.

Under current regulations, requirements at § 305.39 (a) through (h) are operational subcriteria which must

be fully met under § 305.20 as a condition of substantial compliance. We are proposing to delete the operational criteria because review of the State's actual use of withholding procedures under the functional criteria is a better measure of State compliance than a review of their written procedures. Current regulations at § 305.20 provide a separate functional criterion for evaluation of the requirements in § 305.39 (a) through (h). We are proposing to delete the separate criterion and to include the subcriteria at § 305.39 (b), (c), (d) and (e) under the proposed criterion evaluating Enforcement at § 305.20(b). We are only including these subcriteria because the remaining requirements are either not conducive to evaluation based on case file review or are of a technical nature.

19. Federal Tax Refund Offset

Regulations at § 305.40 provide subcriteria evaluated to determine compliance with the State plan requirement for Federal tax refund offset under § 302.60.

We propose to revise § 305.40 to consolidate the requirements of paragraphs (a) and (b) to provide that States must have and utilize procedures for the withholding of past-due support from Federal tax refunds. Under current regulations paragraph (b) requires use of the procedures required under paragraph (a). Because procedures are not in and of themselves a substantive measure of State performance, we believe that the criteria should be consolidated.

Paragraph (c) requires States to have personnel performing the functions required under § 305.40. We are proposing to delete this subcriterion as the requirement to utilize procedures inherently entails having personnel perform the necessary functions.

Under current regulations at § 305.20, the requirement to have written procedures providing for Federal tax refund offset is a separate operational criterion which must be fully met as a condition of substantial compliance. We are proposing to delete the operational criterion because the functional criterion to use the required procedures is a better measure of State performance and will disclose procedural deficiencies. The functional criterion which is currently evaluated separately would become a subcriterion under the proposed criterion evaluating Enforcement at § 305.20(b).

20. Recovery of Direct Payments

Regulations at § 305.41 provide subcriteria evaluated to determine compliance with the State plan requirement for recovery of direct payments under § 302.31(a).

We propose to revise § 305.41 by consolidating the requirement to have written procedures for the recovery of direct payments at paragraph (a) with the requirement at paragraph (b) to use such procedures. Because procedures are not in and of themselves a substantive measure of State performance, we believe the requirement need not be stated and reviewed independently.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions as the requirement to use procedures inherently includes having personnel perform the necessary activities.

Under the current regulations at § 305.20, the requirement to have written procedures for the recovery of direct payments is a separate operational criterion which must be fully met as a condition of substantial compliance. The requirement to use procedures is a separate functional criterion wherein the required procedures must be used in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional subcriterion would disclose any procedural deficiencies. The requirement for using procedures would become a functional subcriterion under the criterion evaluating Collection/Distribution at § 305.20(b).

21. Spousal Support

Regulations at § 305.42 provide subcriteria evaluated to determine compliance with the State plan requirement for the collection of spousal support contained under § 302.31(a).

We propose to revise § 305.42 by consolidating the requirement to have written procedures for the collections of spousal support under paragraph (a) with the requirement at paragraph (b) to use such procedures. As the main emphasis in determining compliance is the actual provision of spousal support services, we believe the procedural requirement need not be stated or reviewed independently.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions as the requirement to use procedures inherently includes having personnel perform the necessary activities.

Under § 305.20, the requirement to have written procedures for enforcing spousal support is a separate operational criterion which must be fully met as a condition of a substantial compliance finding. The requirement to use such procedures is a separate functional criterion wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional standard will disclose procedural deficiencies and is indicative of State compliance. The requirement to use procedures for enforcing spousal support orders would become a functional subcriterion under the new criterion evaluating Enforcement.

22. 90 Percent Federal Financial Participation (FFP) for Computerized Enforcement Systems

Under current regulations at § 305.43, a computerized system eligible for enhanced Federal funding must meet the requirements in § 307.10. This is currently a separate operational criterion at § 305.20 which must be fully met as a condition of a finding of substantial compliance. We propose to delete § 305.43 from the list of operational criterion which must be fully met under § 305.20 because the certification procedures entailed in receiving such funding ensure compliance with the procedural requirements of § 307.10.

23. Publicizing the Availability of Services

Regulations at § 305.44 provide subcriteria evaluated to determine compliance with the State plan requirement for publicizing the availability of child support enforcement services under § 302.30. Currently this requirement is included as a separate operational criterion under § 305.20 which must be fully met as a condition of substantial compliance. We propose to delete the separate criterion for reviewing compliance with this requirement and to include it instead as a subcriterion under the criterion evaluating Statewide Operation as proposed under § 305.20(a). While we believe that this is an important requirement, we do not believe the substance of § 305.44 is a significant indicator of compliance and compliance with this statutory requirement can be adequately assessed under the criterion evaluating Statewide Operation.

We propose to make a technical correction to § 305.44, by replacing the period at the end of the introductory phrase with a colon.

24. Notice of Collection of Assigned Support

Regulations at § 305.45 provide subcriteria evaluated to determine compliance with the State plan requirement for providing notice of

collection of assigned support under § 302.54.

We propose to revise § 305.45 by consolidating the requirement to have procedures for providing notice under paragraph (a) with the requirement at paragraph (b) to use such procedures. Because procedures are not in and of themselves a substantive measure of State performance, we believe the requirement need not be stated or reviewed independently.

Section 305.45(a)(1) requires States to send an annual notice of the amounts of support collected during the past year to individuals who have assigned their rights to support under § 232.11. We propose to clarify this requirement by prefacing it with the clause, "with respect to those cases where there is a support order or, in the absence of an order, voluntary support payments have been made." This change is proposed to clarify that, while such notices must be sent even if no support was collected pursuant to a support order, a notice need not be sent if a support order has not been established and voluntary payments have not been made.

We also propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions, as the requirement to use procedures inherently includes having personnel perform the necessary activities.

Under the current regulations at § 305.20, the requirement to have written procedures for providing notice is a separate operational criterion which must be fully met as a condition of substantial compliance. We propose to delete the operational criterion as casework reviewed under the functional criterion is a better measure of State compliance and would disclose procedural deficiencies. The requirement for sending the notice under § 305.45(a) would become a functional subcriterion under the criterion evaluating Collection/Distribution as proposed under § 305.20(b). It is currently reviewed as a separate functional criterion.

25. Incentive Payments to States and Political Subdivisions

Regulations at § 302.46 provide subcriteria evaluated to determine compliance with the State plan requirement for incentive payments to States and political subdivisions under § 305.55.

We propose to revise § 305.46 by consolidating the requirement to have written procedures for passing State incentives down to political subdivisions at paragraph (a) with the requirement at paragraph (b) to use such procedures. As procedures are not in and of themselves a substantive measure of compliance, we believe the requirement need not be stated and reviewed independently.

We also propose to delete the contents of § 305.46(a)(2) which require the State to have procedures to consider the efficiency and effectiveness of political subdivisions in determining the amount of the incentive payable. We are proposing this change as the requirement is already embraced by paragraph (a)(1) which requires that incentive payments to political subdivisions be made as determined by the State in accordance with § 303.52(d). Regulations at § 303.52(d) provide that the determination of the amount of incentives payable to political subdivisions should be based on such subdivision's efficiency and effectiveness.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions because the requirement to use procedures inherently includes having staff perform the necessary activities.

Under current regulations at § 305.20, the requirement to have written procedures for passing incentives payments through to political subdivisions is a separate operational criterion which must be fully met as a condition of substantial compliance. In addition, the requirement to use such procedures is a separate functional subcriterion under § 305.20. We propose to delete the functional criterion because the current incentive structure is not conducive to review under the 75 percent standard. Instead we propose to review the requirement at § 305.46 to utilize procedures for the pass-through of incentive payments as a subcriterion under the proposed operational criterion evaluating Financial Accountability.

26. Payment of Support Through the IV–D Agency or Other Entity

Regulations at § 305.48 provide subcriteria evaluated to determine compliance with the optional State plan requirement for payment of support through the IV–D agency or other entity under § 302.57.

We propose to revise § 305.48 by deleting the requirement to use procedures at paragraph (c) and adding to paragraphs (a) and (b) the requirement to use the required written procedures providing for payment of support through the IV–D agency or other entity. We are proposing this change as procedures are not in and of themselves a substantive measure of State performance and need not be reviewed individually.

In addition, we propose to delete the current requirement under paragraph (d) for having personnel perform the specified functions as the requirement to utilize procedures inherently includes having personnel perform the necessary activities.

Under the current regulations at § 305.20, the requirements at paragraph (a) and (b) are operational subcriteria which must be fully met as a condition of substantial compliance. The requirement to use such procedures is a separate functional criterion wherein the required procedures must be used in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional subcriterion will disclose any procedural deficiencies. The separate functional criterion for utilizing procedures would, with the exception of paragraph (b)(3), become subcriteria under the proposed criterion evaluating Collection/Distribution at § 305.20(b). The requirement for collecting fees under the proposed paragraph (b)(3) would be reviewed under the proposed criterion evaluating Financial Accountability at § 305.20(a).

27. Wage or Income Withholding

Regulations at § 305.49 provide subcriteria evaluated to determine compliance with the State plan requirement for wage or income withholding under § 302.70(a)(1).

We propose to revise § 305.49 by consolidating the requirement to have written procedures for carrying-out a program of withholding at paragraph (a) with the requirement at paragraph (b) to utilize such procedures. We are proposing this change because procedures are not in and of themselves a substantive measure of State performance and need not be reviewed separately.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified function as the requirement for using procedures inherently includes having staff perform the necessary functions.

Under the current regulations at § 305.20, the requirement to have written procedures providing for wage or income withholding at § 305.49(a) is a separate operational criterion which must be fully met as a condition of substantial compliance and the requirement under paragraph (b) to utilize such procedures is a separate functional criterion wherein the required procedures must be utilized in 75

percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional criterion will disclose any procedural deficiencies. The separate functional criterion for utilizing procedures for wage or income withholding would be retained under § 305.20(b).

28. Expedited Processes

Regulations at § 305.50 provide subcriteria evaluated to determine compliance with the State plan requirement for expedited process under § 302.70(a)(2).

We propose to revise § 305.50 by consolidating the requirement to have written procedures providing for an expedited process with the requirement at paragraph (b) to use such procedures. We are proposing this change because such procedures are not in and of themselves a substantive measure of State performance and need not be stated and reviewed separately.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions as the requirement to utilize procedures inherently includes having personnel perform the necessary activities.

The requirement for having an expedited process system will remain a separate operational criterion under § 305.20 which must be fully met as a condition of substantial compliance.

29. State Income Tax Refund Offset

Regulations at § 305.51 provide subcriteria evaluated to determine compliance with the State plan requirement for collection of overdue support by State income tax refund offset under § 302.70(a)(3).

We propose to revise § 305.51 by consolidating the requirement at paragraph (a) to have written procedures for State tax offset with the requirement under paragraph (b) to utilize such procedures. We are proposing this change because procedures are not in and of themselves a substantive measure of State performance and need not be stated or reviewed separately. In addition, we propose to delete from paragraph (a) all that follows the word "refunds," which provides that the requirement applies to AFDC, Non-AFDC and Foster Care cases. We are proposing this change for consistency with other requirements in Part 305 and because, unless otherwise stated, the requirements in Part 305 apply to the review of all IV-D cases.

We propose to delete paragraph (c) of § 305.51 which requires that personnel perform the specified functions because the requirement to utilize procedures inherently entails having personnel perform the necessary functions.

Under current regulations at § 305.20, the requirement to have written procedures providing for the offset of State tax refunds for collection of overdue support is a separate operational criterion which must be fully met to substantiate a finding of substantial compliance. The requirement to utilize those procedures is a separate functional criterion which must be met in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional criterion will uncover any procedural deficiencies. The functional criterion, which is currently evaluated separately, would become a subcriterion under the proposed criterion evaluating Enforcement at § 305.20(b).

30. Imposition of Liens

Regulations at § 305.52 provide subcriteria evaluated to determine compliance with the State plan requirement for the imposition of liens against real and personal property under § 302.70(a)(4).

We propose to revise § 305.52 by consolidating the requirement at paragraph (a) to have procedures for the imposition of liens against real and personal property with the requirement at paragraph (b) to utilize such procedures. We are proposing this change because the major emphasis in determining State performance is the actual provision of services not the availability of written procedures.

In addition, we propose to delete paragraph (c) which requires the State to have personnel performing the specified functions. The requirement for utilizing procedures inherently includes having personnel perform the required functions.

Under current regulations at § 305.20, the requirement to have written procedures for the imposition of liens against property is a separate operational criterion which must be fully met to substantiate a finding of substantial compliance. The requirement to utilize those procedures is a separate functional criterion wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional criterion is a better measure of State compliance and will uncover any procedural deficiencies. The functional criterion which is currently evaluated separately would become a subcriterion under the proposed criterion evaluating Enforcement.

31. Posting Security, Bond or Guarantee

Regulations at § 305.53 provide subcriteria evaluated to determine compliance with the State plan requirement for posting security, bond or guarantee to secure payment of overdue support under § 302.70(a)(6).

We propose to revise § 305.53 by consolidating the requirement at paragraph (a) to have written procedures requiring an absent parent to give security, post a bond or give other guarantee to secure support with the requirement at paragraph (b) to use such procedures. We are proposing this change because such procedures are not in and of themselves a substantive measure of State performance and need not be stated and reviewed separately.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions because the requirement to utilize procedures for posting bonds or giving guarantee of support inherently includes having personnel perform the necessary activities.

Under the current regulations at § 305.20, the requirement to have written procedures providing for posting bonds or securing guarantees of support at § 305.53(a) is a separate operational criterion which must be fully met as a condition of substantial compliance and the requirement under paragraph (b) to utilize such procedures is a separate functional criterion wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional criterion will reveal the existence of any procedural deficiencies. The separate functional criterion for utilizing procedures would be consolidated as a subcriterion under the proposed criterion evaluating Enforcement.

32. Making Information Available to Consumer Reporting Agencies

Regulations at § 305.54 provide subcriteria evaluated to determine compliance with the State plan requirement for making information available to consumer reporting agencies under § 302.70(a)(7).

We propose to revise § 305.54 by consolidating the requirement at paragraph (a) to have written procedures for making information regarding the amount of overdue support owed by an absent parent to consumer reporting agencies with the requirement at paragraph (b) to use such procedures. We are proposing this change because

such procedures are not in and of themselves a substantive measure of State performance and need not be stated and reviewed separately.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions as the requirement to utilize procedures inherently includes having personnel perform the necessary activities.

Under current regulations at § 305.20, the requirement to have procedures for informing consumer credit agencies of overdue support is a separate operational criterion which must be fully met as a condition of substantial compliance and the requirement under paragraph (b) to utilize such procedures is a separate functional criterion wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to delete the operational criterion as casework reviewed under the functional criterion for utilizing procedures would reveal any procedural deficiencies. The separate functional criterion for utilizing procedures for informing consumer credit agencies of overdue support would be consolidated under the proposed functional criterion evaluating Enforcement.

33. Late Payment Fees

Regulations at § 305.55 provide subcriteria evaluated to determine compliance with the optional State plan provision for imposing late payment fees on absent parents who owe overdue support under § 302.75.

We propose to revise § 305.55 by consolidating the requirement at paragraph (a) to have written procedures providing for applying late payment fees uniformly throughout the State with the requirement at paragraph (b) to use such procedures. We are proposing this change as procedures are not in and of themselves a substantive measure of State performance and need not be stated and reviewed separately.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions as the requirement to utilize procedures inherently includes having personnel perform the necessary activities.

Under current regulations at § 305.20, the requirement to have written procedures for imposing late payment fees at § 305.55 is a separate operational criterion which must be fully met as a condition of substantial compliance and the requirement to utilize such procedures is a separate functional criterion wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to delete the functional criterion because a systemic review under the operational criterion evaluating Financial Accountability under § 305.20(a), as proposed, would better identify widespread deficiencies in this area.

34. Medical Support Enforcement

Regulations at § 305.56 provide subcriteria evaluated to determine compliance with the State plan requirement for medical support enforcement under § 302.80.

We propose to revise § 305.56 by consolidating the requirement at paragraph (a) to have written procedures to secure medical support information and secure and enforce medical support obligations with the requirement at paragraph (b) to use such procedures. We are proposing this change as such procedures are not in and of themselves a substantive measure of State performance and need not be stated and reviewed separately.

In addition, we propose to delete the current requirement under paragraph (c) for having personnel perform the specified functions as the requirement to utilize procedures inherently includes having personnel perform the necessary activities.

We propose to add a new paragraph (b) which would require States to have and utilize written procedures for notifying the State Medicaid agency when a new or modified order for support includes medical support and for providing the information referred to at § 306.50(a) to the State Medicaid agency. We are proposing this change as the current criteria do not adequately measure State compliance with the requirements at §§ 306.50 and 306.51 for providing information to and communicating with the State Medicaid agency.

Under current regulations at § 305.20, the requirement for having written procedures providing for medical support enforcement is a separate operational subcriterion which must be fully met as a condition of substantial compliance. The requirement to utilize such procedures is a separate functional criterion wherein the required procedures must be utilized in 75 percent of the cases reviewed. We propose to replace the operational criterion currently reviewed for medical support enforcement at § 305.20(a) with the new subcriterion found under proposed paragraph (b). In addition, we propose to consolidate the separate functional criteria for utilizing procedures to secure and enforce medical support obligations as subcriteria under the proposed criteria evaluating Establishing an Obligation and Enforcement under § 305.20(b).

35. Prohibition From Retroactive Modification of Child Support Arrearages

Although regulations prohibiting the retroactive modification of child support arrearages at proposed § 305.57 have not been published in final yet, they will be by the time this proposal is published in final (see 52 FR 34689, September 14, 1987). Therefore, we are including reference to § 305.57 in this proposed regulation. Under proposed § 305.57, States must have written procedures prohibiting the retroactive modification of child support arrearages. We propose to include this requirement as a functional subcriterion under the criterion evaluating Support Obligations as proposed under § 305.20(b). We are proposing to add this as a substantial compliance subcriterion because it is an important State plan requirement.

*Performance Indicator.* Regulations at § 305.98(a) provide three performance indicator components which were effective beginning with the fiscal year 1986 audit period. Paragraph (b) provides four additional indicator components which were effective beginning with the fiscal year 1988 audit period. We propose to revise § 305.98 by redesignating current paragraph (d) as paragraph (f) and adding a new paragraph (d) which would include the performance indicator components in paragraphs (a) and (b) and add two new performance indicator components. The proposed performance indicator set forth in paragraph (d) would be effective beginning with the Federal fiscal year beginning after publication of these regulations in final form. We also propose to clarify in proposed paragraph (d) whether or not interstate collections are included in the collection amounts and that collections for a fiscal year will be used for purposes of computing the indicator components.

The first of the two proposed indicator components provided under § 305.98(d)(8) would be referred to as the Paternity Establishment Indicator and is calculated by dividing the total number of paternities established by the IV-D agency during a fiscal year by the total number of births to unmarried women in the State during the calendar year 2 years earlier (as reported to the National Center for Health Statistics). For example, the number of paternities for FY 1989 would be divided by the number of births to unmarried women for calendar year 1987. The number of births to unmarried women is not a

perfect measure of the number of IV–D cases in which paternity must be established. Clearly not all unmarried women will seek services from the IV–D agencies within two years following the birth. Some will come immediately. Some will come at a later date. Some will never apply for services. Nevertheless, we believe that it is the best indicator of the demand for paternity services that currently exists. Further, no State is required to establish paternity in all or even a majority of these cases. To achieve a passing score, a State need only establish a number of paternities equivalent to 25 percent of the births to unmarried women. To achieve the maximum score, a State need only establish a number of paternities equivalent to 55 percent of the births to unmarried women.

We believe this indicator component is the best measure of the degree to which States are establishing paternity in cases that require such services, given available data. However, we are committed to obtaining data on the number of children in IV–D cases born out of wedlock and on the number of these children for whom paternity has been established. Further, once this data is available, we intend to substitute it in this indicator component.

The new ratio would be equivalent to the Paternity Establishment Percentage as defined in Section 111 of the Family Support Act of 1988. This percentage is, for each State, the number of children in IV–D cases who are born out of wedlock for whom paternity has been established divided by the number of children in IV–D cases who are born out of wedlock. A child who is receiving AFDC by reason of the death of a parent, or a child with respect to whom a mother is found to have good cause for refusing to cooperate in establishing or collecting support, is excluded from this equation.

We note that, unlike the other indicator components which focus either on AFDC or non-AFDC services, the paternity indicator component is a cross-cutting indicator component in which AFDC and non-AFDC paternities count equally. In 1985, there were 828,000 births to unmarried women. A majority of these women do not go on AFDC immediately. From this perspective, we might expect that there could be more non-AFDC than AFDC paternity establishments. However, in the past there have not been a large number of non-AFDC paternity establishments. But this is changing. Non-AFDC paternity establishments have increased 125 percent in the four years from 1983 to 1987. Non-AFDC paternities now comprise over 17 percent of all paternities established under the IV–D program (up from only 10 percent in 1983). In the future we expect that percentage to continue to increase.

The second additional indicator component proposed under § 305.98(d)(9) would be referred to as the Cost Avoidance Indicator and is calculated by multiplying the non-AFDC collections in a fiscal year (excluding collections made on behalf of other States) by 20 percent and dividing the result by the total IV–A assistance payments (excluding payment to families with unemployed parents) plus the amount of food stamps and Medicaid payments for these same families for the same fiscal year. The term cost avoidance refers to the financial savings to the taxpayer that occur when a family leaves public assistance, stays off assistance in the first instance or has their assistance reduced due to child support collections.

This proposed indicator component is based on recently completed research, performed by Advanced Sciences, Inc. Although this research was limited in scope and based on all female-headed households (not just IV–D cases), it found that the cost avoidance associated with child support collections was considerable. It was estimated that there was $1 in AFDC, food stamp and Medicaid costs avoided for every $5 in child support collections realized for families not receiving AFDC. In other words, there is 20 cents in cost avoidance for every dollar of child support collected by the IV–D agency on behalf of non-welfare families. The proposed indicator component would take into account the amount of cost avoidance in a State relative to the cash and medical assistance and food stamps paid in the State.

Although the research upon which this indicator component is based is a significant step forward in establishing actual welfare cost avoidance attributable to non-AFDC collections, it is not the definitive work on cost avoidance. Although problems remain in defining a cost avoidance measure, we propose to include this indicator component at this time in order to give States the benefit of their efforts to increase cost avoidance and will improve and revise this measure over time.

Ideally, a cost avoidance indicator component would measure only those cases in which the child support enforcement services actually made the difference between a family receiving and not receiving AFDC, Medicaid and food stamps. Unfortunately it would require extensive data collection to make this decision on a State by State basis. Instead we propose to use the average amount of cost avoidance per dollar of child support collected. We have set the standards for this indicator component so that States with very large non-AFDC caseloads do not receive excessive credit and so that States with smaller non-AFDC caseloads are not penalized. A State can achieve a passing score by achieving a level of cost avoidance equal to only 1.5 percent of AFDC, food stamp and Medicaid payments in the State.

In order to integrate the two additional indicator components proposed, with the seven indicator components currently in the regulation, we are proposing under paragraph (e) a new scoring system which would be effective, along with the new performance indicator, beginning with the Federal fiscal year beginning after publication of this regulation in final form. The proposed scoring system retains the 100-point scoring system, the equal weight for AFDC and non-AFDC indicator components, and the requirement that States achieve a minimum score of 70. Under the proposed system, up to 20 points each would be given for the Paternity Establishment, the AFDC Recovery Rate, and the Cost Avoidance indicator components. Up to 10 points each would be given for the AFDC and non-AFDC Cost Effectiveness indicator components. Finally, up to 5 points each would be given for the four Accounts Receivable indicator components (for a total of 20 points). In all, up to 40 points would be given for AFDC-related indicator components; up to 40 points for non-AFDC-related indicator components; and up to 20 points for the cross-cutting paternity establishment indicator component. The tables in proposed § 305.98(e)(1) (i) through (ix) show the scores which would be applied for different levels of performance on each performance indicator component.

The tables in subparagraphs (e)(1) (i) through (ix) are based on a computer simulation which showed the results which were obtained for alternative scoring systems. In developing the scoring tables, we looked at the performance of each State relative to the other States and relative to the national averages. Our purpose was not to develop scoring tables which were impossible to meet or to develop scoring tables which every State currently met. Rather our purpose was to develop individual scoring tables which were clearly achievable, which accurately reflected a minimum level of acceptable

performance on each indicator component and which when taken together would define a minimum level of acceptable performance. We believe that the scoring tables, individually and taken together, meet these criteria. We note that a State need not attain a passing score on every indicator component. A State can make up, to a certain extent, its poor performance on one indicator component with above average performance on other indicator components.

Proposed paragraph (e)(2) provides that a State's total score must equal or exceed 70 and includes three examples of the scores typical States would receive under the proposed scoring system. The average score for the States which submitted complete data in fiscal year 1987 was 70. We believe that the proposed scoring system is a clear measure of the overall effectiveness of State child support enforcement programs and that a minimum score of 70 is clearly achievable for an effective IV-D program.

Using FY 1987 data for simulation purposes, 21 jurisdictions score 70 or more. Of the remainder, 24 score between 50 and 69, meaning that they can realize a passing grade with, in many instances, little effort. Further, 5 of the 9 other failing jurisdictions are hampered by missing data, for which they get a zero score.

Table 1 shows the individual scores on each performance indicator component and the total audit score a State would receive in fiscal year 1989 if it were to achieve the fiscal year 1987 national average on each of the performance indicator components.

TABLE 1

| Performance indicator | FY1987 national average | Audit score |
|---|---|---|
| 1. AFDC cost effectiveness (CE) ratio | $1.38 | 7 |
| 2. Non-AFDC CE ratio | $2.61 | 7 |
| 3. AFDC recovery rate | [1] 9.2 | 14 |
| 4. AFDC current accounts receivable | [1] 39.2 | 4 |
| 5. Non-AFDC current accounts receivable | [1] 55.0 | 4 |
| 6. AFDC past due accounts receivable | [1] 6.7 | 3 |
| 7. Non-AFDC past due accounts receivable | [1] 9.8 | 3 |
| 8. Paternity establishment | [1] 32.5 | 14 |
| 9. Cost avoidance | [1] 1.7 | 14 |
| Total audit score | | 70 |

[1] Percent.

Table 2 shows the total audit scores which each State would receive if the proposed scoring system were applied to fiscal year 1987 data. Note that States marked with an asterisk are States for which complete fiscal year 1987 data were not available. When data were not available on any particular performance indicator component, the States were given no points for that indicator component.

TABLE 2

| State | Total audit score |
|---|---|
| Alabama | 79 |
| Alaska | 65 |
| Arizona* | 52 |
| Arkansas | 76 |
| California | 56 |
| Colorado | 51 |
| Connecticut | 79 |
| Delaware* | 71 |
| D.C.* | 28 |
| Florida | 56 |
| Georgia | 72 |
| Guam* | 32 |
| Hawaii* | 55 |
| Idaho | 82 |
| Illinois* | 51 |
| Indiana* | 58 |
| Iowa | 79 |
| Kansas* | 52 |
| Kentucky | 54 |
| Louisiana | 53 |
| Maine | 66 |
| Maryland | 58 |
| Massachusetts | 75 |
| Michigan | 92 |
| Minnesota | 83 |
| Mississippi | 50 |
| Missouri | 79 |
| Montana | 40 |
| Nebraska* | 60 |
| Nevada | 69 |
| New Hampshire | 76 |
| New Jersey | 87 |
| New Mexico* | 29 |
| New York | 49 |
| North Carolina | 85 |
| North Dakota | 79 |
| Ohio | 71 |
| Oklahoma* | 38 |
| Oregon | 80 |
| Pennsylvania | 85 |
| Puerto Rico* | 50 |
| Rhode Island | 61 |
| South Carolina* | 64 |
| South Dakota | 67 |
| Tennessee* | 73 |
| Texas | 33 |
| Utah | 75 |
| Vermont | 82 |
| Virgin Islands* | 48 |
| Virginia* | 53 |
| Washington* | 63 |
| West Virginia | 35 |
| Wisconsin* | 74 |
| Wyoming* | 52 |

Data used to compute the performance indicator components related to accounts receivable have been required to be reported to OCSE since FY 1986. Reporting by the States to date has been incomplete and, in some cases, clearly inaccurate. For instance, there have been substantial discrepancies between collections reported on the OCSE-56 and the same collections reported on the OCSE 41. In addition, some States have reported identical data year after year. For purposes of assigning score values to the accounts receivable performance indicator components or to any other performance indicator component, a zero value will be assigned when a State fails to report data required or when the data a State reports is clearly erroneous on its face. Accuracy and reliability of data reported and used to construct the performance indicator will be evaluated as part of the complete audit conducted of all States which fail to achieve a passing score on the performance indicator. An estimate, if possible, will be made as part of the audit for any performance indicator component which received a zero score as the result of no data reported or reported data that on its face is found to be erroneous.

The new performance indicator components as well as the proposed scoring system would be effective for the fiscal year beginning after publication of these proposed regulations as final regulations, allowing even more time for program improvement. States have had ample time to implement requirements that have been in effect since the inception of the program in 1975, as well as those enacted as part of the 1984 Child Support Enforcement Amendments. In addition, it should be noted that States have already shown improvement under the current performance indicator components. When first published, using FY 1983 data, the current scoring system showed 18 States as failing the 70 percent standard. However, experience for FY 1986, the initial year of applicability, indicated only three failures. Further, because child support data processing systems, funded at enhanced matching rates or otherwise, will be operational in increasing numbers of States, program performance and reporting capabilities will improve. Again, we feel any State with an effective program should be able to meet the 70 percent standard.

In addition, we propose to revise current paragraph (d) (which would be redesignated as paragragh (f)) by replacing the provision that a performance indicator scoring system will be described and updated by regulation every two years with a provision that the performance indicator scoring system will be described and updated by the Office in instructions.

The scoring system will be updated from time to time as necessitated by changing expectations. Changes in the scoring system will reflect progress made by the States in improving

program performance. Scoring system revisions will be based on the actual performance of States with respect to indicator components. A passing score of 70 points will be retained. We will make any changes to the scoring system available to States for comment and will publish any changes in the Federal Register in advance of their effective date.

*Notice and Corrective Action Period*

We propose to make a technical change to § 305.99(b)(2) by replacing the reference to § 305.20 (a)(2), (b)(2) or (c)(2) with § 305.20(b). This change is consistent with the proposed changes to § 305.20.

In addition, we propose to amend paragraph (d)(1) to make a correction by replacing the word "maintain" where it appears, with the word "maintained." For clarity, we propose to add at the beginning of paragraph (d)(2), "during the corrective action period." Finally, in paragraph (d)(3), we propose to replace "quarter" with "three-month period"; to insert "first full" before "fiscal" where it first appears; and, to delete the word "fiscal" where it last appears. These changes are being proposed to correspond with the changes proposed to section § 305.11, Audit period.

*Penalty for Failure to Have an Effective Program*

We propose to make a technical correction to § 305.100(d) by replacing the word "and" where it appears after the word "notice" and before the word "maintain" with the word "or."

**Paperwork Reduction Act**

This rule does not require any information collection activities and, therefore, no approvals are necessary under the Paperwork Reduction Act.

**Regulatory Impact Analysis**

The Secretary has determined, in accordance with Executive Order 12291 that this rule does not constitute a "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Executive Order requires that, for major rules, we prepare a regulatory impact analysis which describes the potential benefits and costs of the rule, together with the potential benefits and costs of any alternative approaches. This proposed rule will have little or no net economic effect, because it will not change the requirements of State Child Support Enforcement programs or the penalties which may be levied against programs which fail to substantially comply with the requirements. The net effect here is not on actual State program practices but rather, on how these practices will be evaluated. The number of States failing the audit is not expected to increase under this proposed rule, even with the inclusion of the proposed performance indicator components. The performance indicator is just one aspect of the program audit and, if a State were to fail to meet the performance indicator, it is likely that it would fail other aspects of the audit as well.

Under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), we are required to prepare a regulatory flexibility analysis for those rules which will have a significant economic impact on a substantial number of small entities. This proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, a regulatory flexibility analysis is not required. The only expected economic impact is comparatively small Federal savings as a result of reduced manhours per State audit.

**List of Subjects in 45 CFR Part 305**

Accounting, Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program No. 13.783, Child Support Enforcement Program)

Dated June 7, 1988.

**Wayne A. Stanton,**

*Director, Office of Child Support Enforcement.*

Approved: December 16, 1988.

**Otis R. Bowen,**

*Secretary.*

For the reasons set out in the preamble, 45 CFR Part 305 is proposed to be amended as follows:

## PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as set forth below:

Authority: 42 U.S.C. 603(h), 604(d), 651(a)(1) and (4), and 1302.

2. Section 305.11 is revised to read as follows:

**§ 305.11 Audit period.**

The audit will cover a period comprised of not more than 12 nor less than three consecutive months. When the State is operating under a corrective action plan, the review will cover the first three-month period beginning after the corrective action period. When the State fails to meet audit criteria related to the performance indicator, the review will cover the first full fiscal year following the date on which a determination was made that performance was not in substantial compliance. The audit may, at State request, be conducted prior to the end of the one-year period prescribed under § 305.10(b) of this part when the State is being penalized under § 305.100 of this part.

3. Section 305.12 is amended by revising paragraph (a) to read as follows:

**§ 305.12 State comments.**

(a) Prior to the start of the actual audit, the Office will hold an audit entrance conference with the IV–D agency. At that conference the Office will explain how the audit will be performed and make any necessary arrangements.

* * * * *

4. Section 305.13 is amended by revising paragraph (b) to read as follows:

**§ 305.13 State cooperation in annual audit.**

* * * * *

(b) Failure to comply with the requirements of this section will necessitate a finding that the State has failed to substantially comply.

5. Section 305.20 is revised to read as follows:

**§ 305.20 Effective support enforcement program.**

For the purposes of this part and section 403(h) of the Act, in order to be found to have an effective program in substantial compliance with the requirements of title IV–D of the Act, a State must meet the IV–D State plan requirements contained in Part 302 of this chapter measured as follows:

(a) For audits conducted for any period beginning after [Insert Date Final Regulation is Published], the following audit criteria must be fully met:

(1) State cooperation. (45 CFR 305.13)

(2) Statewide operation. (45 CFR 305.21 (a) and (c), 305.34 and 305.44)

(3) Single and separate organizational unit. (45 CFR 305.23)

(4) Reports and maintenance of records. (45 CFR 305.35)

(5) Financial accountability. (45 CFR 305.36, 305.37, 305.38, 305.46 and collection and reporting of fees and interest (including as appropriate, those provided under 45 CFR 303.69(e), 303.72(i), 303.100 (d)(1)(iii) and (e)(3), 303.102(f), 303.105(c), 305.31(b), 305.33(b), 305.48(b)(3), and 305.55))

(6) Medical support. (45 CFR 305.56(b))

(7) Child support guidelines. (45 CFR 305.47)

(8) Expedited processes. (45 CFR 305.50)

(9) Interstate cooperation. (45 CFR 305.32 (a) and (f) through (h))

(10) Continuation of services. (45 CFR 305.31(c))

(b) For audits conducted for any period beginning after [Insert Date Final Regulation is Published], the procedures required by the following audit criteria must be used in 75 percent of the cases reviewed for each criterion:

(1) Establishing paternity. (45 CFR 305.24, 305.32(c) and 305.33(c))

(2) Support obligations. (45 CFR 305.25, 305.32(d), 305.33(c), 305.56(a) and 305.57)

(3) Enforcement of support obligations. (Providing enforcement services under 45 CFR 305.26 (a), (b) and (c), 305.32(e), 305.33(c), 305.42, 305.54, 305.56(a) and, when appropriate, use of one or more of the specialized enforcement techniques under 45 CFR 305.39 (b), (c), (d), and (e), 305.40, 305.51, 305.52 and 305.53)

(4) Collection/Distribution. (45 CFR 305.27, 305.28, 305.29, 305.32(e), 305.41, 305.45(a) and 305.48 (a) and (b) (1) and (2))

(5) Wage or income withholding. (45 CFR 305.49)

(c) Beginning in [Insert Fiscal Year Beginning After Publication of Final Regulation], the criteria referred to in § 305.98 (e) and (f) of this part relating to the performance indicator prescribed in paragraph (d) of that section must be met.

**§ 305.21 [Amended]**

6. Section 305.21 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c).

7. Section 305.22 is revised to read as follows:

**§ 305.22 State financial participation.**

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for State financial participation (45 CFR 302.11), a State must participate financially by incurring the applicable State share of the program's administrative costs with funds which are appropriated to the IV-D agency or transferred to the IV-D agency, or certified by the contributing public agency as representing expenditures under the State's IV-D plan.

8. Section 305.23 is amended by revising paragraph (a) and (b) and removing paragraph (c) to read as follows:

**§ 305.23 Single and separate organizational unit.**

* * * * *

(a) Is responsible and accountable for the operation of the IV-D plan; and

(b) Is responsible for securing compliance with requirements of the IV-D plan delegated to any other State or local agency or official performed under cooperative agreement or purchase of service agreement.

**§ 305.24 [Amended]**

9. Section 305.24 is amended by adding the word "and" after the semicolon in paragraph (a) and removing paragraphs (c) through (g).

**§ 305.25 [Amended]**

10. Section 305.25 is amended by replacing the colon at the end of paragraph (a) with "; and", removing subparagraphs (a) (1) and (2), removing paragraphs (c) and (d) and changing the semicolon to a period at the end of paragraph (b).

**§ 305.26 [Amended]**

11. Section 305.26 is amended by removing "identified and" and adding "and be utilizing" after "established" in the beginning of paragraph (c), adding the word "and" after the semicolon at the end of paragraph (c), replacing the semicolon at the end of paragraph (d) with a period and removing paragraphs (e) through (g).

12. Section 305.27 is amended by revising paragraph (a), removing paragraphs (b) and (e), and redesignating and revising paragraphs (c) and (d) as paragraphs (b) and (c), respectively, to read as follows:

**§ 305.27 Support payments to the IV-D agency.**

* * * * *

(a) Have established and be utilizing written procedures for the receipt of support payments by the IV-D agency;

(b) Have established and be utilizing written procedures to identify support payments that are not being received by the IV-D agency and to take corrective action; and

(c) Have established and be utilizing written procedures that meet the requirements of § 302.32(b) of this chapter for informing the State s IV-A agency of the amounts of collection so that the family's continued eligibility for assistance payments can be determined.

13. Section 305.28 is revised to read as follows:

**§ 305.28 Distribution of support payment.**

For the purposes of this part, in order to be found to be in compliance with the State plan requirements for distribution of support collections (45 CFR 302.51, 302.52 and 302.32), a State must have and utilize written procedures which, if properly applied, would result in a distribution of support collections which is in accordance with §§ 302.51, 302.52 and 302.32 of this chapter.

14. Section 305.31 is revised to read as follows:

**§ 305.31 Individuals not otherwise eligible.**

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for providing support enforcement services to individuals not otherwise eligible (45 CFR 302.33 and 302.51(e)), a State must:

(a) Have established and be utilizing written procedures for accepting signed, written applications on a Statewide basis for support services from individuals not otherwise eligible under § 302.31 of this chapter;

(b) Have established and be utilizing written procedures for collection of any fees and recovery of any costs authorized by the State's plan; and

(c) Have established and be utilizing procedures for providing services to former AFDC recipients in accordance with § 302.51(e) of this chapter.

**§ 305.32 [Amended]**

15. Section 305.32 is amended by adding the word "and" at the end of paragraph (g), replacing the semicolon with a period at the end of paragraph (h) and removing paragraphs (i) and (j).

16. Section 305.33 is amended by revising paragraph (a), removing paragraph (b) through (e), redesignating and revising paragraph (f) as paragraph (b), and redesignating paragraph (g) as paragraph (c) and revising it to read as follows:

**§ 305.33 State parent locator service.**

* * * * *

(a) Have established and be utilizing a central State PLS office as required by § 302.35 (a) and (c) of this chapter;

(b) Have established and be utilizing written procedures for collecting any fees required by § 303.70(e)(2) of this chapter and the State's plan; and

(c) Have established and be using the names and other identifying information of absent parents, the State and local locate data sources, such as those listed in § 303.3 of this chapter, and the

Federal PLS, in an attempt to determine the actual whereabouts of the absent parent, or determine that the whereabouts of the absent parent cannot be ascertained.

17. Section 305.35 is amended by removing paragraph (c), redesignating and revising paragraph (b) as paragraph (c), and adding a new paragraph (b) to read as follows:

**§ 305.35 Reports and maintenance of records.**

* * * * *

(b) Have established and be utilizing procedures for establishing and maintaining case file records containing all information pertaining to the case, in accordance with § 303.2; and

(c) Have established and be utilizing a system for insuring that reports required by the Secretary are provided when due, and are accurate and complete.

18. Section 305.36 is revised to read as follows:

**§ 305.36 Fiscal policies and accountability.**

For the purposes of this part, in order to be found in compliance with the State plan requirement for fiscal policies and accountability (45 CFR 302.14), a State must have established and be maintaining and utilizing an accounting system and supporting fiscal records that assure that claims for Federal funds are in accord with applicable Federal regulations and instructions issued by the Office.

19. Section 305.37 is revised to read as follows:

**§ 305.37 Bonding of employees.**

For the purposes of this part, to be found in compliance with the State plan requirement for bonding of employees (45 CFR 302.19), a State must ensure that every person, including the individuals prescribed in § 302.19(b) of this chapter, who, as a regular part of his or her employment, receives, disburses, handles or has access to or control over funds collected under the Child Support Enforcement program is covered by a bond in an amount which the State IV–D agency deems adequate to indemnify the State IV–D program for loss resulting from employee dishonesty.

20. Section 305.38 is revised to read as follows:

**§ 305.38 Separation of cash handling and accounting functions.**

For the purposes of this part, to be found in compliance with the State plan requirement for the separation of cash handling and accounting functions (45 CFR 302.20), a State must ensure that persons, including the individuals specified in § 302.20(b) of this chapter, responsible for handling cash receipts of support do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of support receipts, except with respect to sparsely populated geographic areas within the State granted a waiver under § 302.20(c) of this chapter by the Regional Office.

**§ 305.39 [Amended]**

21. Section 305.39 is amended by adding the words "and utilize" after the word "Have" in paragraphs (b) through (h), removing paragraphs (i) and (j), replacing the semicolon at the end of paragraph (g) with ", and" and replacing the semicolon at the end of paragraph (h) with a period.

22. Section 305.40 is revised to read as follows:

**§ 305.40 Federal tax refund offset.**

For the purpose of this part, to be found in compliance with the State plan requirement for Federal tax refund offset (45 CFR 302.60), a State must have and utilize written procedures to obtain payment of past-due support from Federal tax refunds in accordance with section 464 of the Act and § 303.72 of this chapter and regulations of the Internal Revenue Service at 26 CFR 301.6402–5.

23. Section 305.41 is revised to read as follows:

**§ 305.41 Recovery of direct payments.**

For the purposes of this part, to be found in compliance with the State plan requirement for recovery of direct payments (45 CFR 302.31(a)), a State must have and utilize written procedures to:

(a) Notify the IV–A agency whenever a determination is made that directly received payments have been retained, if the State elects the IV–A recovery method; or

(b) Recover retained direct support payments in accordance with the standards in § 303.80 of this chapter if the State elects the IV–D recovery method.

24. Section 305.42 is revised to read as follows:

**§ 305.42 Spousal support.**

For the purposes of this part, to be found in compliance with the State plan provision for the collection of spousal support (45 CFR 302.31(a)), a State must have and utilize written procedures for the collection of spousal support from a legally liable person when:

(a) A support order has been established for the spouse;

(b) The spouse or former spouse is living with the child(ren) for whom the individual is liable for child support; and

(c) The support order established for the child(ren) is being enforced under the IV–D plan.

**§ 305.44 [Amended]**

25. Section 305.44 is amended by replacing the period at the end of the introductory language with a colon.

26. Section 305.45 is revised to read as follows:

**§ 305.45 Notice of collection of assigned support.**

For the purposes of this part, to be found in compliance with the State plan requirement for providing notice of collection of assigned support (45 CFR 302.54), a State must have and utilize written procedures for:

(a) Sending, at least annually, with respect to those cases where there is a support order, or, in the absence of an order, voluntary support payments have been made, a notice of the amount of support payments collected during the past year to individuals who have assigned rights to support under § 232.11 of this title;

(b) Listing separately in the notice support payments collected from each absent parent when more than one absent parent owes support to the family; and

(c) Indicating in the notice the amount of support collected which was paid to the family.

27. Section 305.46 is revised to read as follows:

**§ 305.46 Incentive payments to States and political subdivisions.**

For the purposes of this part, to be found in compliance with the State plan requirement for incentive payments to States and political subdivisions (45 CFR 302.55), the State must have and utilize written procedures to require that if one or more political subdivisions of the State participate in the costs of carrying out the activities under the State plan during any period, each such subdivision shall be paid an appropriate share of any incentive payments made to the State for such period, as determined by the State in accordance with § 303.52(d) of this chapter.

**§ 305.48 [Amended]**

28. Section 305.48 is amended by adding "and utilize" after the word "Have" in paragraphs (a) and (b), adding "and" after the semicolon at the end of paragraph (a), replacing the semicolon with a period at the end of paragraph (b)(3) and removing paragraphs (c) and (d).

29. Section 305.49 is revised to read as follows:

**§ 305.49 Wage or income withholding.**

For the purposes of this part, to be found in compliance with the State plan requirement for wage or income withholding (45 CFR 302.70(a)(1)), a State must have and utilize written procedures for carrying out a program of withholding in accordance with § 303.100 of this chapter.

30. Section 305.50 is revised to read as follows:

**§ 305.50 Expedited processes.**

For the purposes of this part, to be found in compliance with the State plan requirement for expedited processes (45 CFR 302.70(a)(2)), a State must have and utilize written expedited procedures to establish and enforce child support obligations having the same force and effect as those established through full judicial process in accordance with § 303.101 of this chapter.

31. Section 305.51 is revised to read as follows:

**§ 305.51 Collection of overdue support by State income tax refund offset.**

For the purposes of this part, to be found in compliance with the State plan requirement for collection of overdue support by State income tax refund offset (45 CFR 302.70(a)(3)), a State must have and utilize written procedures for obtaining overdue support from State income tax refunds in accordance with § 303.102 of this chapter.

32. Section 305.52 is revised to read as follows:

**§ 305.52 Imposition of liens against real and personal property.**

For the purposes of this part, to be found in compliance with the State plan requirement for the imposition of liens against real and personal property (45 CFR 302.70(a)(4)), a State must have and utilize written procedures for the imposition of liens against the real and personal property of absent parents who owe overdue support in accordance with § 303.103 of this chapter.

33. Section 305.53 is revised to read as follows:

**§ 305.53 Posting security, bond or guarantee to secure payment of overdue support.**

For the purposes of this part, to be found in compliance with the State plan requirement for posting security, bond or guarantee to secure payment of overdue support (45 CFR 302.70(a)(6)), a State must have and utilize written procedures which require that an absent parent give security, post a bond or give some other guarantee to secure payment of support in accordance with § 303.104 of this chapter.

34. Section 305.54 is revised to read as follows:

**§ 305.54 Making information available to consumer reporting agencies.**

For the purposes of this part, to be found in compliance with the State plan requirement for making information available to consumer reporting agencies (45 CFR 302.70(a)(7)), a State must have and utilize written procedures for making information regarding the amount of overdue support owed by an absent parent available to consumer reporting agencies in accordance with § 303.105 of this chapter.

35. Section 305.55 is revised to read as follows:

**§ 305.55 Imposition of late payment fees on absent parents who owe overdue support.**

For the purposes of this part, to be found in compliance with the optional State plan provision for imposing late payment fees on absent parents who owe overdue support (45 CFR 302.75), a State must have and utilize written procedures for uniformly applying the late payment fee in accordance with § 302.75 of this chapter.

36. Section 305.56 is revised to read as follows:

**§ 305.56 Medical support enforcement.**

For the purposes of this part, to be found in compliance with the State plan requirement for medical support enforcement (45 CFR 302.80), a State must:

(a) Have and utilize written procedures to secure medical support information and secure and enforce medical support obligations in accordance with 45 CFR Part 306 Subpart B of this chapter; and

(b) Have and utilize written procedures for notifying the State Medicaid agency when a new or modified order for support includes medical support and for providing the information referred to at § 306.50(a) to the State Medicaid agency when available.

37. Section 305.98 is amended by revising paragraph (d) and redesignating it as paragraph (f) and adding new paragraphs (d) and (e) to read as follows:

**§ 305.98 Performance indicator and audit criteria.**

* * * * *

(d) Beginning in [Insert Fiscal Year Beginning After Publication of Final Regulation], the Office will use the following performance indicator components in determining whether each State has an effective IV-D program:

(1) AFDC IV-D collections for a fiscal year (including collections made on behalf of other States) divided by total IV-D expenditures for the same fiscal year (less laboratory cost incurred in determining paternity at State option);

(2) Non-AFDC IV-D collections for a fiscal year (including collections made on behalf of other States) divided by total IV-D expenditures for the same fiscal year (less laboratory cost incurred in determining paternity at State option);

(3) AFDC IV-D collections for a fiscal year (excluding collections made on behalf of other States) divided by IV-A assistance payments for the same fiscal year (less payments to unemployed parents);

(4) AFDC IV-D collections for a fiscal year (including collections made on behalf of other States) on support due for the same fiscal year divided by total AFDC support due for the same fiscal year;

(5) Non-AFDC IV-D collections for a fiscal year (including collections made on behalf of other States) on support due for the same fiscal year divided by total non-AFDC support due for the same fiscal year;

(6) AFDC IV-D collections for a fiscal year (including collections made on behalf of other States) on support due for prior periods divided by total AFDC support due for the same prior periods;

(7) Non-AFDC IV-D collections for a fiscal year (including collections made on behalf of other States) on support due for prior periods divided by total non-AFDC support due for the same prior periods;

(8) The number of paternities established by the State during a fiscal year divided by the total number of births to unmarried women in the State for the calendar year two years prior to the fiscal year (for example, the number of paternities esbtablished by the State during FY 1986 (October 1, 1985–September 30, 1986) divided by the total number of births to unmarried women in the State for calendar year 1984 (January 1–December 30, 1984)); and

(9) Non-AFDC IV-D collections for a fiscal year (excluding collections made on behalf of other States) multiplied by .2 and divided by the total IV-A assistance payments (less payments to unemployed parents) plus Food Stamps and Medicaid payments to the same families for the same fiscal year.

(e) Beginning in [insert fiscal year beginning after publication of final regulation], the Office shall use the following procedures and audit criteria to measure State performance·

(1) The ratio for each of the performance indicator components in paragraph (d) of this section will be evaluated on the basis of the scores in the tables in paragraphs (e)(1) (i) through (ix) of this section. The tables show the scores the States will receive for different levels of performance.

(i) The ratio provided under paragraph (d)(1) measuring AFDC cost effectiveness.

| Level of performance: | Score |
|---|---|
| Less than $.20 | 0 |
| At least $.20 but less than $.40 | 1 |
| At least $.40 but less than $.60 | 2 |
| At least $.60 but less than $.80 | 3 |
| At least $.80 but less than $1.00 | 4 |
| At least $1.00 but less than $1.20 | 5 |
| At least $1.20 but less than $1.30 | 6 |
| At least $1.30 but less than $1.40 | 7 |
| At least $1.40 but less than $1.50 | 8 |
| At least $1.50 but less than $1.60 | 9 |
| $1.60 or more | 10 |

(ii) The ratio provided under paragraph (d)(2) measuring non-AFDC cost effectiveness.

| Level of performance: | Score |
|---|---|
| Less than $.20 | 0 |
| At least $.20 but less than $.60 | 1 |
| At least $.60 but less than $1.00 | 2 |
| At least $1.00 but less than $1.40 | 3 |
| At least $1.40 but less than $1.80 | 4 |
| At least $1.80 but less than $2.10 | 5 |
| At least $2.10 but less than $2.40 | 6 |
| At least $2.40 but less than $2.70 | 7 |
| At least $2.70 but less than $3.00 | 8 |
| At least $3.00 but less than $3.30 | 9 |
| $3.30 or more | 10 |

(iii) The percentage provided under paragraph (d)(3) measuring AFDC recovery.

| Level of performance (in percent): | Score |
|---|---|
| Less than 3% | 0 |
| At least 3% but less than 4% | 2 |
| At least 4% but less than 5% | 4 |
| At least 5% but less than 6% | 6 |
| At least 6% but less than 7% | 8 |
| At least 7% but less than 8% | 10 |
| At least 8% but less than 9% | 12 |
| At least 9% but less than 10% | 14 |
| At least 10% but less than 12% | 16 |
| At least 12% but less than 14% | 18 |
| 14% or more | 20 |

(iv) The percentage provided under paragraph (d)(4) measuring AFDC current accounts receivable.

| Level of performance: | Score |
|---|---|
| Less than 5% | 0 |
| At least 5% but less than 15% | 1 |
| At least 15% but less than 25% | 2 |
| At least 25% but less than 35% | 3 |
| At least 35% but less than 45% | 4 |
| 45% or more | 5 |

(v) The percentage provided under paragraph (d)(5) measuring non-AFDC current accounts receivable.

| Level of performance: | Score |
|---|---|
| Less than 20% | 0 |
| At least 20% but less than 30% | 1 |
| At least 30% but less than 40% | 2 |
| At least 40% but less than 50% | 3 |
| At least 50% but less than 60% | 4 |
| 60% or more | 5 |

(vi) The percentage provided under paragraph (d)(6) measuring AFDC past due accounts receivable.

| Level of performance: | Score |
|---|---|
| Less than 2% | 0 |
| At least 2% but less than 4% | 1 |
| At least 4% but less than 6% | 2 |
| At least 6% but less than 8% | 3 |
| At least 8% but less than 10% | 4 |
| 10% or more | 5 |

(vii) The percentage provided under paragraph (d)(7) measuring non-AFDC past due accounts receivable.

| Level of performance: | Score |
|---|---|
| Less than 4% | 0 |
| At least 4% but less than 6% | 1 |
| At least 6% but less than 8% | 2 |
| At least 8% but less than 10% | 3 |
| At least 10% but less than 12% | 4 |
| 12% or more | 5 |

(viii) The percentage provided under paragraph (d)(8) measuring paternity establishment

| Level of performance: | Score |
|---|---|
| Less than 2% | 0 |
| At least 2% but less than 4% | 2 |
| At least 4% but less than 8% | 4 |
| At least 8% but less than 12% | 6 |
| At least 12% but less than 16% | 8 |
| At least 16% but less than 20% | 10 |
| At least 20% but less than 25% | 12 |
| At least 25% but less than 35% | 14 |
| At least 35% but less than 45% | 16 |
| At least 45% but less than 55% | 18 |
| 55% or more | 20 |

(ix) The percentage provided under paragraph (d)(9) measuring cost avoidance.

| Level of performance: | Score |
|---|---|
| Less than .25% | 0 |
| At least .25% but less than .5% | 4 |
| At least .5% but less than .75% | 6 |
| At least .75% but less than 1.0% | 8 |
| At least 1.0% but less than 1.25% | 10 |
| At least 1.25% but less than 1.5% | 12 |
| At least 1.5% but less than 2.0% | 14 |
| At least 2.0% but less than 3.0% | 16 |
| At least 3.0% but less than 4.0% | 18 |
| 4.0% or more | 20 |

(2) To be found to meet the audit criteria, a State's total score must equal or exceed 70.

**Examples.** The following tables show how typical States would be judged under the performance indicator components listed in paragraphs (d)(1) through (9).

STATE A

| Indicator | Level of performance | Score |
|---|---|---|
| 1. AFDC cost effectiveness (CE) ratio | $1.15 | 5 |
| 2. Non-AFDC CE ratio | $1.45 | 4 |
| 3. AFDC recovery rate | [1] 21 | 20 |
| 4. AFDC current accounts receivable | [1] 26 | 3 |
| 5. Non-AFDC current accounts receivable | [1] 25 | 1 |
| 6. AFDC past due accounts receivable | [1] 11 | 5 |
| 7. Non-AFDC past due accounts receivable | [1] 20 | 5 |
| 8. Paternity indicator | [1] 46 | 18 |
| 9. Cost avoidance indicator | [1] 5.5 | 20 |
| Total audit score (points) | | 82 |

[1] Percent.

STATE B

| Indicator | Level of performance | Score |
|---|---|---|
| 1. AFDC CE ratio | $2.65 | 20 |
| 2. Non-AFDC CE ratio | $2.75 | 8 |
| 3. AFDC recovery rate | [1] 7.5 | 10 |
| 4. AFDC current accounts receivable | [1] 27 | 3 |
| 5. Non-AFDC current accounts receivable | [1] 42 | 3 |
| 6. AFDC past due accounts receivable | [1] 6.5 | 3 |
| 7. Non-AFDC past due accounts receivable | [1] 9 | 3 |
| 8. Paternity indicator | [1] 56 | 20 |
| 9. Cost avoidance indicator | [1] 1.2 | 10 |
| Total audit score (points) | | 70 |

[1] Percent.

STATE C

| Indicator | Level of performance | Score |
|---|---|---|
| 1. AFDC CE ratio | $0.85 | 4 |
| 2. Non-AFDC CE ratio | $2.45 | 7 |
| 3. AFDC recovery rate | [1] 5.5 | 6 |
| 4. AFDC current accounts receivable | [1] 38 | 4 |
| 5. Non-AFDC current accounts receivable | [1] 59 | 4 |

STATE C—Continued

| Indicator | Level of performance | Score |
|---|---|---|
| 6. AFDC past due accounts receivable | [1] 5 | 2 |
| 7. Non-AFDC past due accounts receivable | [1] 9 | 3 |
| 8. Paternity indicator | [1] 10 | 6 |
| 9. Cost avoidance indicator | [1] 3.5 | 18 |
| Total audit score (points) | | 54 |

[1] Percent.

In the above examples, State A would meet the audit criterion because it received a total audit score of 82; State B would also meet the audit criterion because it had a total audit score of 70; State C would not meet the audit criterion because it had achieved a score of only 54.

(f) The scoring system provided in paragraph (e) of this section will be described and updated periodically by the Office in instructions.

38. Section 305.99 is amended by revising paragraph (b)(2), and paragraphs (d) (1), (2) and (3) to read as follows:

**§ 305.99 Notice and corrective action period.**

(a) * * *

(b) * * *

(2) Identify any audit criteria listed in § 305.20(b) of this part that the State met only marginally (that is, in 75 to 80 percent of the cases reviewed);

* * * * *

(d) * * *

(1) The State has achieved substantial compliance with the unmet criteria cited in the notice and maintained substantial compliance with any marginally-met criteria cited in the notice;

(2) During the corrective action period, the State is not implementing its corrective action plan; or

(3) The State has implemented its corrective action plan but has failed to achieve substantial compliance with the unmet criteria cited in the notice and maintain substantial compliance with any marginally-met criteria cited in the notice. For State plan-related criteria, this determination will be made as of the first full three-month period after the corrective action period. For performance related criteria, this determination will be made as of the first full fiscal year following the year in which a determination was made that performance was not in substantial compliance.

* * * * *

**§ 305.100 [Amended]**

39. Section 305.100 is amended by replacing the word "and" with the word "or" in paragraph (d).

[FR Doc. 89-1605 Filed 1-30-89; 8:45 am]

BILLING CODE 4150-04-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 83-601, RM-6505]**

### Radio Broadcasting Services; Johannesburg, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by Robert Adelman, permittee of Station KRAJ(FM), Channel 280A, Johannesburg, California, proposing the substitution of FM Channel 280B1 for Channel 280A and modificaiton of his permit accordingly, to provide that community with its first expanded coverage area FM service. The site coordinates for this proposal are 35-27-04 and 117-42-41.

**DATES:** Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners counsel, as follows: David M. Hunsaker, Esq., Putbrese & Hunsaker, 6800 Fleetwood Road, P.O. Box 539, McLean, Virginia 22101.

**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. 88-601, adopted December 2, 1988, and released January 25, 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. 89-2170 Filed 1-30-89; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 69

**[CC Docket No. 89-2; FCC 89-1]**

### Common Carrier Mergers and Acquisitions; Pooling; and Long Term and Transitional Support

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In a Notice of Proposed Rulemaking, the FCC proposed amending Part 69 of its rules to specify the effects of mergers and acquisitions among exchange carriers on common line pooling status and the long term and transitional support arrangements.

**COMMENT DATES:** Comments may be filed on or before February 16, 1989. Reply comments may be filed on or before March 3, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Douglas L. Slotten, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-9342.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking* proposing to amend Part 69 of the Commission's rules, CC Docket No. 89-2, adopted January 10, 1989, and released January 17, 1989.

The full text of this 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.

**Summary of Notice**

On April 1, 1989, changes in the mandatory common line pooling arrangements that have governed the recovery of the non-traffic sensitive (NTS) costs of exchange carriers will be implemented. These changes will allow local exchange carriers (LECs) to leave the National Exchange Carrier Association (NECA) common line cost and revenue pool if they choose and file carrier common line (CCL) tariffs based on their own costs, subject to certain conditions. These conditions include the "affiliate withdrawal requirement," which provides that carriers that choose to leave the pool and file their own common line tariffs remove all their study areas, and that departing holding companies remove all their affiliated companies. Moreover, under the new rules, once a company (or group of affiliated companies) elects to leave the NECA common line pool and file its own common line tariff, it may not choose to participate in the NECA common line pool at a later date. LECs that withdraw from the NECA pool are required to contribute long-term support (LTs) to LECs that remain in the NECA pool to enable pooling companies to tariff a CCL charge equal to the charge that would have resulted if all LECs had remained in the pool. In addition, four years of transitional support (TRS) payments will be provided to qualifying LECs that withdraw from the pool. TRS would be paid by those non-pooling companies that were net contributors to the pool in 1988. *See, MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board,* 2 FCC Rcd 2953 (1987), *aff'd on recon.,* 3 FCC Rcd 4543 (1988), *appeal pending sub non. Public Service Commission of the District of Columbia* v. *FCC,* D.C. Cir. No. 88–1661 (filed Sept 12, 1988).

The FCC initiated the rulemaking proceeding to consider what effect a LEC's involvement in a merger or acquisition should have on its participation in the revised pooling arrangements that will be implemented as part of the overall access charge plan. The FCC observed that any rules adopted must serve the four fundamental goals of the access charge proceeding: promoting economic efficiency, eliminating pricing discrimination, deterring bypass, and preserving universal service. The FCC also noted that any rules developed should be as "neutral" as possible in terms of their effect on the underlying business decisions, should not adversely affect the marketability of small telephone companies, and should not impede transactions that offer legitimate advantages to the companies and consumers involved. The FCC also stated that the approach adopted should not have the potential to cause material or unexpected changes in the pooling structure that has been developed. Finally, the FCC indicated that LECs should not be accorded flexibility to an extent that would cause major problems for NECA in administering the common line pool and associated TRS and LTS arrangements, or for Commission review of the LECs' tariff filings. The FCC invited comment on whether these concerns accurately describe the factors that should guide its decisions.

The FCC noted that the current rules governing the revised pooling arrangements do not adequately address issues relating to the pooling status of LECs involved in a merger or acquisition, and will require some modification to accommodate these circumstances. Indeed, the Federal/State Joint Board in CC Docket Nos. 78–72 and 80–286 recognized that the FCC would need to consider these matters on a more complete record. However, the FCC found a proposal from several LECs unacceptable. That proposal essentially would have permitted a LEC that acquired another LEC with a pooling status different from its own to determine at its option whether the acquired LEC should retain its current pooling status or convert to the status of its new affiliate(s). The FCC found that the industry proposal could have a substantial adverse impact on the revenue requirement of the common line pool, and thus on the LTS obligations of the non-pooling LECs because of the ability of LECs to structure transactions to take advantage of the support mechanisms. Second, the FCC determined that the procedure suggested by the industry for challenging transactions that would have a substantial impact on the LTS obligations, and hence the CCL charges, of non-pooling LECs is vague and undefined, and could well lead to uncertainty and controversy in virtually every transaction that contemplates any change in pooling status. Finally, the FCC was concerned that the broad scope of flexibility could result in a substantial number of holding companies having some of their affiliates in, and some out, of the NECA common line pool, thereby possibly substantially complicating NECA's rate calculation and billing functions and the FCC's tariff review process.

The FCC proposed modifications affecting three potential scenarios: (1) Both companies desire to operate outside the NECA pool; (2) both companies want to be included in the NECA common line pool; and (3) each company wants to retain its preexistin status. The FCC indicated that the effective date for any such change in common line pooling status must coincide with the effective date of the annual tariff filing following consumation of the relevant transactio

The FCC indicated that if the acquiring LEC (or the surviving entity a merger context) determines that all the newly affiliated companies should leave the common line pool they could do so. The FCC determined that its rul providing that after the transition peri LTS obligations will be allocated base upon the percentage of lines attributed to each non-pooling carrier will accommodate mergers and acquisition However, the FCC proposed specific rules governing the LTS or TRS arrangements that would apply to the new entity or entities outside the pool when the departure from the NECA po occurred during the transition period. the non-pooling Company was obligat to pay both LTS and TRS (and was no receiving TRS) prior to the transaction the FCC proposed that the new entity (or affiliated entities) would likewise b obligated to pay LTS and TRS accordi to a formula that adds together the 19 Base Years of the separate pre-transaction companies. If Company A had been receiving TRS based on Company A's 1988 Base Year (and had therefore not been required to pay LT or TRS), the FCC proposed that TRS payments not be adjusted to reflect th effect of the merger or acquisition involving Company B. Thus, the new entity or affiliated entities would recei TRS based only on Company A's 1988 Base Year. Moreover, if Company B ha been a net recipient in the NECA pool the time of its departure, the FCC proposed not to require the surviving entity or entities to pay LTS or TRS during the transition period. However, Company B had been a net contributor to the pool, the FCC proposed to requir the surviving entity or entities to pay LTS and TRS based on the 1988 Base Year or Company B during the transitio period.

The FCC also addressed the questio of what LTS and TRS arrangements should apply when two companies outside the pool are involved in a merger or acquisition. It proposed that the companies involved are all LTS and TRS contributors, their new LTS and TRS obligations should be calculated based on the combined 1988 Base Year of the companies. Similarly, if all the companies involved are TRS recipients

their new TRS benefits should be based on the combined 1988 Base Years of the companies. If, however, a company that is an LTS/TRS contributor acquires or merges with a TRS recipient LEC, the FCC proposed that, for the duration of the transition period, the new entity continue to contribute to the LTS and TRS funds according to the 1988 Base Year formula of the pre-transaction contributor LEC, and continue to receive TRS according to the 1988 Base Year formula of the pre-transaction recipient LEC.

LECs with different pooling positions might also seek to have the LEC outside the pool reenter the pool, either through a merger with the LEC already in the pool or by being acquired as an affiliate of the pooling company. The FCC stated that it recognized that allowing a company that has left the pool to reenter the pool at a later date is inconsistent with our "no pool reentry" principle, but indicated that it believed it would be appropriate to apply a somewhat less restrictive rule in the circumstances of a merger or acquisition so that companies would not be unduly deterred from negotiating an otherwise desirable business transaction simply because their different pooling positions might require them to utilize separate corporate structures or administrative procedures that they considered less efficient. The FCC stated that certain safeguards must be applied when LECs seeks to reenter the pool in a merger or acquisition context in order to protect against any major adverse impact to the pool, and indirectly to the LTS obligations of non-pooling LECs. To address these concerns, the FCC proposed that if a non-pooling company wishes to reenter the pool because it is involved in a merger or acquisition with a LEC in the pool, it must seek and obtain a waiver from the FCC before it would be allowed to reenter the pool. To obtain such a waiver, LECs would have to demonstrate that the overall pooling structure would not be materially harmed. Specifically, the petitioning companies would have to show that the reentry of the non-pooling LEC(s) into the pool would not have a substantial adverse effect on the revenue requirement of the pool, and would also not significantly increase the LTS and/or TRS obligations of the remaining non-pooling LECs. In evaluating such waiver requests, the FCC stated that the Common Carrier Bureau would also take into account the comparative benefits that would flow to the public from consolidating the companies' operations within the NECA common line pool.

Finally, a LEC acquiring another company with a different pooling status may desire to have each party to the transaction retain its pre-transaction pooling position for either a transition period or for an indefinite period of time. While such an option would be inconsistent with the principles underlying the affiliate withdrawal rule, the FCC indicated that it considered that it might again be appropriate to provide for some flexibility in this respect to achieve sufficient neutrality regarding the marketability of telephone companies. The FCC accordingly proposed as a first option that, when LECs with different pooling positions are involved in an acquisition, those LECs should be permitted to retain their pre-transaction pooling positions for a three-year transition period following the consumation of the transaction. Alternatively, the acquired LEC could be permitted to remain in the pool indefinitely if its costs are greater than a fixed percentage of the nationwide average. For example, if the FCC's rules were to provide that companies with costs over 150 percent of the nationwide average that are acquired by a non-pooling LEC could stay in the pool indefinitely (or until its costs drop below the specified level), the higher cost companies that would be in greatest need of the risk sharing and administrative savings offered by participation in the pool would be able to avail themselves of this protection. The FCC tentatively concluded that, of these two alternatives, the three-year "transition period" proposal best serves the identified goals.

The FCC sought comment on the principles it had identified as guiding its proposed approach, and on the extent to which its proposal serves those goals. In addition, the FCC asked commenting parties to discuss logistical or administrative considerations involved in implementing its proposal, and to identify any practical implementation issues or other problems relating to the feasibility of the approach it proposed.

The FCC certified that the requirements contained in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable to the rules adopted in this proceeding.

### Paperwork Reduction

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

### Ordering Clauses

Pursuant to sections 1, 4(i)–(j), and 403 of the Communications Act of 1934, as amended, and section 553 of the Administrative Procedure Act, notice is hereby given of a proposal to amend Part 69 of the Commission's Rules.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 89–1574 Filed 1–30–89; 8:45 am]

BILLING CODE 6712–01–M

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## 47 CFR Part 73

**[MM Docket No. 88–600, RM–6468]**

## Radio Broadcasting Services; Colorado City, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Diana L. Le Baron, seeking the allotment of FM Channel 296C1 to Colorado City, Arizona, as that community's first local broadcast service. Reference coordinates for this proposal are 36–59–24 and 112–58–36.

**DATES:** Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Diane L. Le Baron, 781 N. Valley View Dr., #34, St. George, UT 84770.

**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. 88–600, adopted November 30, 1988, and released January 25, 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. 89-2166 Filed 1-30-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-603, RM-6455]**

## Radio Broadcasting Services; Hot Springs Village, AR

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed on behalf of Caddo Broadcasting Co., seeking the allotment of FM Channel 225A to Hot Springs Village, Arkansas, as that community's first local broadcast service. Reference coordinates for this proposal are 34-40-19 and 92-59-55.

**DATES:** Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Tom Nichols, General Partner, Caddo Broadcasting Co., P.O. Box S, Glenwood, Arkansas 71943

**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. 88-603, adopted December 2, 1988, and released January 25, 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. 89-2167 Filed 1-30-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-602, RM-6502]**

## Radio Broadcasting Services; Buena Vista, CO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Robert D. and Marjorie M. Zellmer, seeking the allotment of FM Channel 281A to Buena Vista, Colorado, as that community's first local FM broadcast service. Reference coordinates for this proposal are 38-50-30 and 106-07-54.

**DATES:** Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 1989.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Robert D. and Marjorie M. Zellmer, Box 2224, Greeley, CO 80632.

**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. 88-602, adopted December 2, 1988, and released April 4, 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. 89-2169 Filed 1-30-89; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 88-599, RM-6501]**

## Radio Broadcasting Services; Salem, IN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed on behalf of Gary Albarez, seeking the allotment of Channel 250A to Salem, Indiana, as that community's second local FM broadcast service. Reference coordinates for this proposal are 38-38-13 and 86-09-47.

**DATES:** Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 1989.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Daniel F. Van Horn, Esq., Arent, Fox, Kintner,

Plotkin & Kahn, 1050 Connecticut Ave., NW., Washington, DC 20036–5339.

**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. 88–599, adopted December 2, 1988, and released January 25, 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. 89–2168 Filed 1–30–89; 8:45 am]

**BILLING CODE 6712–01–M**

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**47 CFR Part 73**

**[MM Docket No. 88–613, RM–6483]**

## Radio Broadcasting Services; Dickson, TN and Benton, KY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition by American Communications, Inc., licensee of Station WQZQ(FM), Channel 273C2 at Dickson, Tennessee, proposing the substitution of Channel 273C1 for Channel 273C2 at Dickson and modifications of its license to specify operation on the higher class co-channel. In order to accomplish the Dickson substitution, the substitution of Channel 256A for Channel 272A (Station WCBL–FM) at Benton, Kentucky, is required. In addition the coordinates specified for the proposed use of Channel 273C1 at Dickson are 36–12–30 and 87–23–20. The restricted site is 14.4 kilometers (9.0 miles) north of Dickson.

**DATES:** Comments must be filed on or before March 20, 1989, and reply comments on or before April 4, 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: John L. Tierney, Esquire, Ann Bavender, Esquire, Tierney & Swift, 1200 18th Street, NW., Suite 210, Washington, DC 20036 (Counsels for 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. 88–613, adopted December 2, 1988, and released January 25, 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. 89–2165 Filed 1–30–89; 8:45 am]

**BILLING CODE 6712–01–M**

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## INTERSTATE COMMERCE COMMISSION

**49 CFR Part 1103**

**[Ex Parte No. 55 (Sub–No. 70)]**

## Practitioners

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** By advance notice of proposed rulemaking the Commission solicited comments on various proposals to change its procedures regarding the licensing of non-attorney ICC practitioners. (See 53 FR 53029, December 30, 1988) The Commission has received a joint request for extension of the comment period from the Association of Transportation Practitioners and the Transportation Lawyers Association. Those groups request the extension so that they can review the matter with their memberships before they submit their comments. That request for extension will be granted.

**DATE:** Comments must be received by March 31, 1989.

**ADDRESS:** An original and 15 copies of comments (and any replies) should be sent to: Ex Parte No. 55 (Sub-No. 70), Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

**List of Subjects for 49 CFR Part 1103**

Administrative practice and procedure.

Decided: January 25, 1989.

By the Commission, Heather J. Gradison, Chairman.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89–2180 Filed 1–30–89; 8:45 am]

**BILLING CODE 7035–01–M**

# Notices

Federal Register
Vol. 54, No. 19
Tuesday, January 31, 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 COMMERCE

### International Trade Administration

[A-588-801]

### Final Determination of Sales at Less than Fair Value: Certain All-Terrain Vehicles From Japan

**ACTION:** Notice.

**SUMMARY:** We determine that certain all-terrain vehicles (ATVs) from Japan are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination and have directed the U.S. Customs Service to continue to suspend liquidation of all entries of certain ATVs from Japan as described in the "Suspension of Liquidation" section of this notice. The ITC will determine, within 45 days of the date of publication of this notice, whether these imports are materially injuring, or threaten material injury to, a U.S. industry.

**EFFECTIVE DATE:** January 31, 1989.

**FOR FURTHER INFORMATION:** Contact Michael Ready or Louis Apple, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 377–2613 or 377–1769.

**SUPPLEMENTARY INFORMATION:**

#### Final Determination

We determine that certain ATVs from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act). The weighted-average dumping margin for each company is shown in the "Suspension of Liquidation" section of this notice.

#### Case History

Since our preliminary determination (53 FR 35220, September 12, 1988), the following events have occurred.

On September 8, 9 and 12, Honda Motor Co., Ltd. (Honda), Yamaha Motor Co., Ltd. (Yamaha), and Suzuki Motor Co., Ltd. (Suzuki) requested a postponement of the final determination until not later than 135 days after the date of publication of the preliminary determination pursuant to section 735(a)(2)(A) of the Act. On September 21, 1988, we issued a notice postponing the final determination until January 25, 1989 (53 FR 37618, September 27, 1988).

During the month of September, 1988, Honda, Yamaha and Suzuki replied to our cost of production questionnaire. Verification of both the sales and cost of production questionnaire responses was conducted in Japan, the United States, and Canada during the period between later September and early November, 1988.

A public hearing was held on December 14, 1988. Petitioner and respondents filed pre-hearing briefs on December 8, 1988, and post-hearing briefs were filed on December 21, 1988.

#### Scope of Investigation

The products covered by this investigation are certain all-terrain vehicles, assembled or unassembled, provided for in item 692.1090 of the *Tariff Schedules of the United States Annotated* (TSUSA) and classifiable under sub-heading 8703.21.0000 of the Harmonized Tariff Schedule.

Certain all-terrain vehicles are motor vehicles designed for off-pavement use by one operator and no passengers and contain internal combustion engines of less than 1000cc cylinder capacity. The ATVs under investigation are non-amphibious, have three or four wheels, and weigh less than 600 pounds. They have a seat designed to be straddled by the operator and handlebars for steering control.

#### Period of Investigation

The period of investigation is September 1, 1987, through February 29, 1988.

#### Such or Similar Comparisons

Pursuant to section 771(16)(C) of the Act, we established two categories of "such or similar" merchandise for all respondent companies: 1) Three-wheel ATVs; and 2) four-wheel ATVs. As noted below, Honda, Suzuki and Yamaha all lacked sufficient home market sales in either such or similar category to serve as the basis for calculating foreign market value. Therefore, for purposes of the preliminary determination, we based foreign market value on sales to a third country, Canada. For all three companies, sales to Canada reflect the largest sales volume of any country outside the home market or the United States.

The percentages of each respondent's total sales to the United States that were used for such or similar comparisons were: 61.0 percent for Honda, 79.8 percent for Yamaha; and, 92.6 percent for Suzuki.

#### Fair Value Comparisons

In order to determine whether sales of ATVs from Japan to the United States were made at less than fair value, we compared the United States price to the foreign market value as specified below. As noted in our preliminary determination, one of the manufacturers, Kawasaki Heavy Industries, Ltd. (Kawasaki), did not reply to the questionnaire. Therefore, we have determined, consistent with the best information available provisions of section 776(c) of the Act, that it is appropriate for the purposes of this determination to assign to Kawasaki the higher of either: (1) The highest margin indicated for Kawasaki in the petition; or, (2) the hightest weighted-average margin found for any company that did respond to the questionnaire. Following this approach for this determination, we have assigned Kawasaki the highest margin indicated for Kawasaki in the petition.

Another manufacturer, Honda, refused to reply to our cost of production questionnaire as it related to ATV models produced prior to the 1987 model year. As we determined for Kawasaki, we determined for Honda that it is appropriate to assign it the higher of: The highest weighted-average margin found for any responding firm, or the highest margin indicated in the petition for the non-responding firm. Following this approach, we have assigned to Honda's sales of pre-1987 models the highest margin indicated for Honda in the petition.

#### United States Price

For all sales by Honda, Yamaha, and Suzuki, we based United States price on exporter's sales price (ESP), in accordance with section 772(c) of the Act, because in each case the sale to the first unrelated purchaser took place

after importation into the United States. We calculated ESP based on packed, f.o.b. seller's warehouse prices to unrelated purchasers in the United States. We made deductions, where appropriate, for brokerage and other export expenses in Japan, inland freight in Japan, ocean freight, marine insurance, U.S. customs duty and user's fees, inland freight and related expenses associated with moving the ATVs to the seller's warehouse in the United States, discounts, rebates, assembly and inspection allowances, credit expenses, advertising expenses, warranty expenses, and, pursuant to section 772(e)(2) of the Act, indirect expenses, including inventory carrying expenses incurred in both Japan and the United States.

**Foreign Market Value**

In order to determine whether there were sufficient sales of ATVs in the home (Japanese) market to serve as the basis for calculating foreign market value, we compared the volume of home market sales within each such or similar category to the total volume of third country sales within each respective such or similar category. For each of the three respondents, for both such or similar categories, we found that home market sales were insufficient to serve as the basis for foreign market value. Not having any grounds to believe or suspect that respondents' third country sales were below cost of production within the meaning of section 773(b) of the Act, we found that Canada was the appropriate third country market to serve as the basis for foreign market value for both such or similar categories in our preliminary determination.

On July 14, 1988, petitioner alleged that Canadian sales for all respondents were at prices below the cost of producing the merchandise. Having determined that these allegations were sufficiently documented, the Department initiated a cost investigation for Honda, Suzuki and Yamaha. We examined production cost data submitted by the respondents, including costs for materials, fabrication and general expenses. The cost of production (COP) calculation for each respondent was adjusted for those costs which were not appropriately quantified or valued in the response (see adjustments below).

In addition, an amount representing inventory carrying costs for 1987, was included in general expenses for all ATV models produced in that year and sold by the respondents during the period of investigation. The amount was determined as an estimate of the interest expense incurred in holding 1987 ATV models in inventory for an additional year (*i.e.*; for both 1987 and 1988). The estimate was based on the same methodology we used for calculating actual inventory carrying costs in 1988. It was calculated by multiplying the cost of carrying in inventory each 1987 ATV by an estimate of the 1987 internal borrowing rate for each of the three respondents. The amount calculated was then included in the cost calculation along with the actual interest expense reported as incurred by each respondent during 1988.

The following adjustments were made to the cost data submitted by each responent:

*A. Honda*

(1) General and administrative (G&A) expenses, including research and development (R&D) expenses and interest expenses, were reallocated using the cost of sales percentage (as reported in the Ministry of Finance Report) and the cost of manufacturing for each model)

(2) Reported interest income was excluded from the calculation of net interest expense due to the lack of documentation supporting the company's assertion that interest income was related to working capital and ATV operations.

(3) Foreign exchange gains reported as a credit against selling, general and administrative (S, G&A) expenses were excluded from the COP and constructed value (CV) calculations since it could not be demonstrated that such gains were related to working capital and ATV production.

(4) An adjustment was made to COP/CV to reflect the write-off of certain obsolete ATVs held in inventory.

(5) A portion of R&D expenses included in the cost of manufacturing was reallocated to G&A expenses. The portion reallocated represented R&D of a more general nature and was not considered to be a product-specific cost.

(6) An adjustment was made to the cost of materials in the COP/CV calculation to reflect more fairly the market value of items received from related parties.

(7) Movement expenses, such as ocean freight and maritime insurance, were excluded from the COP/CV calculations.

*B. Suzuki*

(1) Adjustments to cost variances for all 1987 Canadian models were submitted by Suzuki at verification. These adjustments were accepted since they were both verifiable and represented only slight differences from the variances submitted in the company's response.

(2) Total R&D expense was recalculated to include not only product specific R&D, but also an allocated portion of other, more general types of R&D expenses.

(3) G&A was adjusted to include legal fees incurred in the dispute over new U.S. ATV safety regulations.

(4) The respondent's adjustment eliminating profit on parts received from related suppliers was not accepted since it was not based on the actual profit realized on such transactions. Instead, no adjustment was allowed for profit on parts received from related suppliers.

(5) Interest expense percentage was calculated using consolidated interest expense and cost of goods sold from the Ministry of Finance Report.

(6) Reported interest income was excluded from the calculation of net interest expense due to the lack of documentation supporting the company's assertion that interest income was related to working capital and ATV operations.

(7) The G&A percentage was calculated using the ratio of total G&A expenses to total sales revenues rather than the ratio of total G&A to total export sales.

*C. Yamaha*

(1) Certain items included in G&A expenses, such as realized dividend income and gain on sales of marketable securities, were disallowed for the COP calculation as they were unrelated to the ATV manufacturing process.

(2) A portion of rental income was disallowed. The amount of rental income included in the COP calculation was that portion which related directly to rental expense as reported in the records of Shinba, a related company.

(3) Certain income items included in "other income" were disallowed for the COP calculation because they represented reimbursements for prior period expenses.

(4) Actual costs, rather than standard costs, were used for components transferred between related companies.

We compared the Canadian sales prices, net of all applicable movement expenses, Canadian duty, Canadian sales tax, discounts and rebates, to the cost of production. For Suzuki and Yamaha, we found sufficient Canadian sales above the cost of production to allow us to use these prices for foreign market value in accordance with section 773(a)(1)(A) of the Act. Therefore, we calculated foreign market value based on packed f.o.b. seller's warehouse or delivered prices to unrelated purchasers

in Canada. We made deductions, where appropriate, for brokerage and other export expenses in Japan, inland freight in Japan, ocean freight, marine insurance, Canadian customs duty, Canadian Federal Sales Tax, inland freight and related expenses associated with moving the ATVs to the seller's warehouse in Canada, discounts, rebates, inland freight from seller's warehouse to customer, credit expenses, warranty expenses, and advertising expenses. We offset indirect selling expenses incurred on Canadian sales up to the amount of selling expenses incurred on sales in the U.S. in accordance with § 353.15(c) of our regulations.

In order to adjust for differences in packing between the two markets, we deducted Canadian packing costs from the foreign market value and added U.S. packing costs.

We made adjustments, where applicable, for differences in the physical characteristics of the merchandise in accordance with § 353.16 of the Regulations.

In the case of Honda's Canadian sales, we found an insufficient number above its cost of production. Therefore, foreign market value was based upon constructed value in accordance with section 773(e) of the Act. When calculating constructed value, the respondent's submission was used, except when reported costs were not appropriately quantified or valued. With the exception of certain Canadian selling expenses (such as warranty expenses), cost of materials, fabrication and general expenses were based upon production costs for U.S. sales.

In computing general expenses for constructed value, we added amounts for Canadian warranty expense, advertising, post-sale credit expenses and inventory carrying expenses associated with Canadian sales. Deductions were made for interest charged Canadian customers and, in order to avoid double counting, for the portion of estimated interest expense allocated to accounts receivable and inventory. With the exception of this latter deduction, all additions and deductions were calculated by model using a weighted-average methodology.

Since the calculated amount for general expenses was greater than the statutory minimum of ten percent of the cost of materials and fabrication as specified in section 773(e)(1)(B) of the Act, we used the calculated amount. Additionally, the amount of reported profit was less than eight percent of the sum of the cost of materials, fabrication and general expenses specified in section 773(e)(1)(B). We therefore, used the statutory minimum of eight percent. Finally, we added U.S. packing costs to arrive at the total constructed value for the product under investigation. We made appropriate deductions from the constructed value for credit expenses, warranties and advertising, in accordance with 19 CFR 353.15(a). In relevant circumstances, we added interest charged to customers to the constructed value. We also made an adjustment to constructed value for indirect selling expenses, in accordance with 19 CFR 353.15(c).

**Currency Conversion**

Since all U.S. sales were exporter's sales price transacitons, we used the official exchange rates in effect on the date of sale, in accordance with section 773(a)(1) of the Act, as amended by section 615 of the Trade and Tariff Act of 1984. All currency conversions were made at rates certified by the Federal Reserve Bank of New York.

**Verification**

We verified the information used in making our final determination in accordance with section 776(b) of the Act. We used standard verification procedures including examination of relevant accounting records and original documents of the respondents.

**Interested Party Comments**

*Honda*

*Comment 1*

Petitioner argues that Honda's writedown of ATV inventory should be included as an expense in the COP/CV. The respondent advocates allocating only a portion of this total write-off on the basis of additional information submitted subsequent to the cost verification.

*DOC Position*

The Department agrees in principle that the value of obsolete inventory written off represents one of the costs incurred in producing ATVs. As such, it should be allocated over the period during which obsolescence is assumed to have occurred. An adjustment was made to allocate the cost of ATV inventory write-offs to the period's ATV production. Information submitted subsequent to verification was not considered in such calculations.

*Comment 2*

The respondent states that the reported cost of materials and components purchased from affiliated companies in which Honda has a 5–49% ownership interest should be accepted although the "market value" of these components was not fully supported. Respondent further states that it provided all documentation which was reasonably available. Respondent argues that these components were specifically designed for Honda products and, therefore, there are no market prices for identical merchandise. The respondent states that Honda's minority interest in these suppliers does not affect the price of purchased components and, in fact, the prices reflect an "arms length" transaction.

The petitioner argues that since Honda did not provide satisfactory evidence of the market value of components, the Department should base component values on the best information available.

*DOC Position*

The Department informed all respondents prior to verification of the need to establish that significant component purchases from related companies were conducted at arm's length, and that the prices charged reflected the component's true market value. Honda did not establish the arm's-length nature of the transactions, nor did the company provide adequate documentation of the components' market value. The company did provide financial statements for three of its related suppliers, nothing that each of the suppliers operated at a profit during the period of investigation. However, the financial statements were provided subsequent to our verification and since the suppliers provided parts and components for a number of purchasers, we could not ascertain that the particular parts sold to Honda were at market value. Therefore, the Department reviewed other respondents' direct material costs for similar models, and established a percentage factor representing the higher materials costs incurred by the other companies. This factor was added to Honda's direct materials costs as "best information available".

*Comment 3*

Respondent contends that the Department should include Honda's foreign exchange "gain" in its COP/CV calculation.

*DOC Position*

The Department diagrees. Exchange rate gains unrelated to the production of the merchandise under investigation are not properly considered credits to COP/CV. In Honda's case, net foreign exchange gains were not considered an offset against financial expenses since

they were not demonstrated to be directly related to the production of ATVs.

*Comment 4*

Respondent maintains that G&A expenses are properly functions of the sales value of the products and, therefore, should be allocated based on the c.i.f. value of the merchandise produced.

*DOC Postion*

G&A expense items are normally associated with the cost of producing merchandise and maintaining an organization's structure. For purposes of calculating COP and CV, G&A is determined as a percentage of total cost of manufacturing for all ATV products. This percentage is then applied to cost of manufacturing for each individual product. Calculating G&A expenses as a percentage of c.i.f. value, and then applying that percentage to cost of manufacturing, would be distortive in that it would understate the G&A incurred in producing and selling the ATVs under investigation.

*Comment 5*

R&D activities carried out by a related company are reimbursed by Honda based on the period's sales results. Honda therefore believes R&D allocated to the subject ATVs should be on the basis of c.i.f. value.

*DOC Position*

The Department believes that the nature of R&D activities is properly associated with the cost of manufacturing. In this case, the specific repayment terms between the related companies does not change the appropriate method of allocating these costs. Therefore, for the purpose of the COP and CV calculations, these costs were adjusted on a cost of manufacture basis.

*Comment 6*

Respondent contends that the Department should exclude all three-wheel ATVs from its fair value comparison. Honda contends that these models are obsolete and no longer being imported into, or sold in, the United States. Furthermore, consistent with a consent decree affecting ATV sales, Honda has no plans to resume United States imports or sales of three-wheel ATVs.

*DOC Position*

We disagree. The antidumping duty law is intended to eliminate unfair price discrimination—that is, the dumping of merchandise in the United States at prices below those in effect in the foreign producer's home or other export markets. To this effect, the law clearly contemplates that the Department will select a period during which sales of the subject merchandise have occurred and to establish, where justified, an estimated dumping margin which may or may not be reviewed and revised during later periods.

We have determined, and no one has contested, that a petition covering three and four-wheel ATVs was properly filed in this case. Therefore, three-wheel ATVs comprise part of the merchandise subject to investigation.

The Department will, on occasion, exclude certain U.S. sales from its fair value comparisons when those sales are not representative of the respondent's selling practices in the U.S. market, or where those sales are so small that they would have an insignificant effect on the margin. In this case, however, there is nothing particularly unusual about Honda's sales of three-wheel ATVs in the United States. It is not possible to conclude that Honda's pricing practices with respect to three-wheel ATVs are not representative of its behavior in the U.S. market.

In sum, the Department is required to take a snapshot of Honda's pricing practices during the period of investigation and to calculate a dumping margin based upon these sales. Since Honda sold three-wheel ATVs during the period of investigation in the United States, three-wheel ATVs are properly included within our dumping calculation.

*Comment 7*

The respondent contends that the Department should not use a sale-by-sale interest expense for inventory carrying and post-sale credit expenses in its calculation of COP and CV. It contends that the Department is required to use whatever amount appears in Honda's financial statements and records.

The petitioner states that it is essential for the Department to include so-called "imputed" interest expenses in the COP and CV calculations. In order to measure accurately the relative returns obtained by Honda, the petitioner argues that the Department must calculate credit and inventory carrying expenses on a sale-specific basis. The petitioner further states that the use of sale-specific data is consistent with generally accepted accounting principles.

*DOC Position*

We cannot accept respondent's argument that no adjustment to the fair value comparison should be made for *actual differences* in the extension of credit by the firm and the time for which finished merchandise is maintained in inventory. The fact that Honda has essentially chosen not to finance its accounts receivables and inventory carrying costs with short-term borrowings does not dispose of the fact that Honda has had differing credit and inventory carrying experiences in the United States and Canada. *See Silver Reed v. United States,* Slip Op. 88–5 (CIT, January 12, 1988). We also cannot embrace the calculation of interest expenses according to one methodology in the case of U.S. sales (*e.g.,* imputed interest expenses) and another methodology in the case of home or third country sales (*e.g.,* actual interest expense). Therefore, inventory carrying costs and post-sale credit expenses should be calculated (1) on a sale-specific basis, not as an allocation of total actual cash outlays and (2) the same way for both foreign market value (including constructed value) and United States price. The Department has, therefore, followed its usual practice and included an imputed interest expense for these items as part of selling expenses in constructed value, *see e.g., Final Determination of Sales at Less Than Fair Value; Certain Granite Products from Italy,* 53 FR 27187, 27191 (July 19, 1988), and adjusted for the actual differences in the extension of credit by the firm and the time finished merchandise is maintained in inventory. *See e.g., Color Televisions from Korea; Final Results of Administrative Review of Antidumping Duty Order,* 49 FR 50420, 50427, 50430 (Dec. 28, 1984); *Portable Electric Typewriters from Japan; Final Results of Administrative Review of Antidumping Order,* 48 FR 40761 (Sept. 9, 1983). To avoid double counting the portion of reported interest expense attributable to accounts receivable and inventory carrying costs was deducted from total interest charges in CV.

In the case of cost of production calculations, however, price discrimination and relative returns on sales are not at issue. When we calculate COP pursuant to section 773(b) of the Act, we are only interested in determining the actual costs incurred to produce the merchandise under investigation. Once those costs have been determined, the Department compares them with the revenue generated from the sale of the merchandise in the home or third country market to determine whether, in fact, these sales have been made at below cost. *See* 19 CFR 353.7. Because

we are not comparing COP to United States sales, there is no need to measure the actual differences that may or may not exist between home market or third country selling expenses and U.S. selling expenses. Therefore, the methodology which leads us to impute interest expenses when making fair value comparisons is simply not present when calculating COP. As we explained in *Color Television Receivers from Korea; Final Results of Antidumping Duty Administrative Review*, 53 FR 24975, 24977 (July 1, 1988):

> In a cost of production calculation, we are not concerned with costs in the same way we are where there are differences in circumstances of sale and adjustments must be made in order to compare U.S. and home market prices on an 'apple-to-apple' basis. Therefore, whether imputed costs used for a circumstance of sale adjustment are higher or lower than respondents' actual financing costs is not relevant for purposes of determining cost of production.

*Id.* at 24977.

In certain recent final antidumping duty determinations, the Department did not apply this methodology. *See e.g., Final Determination of Sales at Less Than Fair Value; Certain Internal Combustion, Industrial Forklift Trucks from Japan*, 53 FR 12552, 12555 (April 15, 1988). After extensive consideration of this issue, and after reviewing the lengthy comments of the parties at the hearing and in their written briefs, we have determined to follow the methodology outlined in the Korean TV determination.

*Comment 8*

Respondent maintains that the Department should limit its COP/CV calculation to the 1987 and 1988 ATV models for which Honda supplied full and complete cost information. Respondent contends that it would have been enormously difficult, if not impossible, to report cost information for pre-1987 models. Petitioner urges the Department to reject this claim. It contends that the COP/CV for pre-1987 models should be based on the cost to produce current models as the best information available.

*DOC Position*

During the period of investigation, Honda sold in the United States ATVs produced for the model years 1983–1988. Honda only provided cost of production information for 1987 and 1988 models, which accounted for about 90 percent of Honda's sales to the U.S. during the period of investigation. Lacking cost data for the pre-1987 models, we were unable to determine whether or not these models were sold below their cost of production. Therefore, as noted above, for best information available pursuant to section 776(c) of the Act, we have assigned to Honda's sales of pre-1987 models sold in both the Canadian and U.S. markets, the highest margin indicated for Honda in the petition.

*Yamaha*

*Comment 9*

The petitioner raises a number of questions regarding the validity of the processing standards developed from a processing time study which Yamaha failed to retain in its records.

The respondent argues that it is impractical to maintain records of all the time studies on which the standards are based due to the large number of finished products and the number of parts and processing steps involved to produce ATVs. Respondent claims that since the variances among products in the motorcycle factories did not significantly differ, the standards must be fairly accurate to approximate actual costs so closely.

*DOC Position*

At verification: (1) The methodology for developing the standard costs, (2) the elements (i.e., depreciation, labor) of the standard costs, (3) the relationship of the standard costs to budgeted costs and (4) the use of the standard costs in YMC's normal accounting system, were tested. We determined that sufficient information was available to support the reasonableness of these processing standards.

*Comment 10*

The petitioner argues that adjusting standard costs for a single month by an annual variance is not an acceptable method for arriving at actual costs. It is not acceptable for Yamaha to submit costs only for the month of March, which is outside the period of investigation.

The respondent argues that Yamaha does not maintain a product-specific/assembly line ATV variance in its normal accounting practice. Yamaha uses full-year, rather than semi-annual variances because of the stability of actual material prices during the fiscal year, and because supplier rebates are included only in the full-year variance.

*DOC Position*

Shinba, Yamaha's related assembly plant, only accumulates product-specific costs during the month of March. Therefore, to facilitate verification, we accepted Yamaha's March standard cost information, which incorporated the cost data for Shinba. However, we also examined Yamaha's cost information for several months within the period of investigation to ensure that March standard costs were representative of cost standards during the period of investigation, and were not significantly higher, lower, or otherwise misleading. Since March standard costs were determined to be representative of the full 1988 fiscal year, applying the annual variance to those standards provides an accurate representation of the actual costs incurred.

*Comment 11*

The petitioner argues that use of factory-wide variance distorts the adjustment from standard costs to actual costs.

The respondent argues that there is little deviation from using a factory-wide variance instead of product-specific variances which the factory does not maintain. When Yamaha repurchases the fully-assembled ATV from Shinba, it reports the assembly cost as its cost of goods sold. Thus, the company feels that it is unnecessary to calculate a product-specific variance for ATV engines.

*DOC Position*

Although we agree with the petitioner that product-specific variances would be desirable, we verified that the respondent used a weighted average of the finished product variances within the factory, and therefore are satisfied that a factory-wide variance is an acceptable alternative.

*Comment 12*

The respondent argues that in order to support the "market value" of components obtained from related companies, it submitted adequate component cost information during verification which demonstrated that major components were purchased by Yamaha at prices above their costs.

*DOC Position*

We verified the cost of production of a number of major components at two related suppliers, and determined that costs were below the transfer price to Yamaha.

*Comment 13*

The respondent contends that it has adequately clarified that both the net loss on disposal of fixed assets and net interest expenses are included in the general and administrative expenses provided in Shinba's cost response.

*DOC Position*

We agree. During verification we identified these items as part of general and administrative expenses.

*Comment 14*

The petitioner argues that Yamaha did not provide a sufficient reason for not submitting Shinba's processing costs for models produced in 1987.

The respondent argues that it was justified in using actual 1988 processing costs as the basis of costs for both 1987 and 1988 model year units. Since the company does not develop information on assembly costs for particular models, the respondent would have had to calculate the cost of production for the year ended March 31, 1987 by developing assembly time for each model produced in 1987. Due to the enormous difficulty of these calculations, the company used 1988 costs as a substitute.

*DOC Position*

We verified the use of the assembly time study and the fiscal year 1988 processing costs used for the 1987 costs, and determined that fiscal year 1988 processing data provided an acceptable basis upon which to calculate 1987 processing costs.

*Comment 15*

The respondent argues that the omission of certain items from the general expenses of the two related suppliers which were reviewed, and the various methodologies used to allocate general expenses to product lines, are not issues for consideration since these items have no impact on the investigation. For the submission, Yamaha used an aggregate general expense ratio, which results in figures similar to the actual general expenses.

*DOC Position*

We determined that calculating general expenses using an aggregate general expense ratio produces virtually the same results as using actual general expenses. Therefore, no adjustment was made to the data in the questionnaire response.

*Comment 16*

The petitioner argues that material costs transferred to Shinba are based solely on the standard costs in Yamaha's inventory system, and that Yamaha has made no attempt to reconcile these standard costs to Shinba's actual costs or to include related variances. Thus, the petitioner believes the submitted costs are not Yamaha's actual costs.

The respondent argues that products transferred to Shinba for incorporation into a finished ATV are ultimately recorded in its costs of goods sold at the fully-assembled transfer price. For the purposes of Shinba's cost accounting system, as an independent accounting entity, it is impossible to pass through variances as in the case of the accounting methodology used for the so-called independent factories within Yamaha itself.

*DOC Position*

Although the engines were transferred to Shinba at standard cost, we verified the actual cost of the engines, which capture the variances. It is the actual costs that are included in the Department's COP calculation.

*Comment 17*

The petitioner argues that the per-unit standard times used in the calculation of Shinba's processing costs were not reconciled to total actual hours worked; therefore, the processing costs in the submission do not necessarily represent fully-absorbed, actual costs.

The respondent argues that it was not necessary to reconcile the per-unit standard times to the total actual hours worked since the basis of the per-second labor cost includes total labor costs, which includes the amount for total actual hours worked.

*DOC Position*

The Department verified the components included in the per-unit standard time calculation. One of the components verified was actual labor costs, including actual total hours worked. Therefore, if these costs were divided by standard hours, the full costs would be absorbed.

*Comment 18*

The petitioner argues that since Yamaha could identify those supplier penalties related to ATVs, it could have identified a separate materials-purchase variance for ATVs.

The respondent argues that supplier penalties are accumulated in a specific account and paid on a supplier-by-supplier basis. Isolating ATV-specific penalties is relatively easy. The materials variance is much more complex, and includes more than supplier rebates, such as the pass-through of variances from Yamaha's other factories.

*DOC Position*

We verified the calculation of the ratio of supplier penalties relating to ATVs to the cost of ATVs sold to determine the amount for supplier penalties included in general and administrative expenses. After viewing the production process, we agree that the respondent cannot isolate a product specific assembly line variance, even though it may maintain specific records pertaining to supplier penalties.

*Comment 19*

Respondent contends that the use of imputed interest rather than actual short term interest in calculating COP and CV is illogical and contrary to law. The Department should follow its prior decisions that reflect a preference for actual interest expenses over imputed costs. Furthermore, Yamaha argues that the use of imputed interest in the CV calculation unlawfully inflates the statutory eight percent minimum amount for profit. If the Department insists on using imputed interest expenses, it should account for the revenue that would have been generated by unused capital.

*DOC Position*

Because a sufficient number of Yamaha's Canadian sales were determined to be above COP, we did not base its foreign market value upon CV. Therefore, respondent's comments with respect to the propriety of utilizing so-called "imputed" interest expenses in CV are moot.

Regarding the use of imputed interest expenses in COP, we explain in response to Honda's comment 7 that the Department based inventory carrying costs and post-sale credit expenses upon each respondent's financial statements and records.

*Comment 20*

Respondent urges the Department to continue its decision from the preliminary determination and exclude from the fair value comparison all non-standard sales and sales of models with no corresponding Canadian models. Due to the burden placed on the respondent and the extremely small amount of sales involved, the Department should not produce calculations for the handful of accommodation sales, barter sales, promotional sales, sales of damaged merchandise, so-called "safety-education sales", and sales of repossessed models.

*DOC Position*

We have determined that an adequate number of comparisons are possible by limiting comparisons to those models which were sold in both the U.S. and Canadian markets. Due to the nature of the "non-standard" sales it is difficult and time consuming to find matches

between the U.S. and Canadian markets. For administrative convenience, we have omitted these comparisons. Furthermore, the quantity of such sales is quite small compared to respondent's total U.S. sales. Therefore, we do not believe that omitting comparisons on non-standard sales has any significant effect on our margin calculations.

*Comment 21*

Respondent also contends that several hundred sales of three-wheel ATVs during the period of investigation should be excluded from the Department's fair value comparison.

*DOC Position*

We disagree. See our response to Honda's comment 6, above.

*Comment 22*

Petitioner contends that since information regarding the deduction of corporate income tax from Yamaha's Canadian indirect selling expenses was submitted after the preliminary determination, it should be rejected as untimely.

*DOC Position*

The information submitted by Yamaha regarding the deduction of corporate income tax from Canadian indirect selling expenses was verified by the Department and was used for this final determination.

*Suzuki*

*Comment 23*

The petitioner argues that transfer prices for parts purchased from related suppliers should not be reduced by a percentage based on the related supplier's overall profit. The petitioner argues that the actual profit or loss on the ATV parts may be entirely different from this average.

*DOC Position*

The respondent provided neither market price nor cost of production data for parts purchased from related suppliers. Consequently, no documentation was available to support the amount of profit deducted by the respondent in adjusting related supplier transfer prices to actual cost. We, therefore, disallowed the company's profit adjustment on parts received from related suppliers.

*Comment 24*

The petitioner argues that the methodology used to compute variance ratios at the processing department level was questionable. It argues that variance ratios should have been computed at the motorcycle group level instead of on a company-wide basis.

*DOC Position*

The Department was unable to verify variance ratios at the product division level since Suzuki's variance statistics are only kept by the processing department at the company level, rather than the division level.

*Comment 25*

The petitioner argues that general R&D, R&D for future ATV models, and R&D related to new safety features for ATVs, should have been included in the COP for purposes of the final determination.

*DOC Position*

We agree. R&D for general ATV purposes, for future development, and for new safety features, are all related to ATV production and were included in our calculation of COP.

*Comment 26*

The petitioner argues that G&A expenses should not be expressed as a ratio of sales revenue and then applied to the cost of manufacture on a per-unit basis.

*DOC Position*

Because Suzuki does not record cost of sales data on a product-specific basis, we were unable to verify the actual cost of sales for the ATVs under investigation using this method. As an alternative procedure, we compared the company's submitted ratio of general expenses to actual ATV sales to the ratio of general expenses to standard cost of sales for ATVs. The two ratios were approximately equal. We, therefore, accepted the company's ratio.

*Comment 27*

The petitioner argues that legal expenses incurred by the respondent in order to defend itself against the U.S. Consumer Product Safety Commission should be included in indirect selling expenses and not in G&A expenses.

*DOC Position*

The legal expenses are not considered related to the actual sale of the product and thus should be included in G&A expenses and not as an indirect selling expense.

*Comment 28*

The petitioner argues that all interest income should be ignored for the purpose of calculating cost of production for the following reason: a) Information on interest income on a consolidated basis was not provided at verification; and b) long-term interest income should be considered related to investments rather than to the general operations of the company.

*DOC Position*

We agree. Interest income was not used as an offset to the interest expense included in the submission.

*Comment 29*

The petitioner argues that long-term interest expense should be included in the cost of production because it is related to the financing of plant and equipment and, as such, is clearly related to the production of ATVs.

*DOC Position*

We agree. We have included long-term interest expense in our cost of production calculation.

*Comment 30*

The respondent contends that the Department should not use a sale-by-sale interest expense for inventory carrying costs and post-sale credit expenses in its calculation of COP and CV. Citing U.S. Department of Commerce, *Treatment of Opportunity Costs in COP Cases*, Policy Paper No. 16 (1982) and U.S. Department of Commerce, *Summary of COP and Constructed Value Principles*, Policy Paper No. 47 (1982), respondent argues that the Department has explicitly repudiated the use of imputed or "opportunity" costs in either COP and CV.

The petitioner states that it is essential for the Department to include so-called "imputed" interest expenses in the COP and CV calculations. In order to measure accurately the relative returns obtained by Honda, the petitioner argues that the Department must calculate credit and inventory carrying expenses on a sale-specific basis. The petitioner further states that the use of sale-specific data is consistent with generally accepted accounting principles.

*DOC Position*

As we explain in response to Yamaha's comment 19 and Honda's comment 7, we based our calculation of interest expenses in COP upon the books and records of each respondent. Since Suzuki's foreign market value was based upon Canadian selling prices, its comment with respect to CV is moot.

*Comment 31*

The respondent contends that its sales of model LT125 in the United States during the period of investigation were

close-out sales which should not be included in the department's fair value comparison. Since Suzuki's sales of other models provide a more than adequate sample of U.S. sales, sales of the obsolete model should not be included.

*DOC Position*

We disagree. See our response to Honda's comment 6.

*Comment 32*

The petitioner argues that ATVs produced in the United States in a Foreign Trade Zone from both imported and domestic parts should be subject to antidumping duties.

*DOC Position*

We disagree. The completed ATVs produced by Kawasaki at its Lincoln, Nebraska facility are considered to be domestic products and therefore not subject to antidumping duties.

*Comment 33*

Suzuki argues that in calculating exporter's sales price, Suzuki's motorcycle incentive program should be disregarded as that program was totally unrelated to the ATVs subject to investigation. Petitioner argues that rebates on ATVs as a result of this program should be deducted by the Department in calculating United States price.

*DOC Position*

We disagree with respondent and agree with petitioner. The incentive program in question provided, among other things, that retailers would be paid a rebate on certain ATV purchases by dealers if the dealer's purchases of certain motorcycles exceeded certain levels. Respondent argues that at the time of sale of any given ATV, respondent did not know whether that particular unit would qualify for the rebate. Regardless of whether Suzuki knew that a particular ATV sale would qualify for the rebate, Suzuki did know that the sale was potentially eligible for the rebate and this potential was built into Suzuki's price structure. We therefore have deducted these rebates in the calculation of United States price.

*Comment 34*

The petitioner argues that the "viability test" (the determination of which market on which to base the calculation of foreign market value) should be made by comparing above-cost Canadian sales to all Canadian sales, with viability being established at ten percent. Alternatively, petitioner argues that above-cost Canadian sales be compared to all third country sales with viability being established at five percent. Petitioner additionally argues that above-cost Canadian sales must exceed five percent of total U.S. sales in order to meet the viability test.

*DOC Position*

We partially agree with petitioner. As noted above, we have determined that none of the respondents had a viable home market because their home market sales did not exceed five percent of their sales to third countries. We also determined that for each respondent the only viable third country market was Canada. When we compared the respondents' net selling prices to Canada with cost of production, we found that for Yamaha and Suzuki, more than 10 percent of their Canadian sales were above their cost of production. We therefore based foreign market value for Yamaha and Suzuki on their above-cost Canadian sales. Once this 10 percent threshold is reached, however, we disagree with petitioner's contention that we should then redetermine viability by comparing the amount of above-cost Canadian sales to the amount of sales in the U.S.

*Continuation of Suspension of Liquidation*

We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of certain ATVs from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amounts by which the foreign market value of the ATVs from Japan exceeds the United States price, as shown below. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

| Manufacturer/producer/exporter: | *Weighted-average margin percentage* |
|---|---|
| Honda Motor Co., Ltd | 32.89 |
| Yamaha Motor Co., Ltd | 8.47 |
| Suzuki Motor Co., Ltd | 14.11 |
| Kawasaki Heavy Industries, Ltd | 35.43 |
| All Others | 24–59 |

**ITC Notification**

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective ortder, without the written consent of the Assistant Secretary for Import Administration.

If the ITC will determine that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, the Department will issue an antidumping duty order on ATVs from Japan entered, or withdrawn from warehouse, for consumption after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Jan. W. Mares,

*Assistant Secretary for Import Administration.*

January 25, 1989.

[FR Doc. 89–2220 Filed 1–30–89; 8:45 am]

BILLING CODE 3510–DS–M

## Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

**ACTION:** Notice of initiation of antidumping and countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce has reached requests to conduct administrative review of various antidumping and countervailing duty orders and findings. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

**EFFECTIVE DATE:** January 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Bernard T. Carreau or Richard W. Moreland, Office of Countervailing Compliance or Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2104/2786.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 13, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 32556) a notice outlining the procedures for requesting administrative reviews. The Department has received timely requests, in accordance with §§ 353.53a (a)(1), (a)(2), (a)(3), and 355.10(a)(1) of the Commerce Regulations, for administrative reviews of various antidumping and countervailing duty orders and findings.

## Initiation of Reviews

In accordance with §§ 353.53a(c) and 355.10(c) of the Commerce Regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews no later than January 31, 1990.

| Antidumping Duty Proceedings and Firms | *Periods to be reviewed* |
|---|---|
| Argentina: Carbon Steel Wire Rods (A-357-007) | 11/01/87-10/31/88 |
| Acindar Industria | |
| Canada: Elemental Sulphur (A-122-047) | 12/01/87-11/30/88 |
| InterRedec Sulphur | |
| Sulco Chemicals | |
| Petro—Canada | |
| BP Resources Canada | |
| Cornwall Chemicals | |
| Suncor | |
| Home Oil | |
| Canada: Choline Chloride (A-122-016) | 01/09/88-10/31/88 |
| Chinook Chemical | |
| Hong Kong: Photo Albums and Filler Pages (A-582-501) | 12/01/87-11/30/88 |
| AICO | |
| Bernlaxie | |
| Chung Wai | |
| Climax Paper | |
| Consolidated Powers | |
| Evergreen & Pych | |
| Hoi Kun | |
| Lee Tung | |
| Marks International | |
| Mascotte | |
| Mirai Denshi (HK) | |
| Northvale | |
| Orient Consolidation | |
| Perfect Leather Ware | |
| Potex | |
| S&C Import Export | |
| Schenker (HK) | |
| Sun Woo | |
| Tradepower | |
| Union Paper Box & Printing | |
| Wah Luen | |
| World Wide | |
| South Korea: Photo Albums and Filler Pages (A-580-501) | 12/01/87-11/30/88 |
| Ace Trading | |
| Ahjun Industrial | |
| Atico | |
| Bowon | |
| C&G | |
| Chinsung | |
| Chungwoo | |
| Cobra | |
| Co-Prosperity | |
| Chilsung | |
| Costco | |
| Daelim | |
| Daewoo | |
| Dae Young | |
| Daechun | |
| Daimyong | |
| Deho | |
| Donam | |
| Dongbang | |
| Donghun | |
| Dong In | |
| Dong Won | |
| Dongwoo | |
| Eulji | |
| Eun Jeong | |
| Eunjin | |
| Eunsung | |
| G.I. | |
| Hae Gang Marine | |
| Hando | |
| Han Duk Mul | |
| Han Yung | |
| Hyosung | |
| Hyundia | |
| Hyupdong | |
| Hankook | |
| Hansang | |
| Honey | |
| Hanil | |
| Hanyang | |
| Inwang | |
| J&C | |
| Jeil | |
| Jung Ang | |
| Jin Yang | |
| KMB | |
| Kang Gyung | |
| Kenny Trading | |
| Keum Nam | |
| Keysung | |
| Korea Binder | |
| Korea Enterprise | |
| Keywon | |
| Korea Export & Import | |
| Korea Trading | |
| Korea Trading International | |
| Kuil | |
| Kukje | |
| Kuksan | |
| Kyongjin | |
| Lee Tung | |
| Little Prince | |
| Lotte Shopping | |
| Lotte Trading | |
| Metro | |
| Mi-jl | |
| Mi Sung | |
| The More Stationary | |
| Nam Doo | |
| New Frontier | |
| Rayheung | |
| Raf Korea | |
| Royal | |
| Sam Bang | |
| Sam Sung | |
| Sang Ah | |
| Sang Kyung | |
| Sam Wang | |
| Samjin Merchandise | |
| Samjin Trading | |
| Sam Hwa | |
| Sam Joh | |
| Sang Jin | |
| Scandecor | |
| Sejin | |
| Seokyung | |
| Seoul Agabang | |
| Seoul Enterprise | |
| Seoul General | |
| Seyou | |
| Shin Won | |
| Shinla | |
| Sinhan | |
| Songwon | |
| Sooter | |
| Sung Jin | |
| Sung Ill | |
| Sung Pung | |
| Sungshim | |
| Ssang | |
| Sunkyoung | |
| Three Leaf | |
| Tradepower | |
| The More Stationary | |
| Ujeon | |
| Union | |
| Universal | |
| Woomi | |
| Young Stationary | |
| Yuhan | |
| Yu Shin Enterprise | |
| Yangjisha | |
| Japan: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-588-604) | 6/01/87-9/30/88 |
| NTN | |
| Japan: Titanium Sponge (A-588-020) | 11/01/87-10/31/88 |
| Osaka Titanium | |
| Japan: Cellular Mobile Telephone and Subassemblies (A-588-405) | 12/01/87-11/30/88 |
| TDK | |
| Japan: Prestressed Concrete Steel Wire Strand (A-588-068) | 12/01/87-11/30/88 |
| Mitsui | |
| PRC: Greige Polyester Cotton Printcloth (A-570-101) | 9/01/87-8/31/88 |
| Chinatex | |
| Mexico: Porcelain-on-Steel Cookware (A-201-504) | 12/01/87-11/30/88 |
| Troqueles Cinsa | |
| New Zealand: Low-Fuming Brazing Copper Wire and Rod (A-570-003) | 10/01/87-9/30/88 |
| McKechnie Brothers | |
| Taiwan: Finished Carbon Steel Butt-Weld Pipe Fittings (A-583-601) | 12/01/87-11/30/88 |
| Rigid | |
| Chup Hsing | |
| Gei Bey | |
| Chung Ming | |
| West Germany: Animal Glue and Inedible Gelatin (A-428-002) | 12/01/87-11/30/88 |
| G. Conradt | |

| Countervailing Duty Proceedings | Periods to be reviewed |
|---|---|
| Argentina: Oil Country Tubular Goods (C–357–403) | 1/1/87–12/31/87 |
| Mexico: Pectin (C–201–007) | 1/1/87–12/31/87 |
| Mexico: Porcelain-on-Steel Cooking Ware (C–201–505) | 1/1/88–12/31/88 |
| Mexico: Toy Balloons and Playballs (C–201–004) | 1/1/87–12/31/87 |
| Singapore: Certain Refrigeration Compressors (C–559–001) | 4/1/87–3/31/88 |

Interested parties are encouraged to submit applications for administrative protective orders as early as possible in the review process.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.53.a(c) and 355.10(c).

Date: January 25, 1989.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for Compliance.*

[FR Doc. 89–2219 Filed 1–30–89; 8:45 am]

BILLING CODE 3510–DS–M

## Short-Supply Review on Certain Flat-Rolled Steel; Request For Comments

**AGENCY:** Import Administration/ International Trade Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.–EC Arrangement Concerning Trade in Certain Steel Products, with respect to certain coater blade steel strip.

**DATE:** Comments must be submitted on or before February 10, 1989.

**ADDRESS:** Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–0159.

**SUPPLEMENTARY INFORMATION:** Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products provides that if the U.S. " * * * determines that because of abnormal supply or demand factors, the US steel industry will be unable to meet demand in the USA for a particular product, (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product * * *."

We have received a short-supply request for certain coater blade steel strip, 1% carbon, cold-rolled, hardened, tempered, polished, coiled, in thicknesses ranging from 0.012 to 0.050 inch and in widths ranging from 2.50 to 4.25 inches.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than February 10, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file willl be maintained in the Central Records Units, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

Dated: January 25, 1989.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 89–2214 Filed 1–30–89; 8:45 am]

BILLING CODE 3510–DS–M

## Short-Supply Review on Certain Semi-Finished Steel Billets; Request for Comments

**AGENCY:** Import Administration/ International Trade Administration, Commerce.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-Australia, the U.S.-EC, the U.S.-Spain, and the U.S.-Trinidad and Tobago steel arrangements, and the U.S.-Finland Understanding, with respect to certain semi-finished steel billets.

**DATE:** Comments must be submitted no later than February 10, 1989.

**ADDRESS:** Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue NW., Washington, DC 20230, (202) 377–0159.

**SUPPLEMENTARY INFORMATION:** Article 8 of the U.S.-Australia Arrangement Concerning Trade in Certain Steel Products, the U.S.-EC Arrangement Concerning Trade in Certain Steel Products, the U.S.-Spain Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Trinidad and Tobago Arrangement Concerning Trade in Certain Steel Products, and the U.S.-Finland Understanding Concerning Trade in Certain Steel Products, provides that if the U.S. determines that because of abnormal supply or demand factors, the United States steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for basic oxygen furnace (or low residual) continuously cast carbon steel billets, of high carbon quality, welding quality, and special quality. The requested billets are of a square cross section measuring 130mm on each side, and in lengths of 30–34 feet and/or 31–35 feet.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than February 10, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B–099, Import Administration, U.S. Department of Commerce, at the above address.

January 25, 1989.

**Jan W. Mares,**

*Assistant Secretary for Import Administration.*

[FR Doc. 89–2215 Filed 1–30–89; 8:45 am]

BILLING CODE 3510–DS–M

**Notice of Applications for Duty-Free Entry of Scientific Instruments; Medical University of South Carolina et al.**

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2481, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket number: 89–024. Applicant: Medical University of South Carolina, 171 Ashley Ave., Charleston, SC 29425. Instrument: Electronic Microscope, Model H–7000. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: The instrument will be used for qualitative and quantitative microanalysis of cryo-frozen spinal cord tissue. The investigations will determine the exact cellular position and amount of calcium present after spinal cord injury and the effect of calcium inhibitors on calcium concentration. Application received by Commissioner of Customs: November 15, 1988.

Docket number: 89–025. Applicant: Texas A&M University, Department of Chemistry, College Station, TX 77843. Instrument: Stopped-flow Spectrophotometer. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended use: Studies of the transient rates of enzyme catalyzed reactions; specifically the reactions catalyzed by bacterial luciferase, carbamoyl phosphate synthetase and phosphotriesterase. Transient-kinetic analyses will be conducted. The enzyme and substrates will be rapidly mixed and then the optical components of the instruments shall record and analyze the very rapid changes in chemical structures of the substrates, intermediates and products. The instrument will also be used in chemistry classes to teach undergraduate and graduate students the latest technology for solving biochemical problems at the cutting-edge of science. Application received by Commissioner of Customs: November 15, 1988.

Docket number: 89–026. Applicant: National Institutes of Health, Division of Procurement, Building 31, Room 3007, Bethesda, MD 20892. Instrument: Electronic Microscope, Model EM902PC. Manufacturer: Carl Zeiss, West Germany. Intended use: The instrument will be used for molecular mass measurements on freeze-dried unstained specimens of the gp120/gp160 envelope protein of Human Immunodeficiency Virus using the global inelastic dark-field signal and other molecules and supramolecular assemblies of interest. Taken in conjunction with current knowledge of this molecule, the electron microscopically derived data will provide unique insights into the oligomeric status of this medically important molecule. In addition, there will be applications of low-electron dose microscopy of supramolecular assemblies in the frozen-hydrated (vitrified) state, a technique with unique potentialities for visualizing biological specimens in their native states. Target specimens include thin sections of muscle fibers, viral envelopes and fragments thereof, and cytoskeletal components such as intermediate filaments. Application received by Commissioner of Customs: November 15, 1988.

Docket number: 89–027. Applicant: Midwest Research Institute, 425 Volker Boulevard, Kansas City, MO 64110. Instrument: Mass Spectrometer, Model VG–70–250S. Manufacturer: VG Instruments, United Kingdom. Intended use: The instrument will be used for studies of environmentally and health-related organic compounds which include polychlorinated dioxins and furans, polychlorinated biphenyls, polybrominated dioxins and furans, and other highly toxic compounds. The investigations that will be conducted are designed to provide state and federal government agencies with the total concentrations of the selected compounds found in the various matrices in support of their research objectives and regulatory directives. Specific objectives include evaluation of operational parameters, determination of national trends, exposure assessments, and identification of new pollutants. Application received by Commissioner of Customs: November 17, 1988.

Docket number: 89–028. Applicant: Oklahoma State University, Chemistry Department, Stilwater, OK 74078–0447. Instrument: Mass Spectrometer, Model TS–250. Manufacturer: VG Instruments, United Kingdom. Intended use: The instrument will be used for a variety of research purposes including but not limited to the following:

(1) Identification of allelochemicals that mediate communication between plants and other plants, plant-microorganisms and plant-insects.

(2) Identification of reaction products from photochemically induced rearrangements and elucidation of reaction mechanisms by means of daughter ion identification and isotopic studies.

(3) Identification of unknowns in coal liquids, petroleum and shale oils and for characterization of snythetic intermediates and products to be used for thermodynamic, spectroscopic and separation studies.

(4) Characterization of intermediates in the biosynthesis of phytealexins, compounds which may be responsible for plant resistance to bacterial pathogens.

(5) Characterization of complex carbohydrates obtained from plant cell walls after anhydrous HF solvolysis.

(6) Development of techniques for the analysis of peptides by modification of the sample target surface. Application received by Commissioner of Customs: November 29, 1988.

Docket number: 89–029. Applicant: National Center for Atmospheric Research, 1801 Table Mesa Drive, Boulder, CO 80307 Instrument: Multi-pass Absorption Cell. Manufacturer: Unisearch Associates, Canada. Intended use: The instrument will be used in conjunction with an infared laser to measure trace reactive atmospheric gases in the parts-per-trillion concentration range. Application received by Commissioner of Customs: November 29, 1988.

Docket number: 89–030. Applicant: University of North Carolina, School of Dentistry, Dental Research Center, Chapel Hill, NC 27599–7455. Instrument: Electronic Microscope, Model CM12S. Manufacturer: N.V. Philips, The Netherlands. Intended use: The instrument will be used for studies of ultrathin sections of biological samples: soft tissue (brain, embryonic craniofacial structures); bone and teeth with associated soft tissue interfaces; and the calcified structural matrix of non-vertebrate skeletons. Interactions and interfaces of tissues to implants and calcified crystalline samples grown in vitro will also be studied. In addition, the instrument will be used in the annual Dental Research Electron Microscopy Workshop to teach faculty and graduate level students the principles of electron microscopy and to introduce them to those related techniques that they might use in their

research. Application received by Commissioner of Customs: December 1, 1988.

Docket number: 89–031. Applicant: Lehigh University, 404 Adams Street, Bethlehem, PA 18015. Instrument: Mass Spectrometer, Model VG 1200. Manufacturer: VG Isotopes, Ltd., United Kingdom. Intended use: Studies of samples of minerals and rocks that are appropriate for K-Ar, U-He, fission-Xe, and other forms of noble-gas dating. Experiments will be conducted to determine the geological ages of samples, and the determination of the samples' temperature histories. In addition, the instrument will be used for educational purposes in the courses: Isotope Geology and Geochemistry, Isotope Thermochronometry, and Thesis Research. Application received by Commissioner of Customs: December 5, 1988.

Docket number: 89–032. Applicant: Regents of the University of California, Material Management Department, Riverside, CA 92521. Instrument: Mass Spectrometer, Model PRISM Series II. Manufacturer: VG Instruments, United Kingdom. Intended use: The instrument will be used to analyze isotopic ratios of Deuterium/Hydrogen, $^{13}C/^{12}C$, $^{15}N/^{14}N$, $^{18}O/^{17}O$, $^{17}O/^{16}O$ and $^{34}S/^{32}S$ in exceedingly small samples of nearly all important earth materials. Application received by Commissioner of Customs: December 6, 1988.

Docket number: 89–033. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: Mass Spectrometer and Data System, Model MS–25. Manufacturer: Kratos, United Kingdom. Intended use: The instrument will be used for studies of a wide variety of chemical substances synthesized or isolated from natural sources. The expermients which will be performed will include: high resolution mass analysis, elemental composition determination, low resolution mass spectral analysis, linked-scan MS/MS analysis, gas chromatography/mass spectrometry analysis, electron and chemical ionization analysis, fast atom bombardment ionization and liquid chromatography/mass spectrometry analysis. These analyses will be conducted to determine the elemental composition and chemical structures of these substances. In addition, the instrument will be used for educational purposes in the courses: Analytical and Clinical Chemistry, Advanced Medical Chemistry Analysis and Advanced Topics in Mass Spectrometry. Application received by Commissioner of Customs: December 7, 1988.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 89–2216 Filed 1–30–89; 8:45 am]

BILLING CODE 3510-DS-M

## Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; NASA-Johnson Space Center, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket number: 88–274. Applicant: NASA-Johnson Space Center, Houston, TX 77058. Instrument: Gas Isotope Ratio Mass Spectrometer, Model MAT 251 EM. Manufacturer: Finnigan MAT, West Germany. Intended use: See notice at 53 FR 39494, October 7, 1988. Reasons for this decision: The foreign article provides automated precision analysis of small sample size (0.03μ Mole $CO_2$ with a precision of 0.008%).

Docket number: 87–048R. Applicant: University of Illinois, Urbana, IL 61801. Instrument: Cryostat System for Mossbauer Spectrometer. Manufacturer: Technology Systems Ltd., United Kingdom. Intended use: See notice at 51 FR 448825, December 12, 1986. Reasons for this decision: The foreign article provides a minimum source-detector distance of 8 inches.

Docket number: 88–148. Applicant: National Aeronautics and Space Administration, Pasadena, CA 91109. Instrument: Black and White Recorder and DEC Unibus Controller, Model FIRE 240 LBR. Manufacturer: MacDonald Dettwiler Technologies, Inc., Canada. Intended use: See notice at 53 FR 22684, June 17, 1988. Reasons for this decision: The foreign article provides recording of data at 8 bits per pixel with an output of 10 bits and is able to record up to 16 000 pixels by 16 000 lines.

Docket number: 87–140R. Applicant: Rutgers University, New Brunswick, NJ 08903. Instrument: Magnetic Field-Sensor Coil Eye Movement Monitoring Instrument, Model 3000. Manufacturer: Skalar Instrumenten B.V., The Netherlands. Intended use: See notice at 52 FR 12220, April 15, 1987. Reasons for this decision: The foreign instrument provides alignment fixtures for consistent head positioning and a supplementary set of field coils to permit calibration with the head in place.

Docket number: 88–013R. Applicant: Yale University, New Haven CT 06520. Instrument: Electron Spectrometer System, Model ELS–22. Manufacturer: Leybold-Heraeus, West Germany. Intended use: See notice at 52 FR 23780, December 9, 1987. Reasons for this decision: The foreign instrument provides analyzer rotation of 0 to 90° and a *background/peak intensity* $> 10^{-6}$ of the main peak intensity.

Docket number: 88–099. Applicant: Miami University, Oxford, OH 45056. Instrument: Spectrophotometer, Model RA–401. Manufacturer: Otsuka Electronics Co., Ltd., Japan. Intended use: See notice at 53 FR 9959, March 28, 1988. Reasons for this decision: The foreign instrument provides a spectral range of 200nm–800nm, a spectral scanning rate of 1scan/1msec with a scanning interval of 0–1 sec.

Docket number: 88–111R. Applicant: National Aeronautics and Space Administration, Hampton, VA 23665–5225. Instrument: FT–IR Spectrophotometer. Manufacturer: BOMEM, Inc., Canada. Intended use: See notice at 53 FR 15102, April 27, 1988. Reasons for this decision: The foreign instrument provides an unapodized resolution of 0.05 $cm^{-1}$.

Docket number: 88–121R. Applicant: Marine Science Program, Chapel Hill, NC 27599. Instrument: Five Radon Gas Detectors, Model PMT–TEL. Manufacturer: Pylon Electronics, Canada. Intended use: See notice at 53 FR 15103, April 27, 1988. Reasons for this decision: The foreign instrument allows in situ measurements and is capable of detecting radon gas levels as low as 0.025 pCi/1.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 89–2217 Filed 1–30–89; 8:45 am]

BILLING CODE 3510-DS-M

**Applications for Duty-Free Entry of Scientific Instruments; Pennsylvania State University et al**

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Public Law 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, D.C.

Docket number: 88–269. Applicant: The Pennsylvania State University, Materials Research Laboratory, University Park, PA 16802. Instrument: Two (2) Crystal Growth Pulling Heads. Manufacturer: Crystalox, Ltd., United Kingdom. Intended use: The instrument will be used in a single-crystal fiber puller for studies of a wide and diverse family of ferric oxide crystals. The experiments are intended to give fundamental information concerning the materials' properties, and the feasibility of their use in a variety of sensor and transducer applications. In addition, the instrument will be used as a tool for graduate students to complete the research portion of their degree requirements. Application received from Commissioner of Customs: December 11, 1988.

Docket number: 89–034. Applicant: Veterans Administration, Lakeside Medical Center , 333 East Huron, Chicago, IL 60611. Instrument: Electron Microscope, Model H–600–3. Manufacturer: Nissei Sangyo America, Inc., Japan. Intended use: The article is intended to be used for biological/biomedical research, specifically examination of cells, cell fractions, viruses, macromolecules etc. Examples of the studies which will be conducted include: (a) Quantitative and qualitative ultrastructural studies of polyamine dependent cellular transport processes, (b) ultrastructural studies of Mallory body formation in alcoholic livers, both animal models and human autopsy specimens, (c) ultrastructural studies of heparin granule release from human mast cells following a variety of allergic stimuli, (d) distribution of antigens on the surface of cancer cells, and (e) distribution of actin filaments in corneal endothelium. Application received from Commissioner of Customs: December 11, 1988.

Docket number: 89–035. Applicant: University of Tennessee, Biology Consortium, Knoxville, TN 37996–0810. Instrument: Scanning Electron Microscope, Model S–800. Manufacturer: Hitachi, Japan. Intended use: The instrument will be used in fundamental studies of the mechanisms of electron interaction with solids including measurements of electron stopping powers and determination of secondary and backscatter electron yields. In addition, the instrument will be used in Zoology 5080 "Introduction to Electron Microscopy", a course which introduces students to the electron microscope, provides detailed hands-on experience in using the scanning electron microscope and teaches the basics of both biological and inorganic specimen preparation for the SEM. In the course Materials Science and Engineering 574 "Principles of Electron Scattering and Diffraction" the instrument will be used to illustrate the fundamentals of electron-beam solid interactions and the technique of x-ray microanalysis. Application received from Commissioner of Customs: December 15, 1988.

Docket number: 89–036. Applicant: University of Miami, Department of Civil and Architectural Engineering, P.O. Box 248294, Coral Gables, FL 33124. Instrument: Digital Controllers. Manufacturer: GDS Instruments Ltd., United Kingdom. Intended use: The instrument will be used for studies of the strength and deformation characteristics and failure mechanisms as a function of effective stresses, time and stress history of soil under static and dynamic load. Investigations will be conducted to evaluate the soil behavior under a variety of conditions and develop a unique constitutive model of soil behavior. In addition, the instrument will be used for the courses: Soil Mechanics Laboratory, Advanced Soil Mechanics Laboratory, and Geomechanics to understand and predict soil behavior. Application received from Commissioner of Customs: Decembr 16, 1988.

Docket number: 89–037. Applicant: University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, L–650, Livermore, CA 94550. Instrument: Universal Streak Camera, Model C–2830 with Accessories. Manufacturer: Hamamatsu Photonics, Japan. Intended use: The instrument will be used to characterize fast optical pulses with a 1 to 20 picosecond pulse duration and wavelengths from 1053nM to 351nM. Application received from Commissioner of Customs: December 19, 1988.

Docket number: 89–038. Applicant: University of Nevada, Desert Research Institute, 7010 Dandini Boulevard, Reno, NV 89512. Instrument: Time Domain Electromagnetic Ground Conductivity Meter, Model Protem I and II. Manufacturer: Geonics Ltd., Canada. Intended use: The instrument will be used to investigate geologic formations at depths less than 100 meters with the objective of developing new methods for detecting the location of groundwater. Application received from Commissioner of Customs: December 19, 1988.

Docket number: 89–039. Applicant: Associated Universities, Inc., Brookhaven National Laboratory, Medical Department, 30 Bell Avenue, Upton, NY 11973. Instrument: Cytogenetic Scanning Analyzer System, Model Cytoscan. Manufacturer: Image Recognition Systems, United Kingdom. Intended use: The instrument will be used for studies of human blood cells to determine chromosome aberrations indicated as casual in baseline cancers. Application received from Commissioner of Customs: December 19, 1988.

Docket number: 89–040. Applicant: Department of the Interior, U.S. Geological Survey, Western Region, 345 Middlefield Road, MS–285, Menlo Park CA 94025. Instrument: Mass Spectrometer, Model MAT 261, Manufacturer: Finnigan MAT, West Germany. Intended use: The instrument will be used to determine isotopic ratios in geologic samples of rocks and various minerals from those rocks. The mineral types include zircon, monazite, apatite, feldspars, pyroxenes, amphiboles and micas. Isotopic ratios are measured to determine an absolute geologic age for the rocks and minerals analyzed and/or to understand more about the parts of the earth from which, or processes by which, the rocks and minerals were produced. Application received from Commissioner of Customs: December 20, 1988.

Docket number: 89–041. Applicant: Franklin and Marshall College, P.O. Box 3003, Lancaster, PA 17604–3003. Instrument: Thermal Demagnetizer, Model MMTDI. Manufacturer: Magnetic Measurements, United Kingdom. Intended Use: The instrument will be used to study rocks and archaeological materials. Both thermal demagnetization and paleointensity experiments will be conducted with the objective of understanding the ferromagnetic

minerals that these materials contain, the physical mechanism by which these materials become magnetized. In addition, the instrument will be used in the course Geology 337—Solid-Earth Geophysics and Geology 490—Independent Study. Application received from Commissioner of Customs: December 22, 1988.

Docket number: 89-042. Applicant: USDA/ARS, Children's Nutrition Center, 1100 Bates Street, Suite 7068, Houston, TX 77030. Instrument: Gas Isotope-Ration Mass Spectrometer, Model PRISM. Manufaturer: VG Instruments, Inc., United Kingdom. Intended use: The instrument will be used for the investigation of the isotopic abundances of hydrogen, carbon, nitrogen and oxygen in plasma, urine, saliva, breast milk, amino acids and cholesterol.

The objectives of the investigations are (a) To define the energy cost of pregnancy and lactation by measurements of total energy expenditure and changes in body composition using the doubly-labeled water method (b) to determine the energy requirement for optimal growth and development in infants by measurements of total energy expenditure, changes in body composition, and milk volume intakes using the doubly-labeled water method, (c) to determine intestinal maturation by measurements of oxidation and malabsorption of $^{13}C$ labeled substrates using $^{13}CO_2$ breath tests, and (d) to understand the metabolism of fatty acids, amino acids, and cholesterol by measurements of the fractional turnover rats of these metabolites in blood or breast milk. Application received from Commissioner of Customs: December 23, 1988.

Docket number: 89-043. Applicant: Duke University, Botany Department Durham, NC 27706. Instrument: Mass Spectrometer, Model, SIRA Series II. Manufacturer: VG Isogas, United Kingdom. Intended use: The instrument will be used for analysis of C, N, O, H metabolism in plants using natural abundance isotope composition. Application received from Commissioner of Customs: December 27, 1988.

Docket number: 89-044. Applicant: The Connecticut Agricultural Experiment Station, 123 Huntington St., P.O. Box 1106 New Haven, CT 06504. Instrument: Mass Spectrometer, Model Concept IS. Manufacturer: Kratos Analytical, United Kingdom. Intended use: The instrument will be used for the investigation of methods of analysis of dioxins and furans. Application received from Commissioner of Customs: December 28, 1988.

Docket number: 89-045. Applicant: Texas A&M, Electron Microscopy Center, Biological Sciences Bldg. West, Room 123, College Station, TX 77843-2257. Instrument: Scanning Electron Microscope, Model JSM-T330A. Manufacturer: JEOL Ltd., Japan. Intended use: The instrument will be used for a variety of studies of insects, plant tissues, minerals, polymers, ceramics, zeolites and metal alloys. Application received from Commissioner of Customs: December 28, 1988.

**Frank W. Creel,**

*Director, Statutory Import Programs.*

[FR Doc. 89-2218 Filed 1-30-89; 8:45 am]

BILLING CODE 3510-DS-M

## Minority Business Development Agency

### Indian Business Development Center Applications; State of Oklahoma

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $167,560 for the project performance period of August 1, 1989 to July 31, 1990. The IBDC will operate in the Oklahoma Statewide Area. The first year cost for the IBDC will consist of $167,580 in Federal Funds.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The IBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The IBDC program is designed to assist those Native American owned businesses that have the highest potential for success. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of Native American individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of Native American individuals and firms; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The IBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as satisfactory performance, the availability of funds, and Agency priorities.

*Closing Date:* The closing date for receipt of applications is March 3, 1989. Applications must be postmarked on or before March 3, 1989.

**ADDRESS:** Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce, Room 7B23, Dallas, Texas 75242-0709, (214) 767-8001.

**FOR FURTHER INFORMATION CONTACT:** Deselene Crenshaw, Business Development Clerk, Dallas Regional Office at the above address and phone number.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.801 American Indian Program (AIP)

(Catalog of Federal Domestic Assistance)

A pre-bid conference will be held in Dallas on February 17, 1989 at 1:00 p.m. Conference site information may be obtained by contacting the individual designated above.

Additional RFA will be available at the conference site.

**Victor M. Casaus,**

*Deputy Regional Director, Dallas Regional Office.*

Date: January 20, 1989.

**Section B—Project Specifications**

(To be completed by the Regional Offices)

BILLING CODE 3510-21-M

| PROJECT IDENTIFICATION | |
|---|---|
| 1. Program Number and Title: | 11.801 American Indian Business Development |
| 2. Project Name: | Oklahoma IBDC |
| | (Geographic Area or SMSA) |
| 3. Project Identification Number: | 06-10-89010-01 |

| PROJECT DURATION | |
|---|---|
| 1. Budget Period (Check One): | First X Second ____ Third ____ |
| 2. Project Start Date: | August 1, 1989 |
| 3. Project End Date: | July 31, 1990 |
| 4. Project Duration (Months): | Twelve |

| PROJECT COST | |
|---|---|
| 1. Required Federal Funding Level: | $ 167,580 |
| 2. Minimum Non-Federal Contribution: | $ N/A |
| 3. Total Project Cost: | $ 167,580 |

| PROJECT MINIMUM PERFORMANCE GOAL LEVELS | |
|---|---|
| 1. Combined Financial Package and Procurement Minimum Goal Level: | $ 6,450,500 |
| 2. Hours of M&TA Minimum Goal Level: | 2,200 |
| 3. Number of Clients Minimum Goal Level: | 127 |

OTHER PROJECT SPECIFICATIONS

1. Closing Date for Submission of this Application: March 3, 1989

2. Geographic Specification: The Indian Business Development Center shall offer assistance in the geographic area of:
State of Oklahoma

3. Eligibility Criteria: There are no eligibility restrictions for this project, except that applicants must have documented experience in providing business development services to American Indian businesses and individuals, and have working relationships with organizations and agencies, and tribal governments unique to American Indians. Eligible applicants may include individuals, non-profit organizations, for-profit firms, American Indian tribes, state and local governments, and educational institutions.

4. Budget Period: The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the IBDC's performance and Agency priorities.

[FR Doc. 89-1738 Filed 1-30-89; 8:45 am]
BILLING CODE 3510-21-C

## Indian Business Development Center Applications; State of New Mexico

January 20, 1989.

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $167,580 for the project performance period of August 1, 1989 to July 31, 1990. The IBDC will operate in the New Mexico Statewide Area. The first year cost for the IBDC will consist of $167,580 in Federal Funds.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The IBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The IBDC program is designed to assist those native American owned businesses that have the highest potential for success. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of Native American idividuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of Native American individuals and firms; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The IBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as satsifactory performance, the availability of funds, and Agency priorities.

*Closing Date:* The closing date for receipt of applications is March 3, 1989. Applications must be postmarked on or before March 3, 1989.

**ADDRESS:** Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce, Room 7B23, Dallas, Texas 75242–0790, (214) 767–8001.

**FOR FURTHER INFORMATION CONTACT:** Deselene Crenshaw, Business Development Clerk, Dallas Regional Office at the above address and phone number.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.801 American Indian Program (AIP)

(Catalog of Federal Domestic Assistance)

A pre-bid conference will be held in Dallas on February 17, 1989 at 1:00 P.M. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

**Victor M. Casaus,**

*Deputy Regional Director, Dallas Regional Office.*

### Section B—Project Specifications

(To be completed by the Regional Offices)

BILLING CODE 3510-21-M

| PROJECT IDENTIFICATION | |
|---|---|
| 1. Program Number and Title: | 11.801 American Indian Business Development |
| 2. Project Name: | New Mexico IBDC |
| | (Geographic Area or SMSA) |
| 3. Project Identification Number: | 06-10-89008-01 |

| PROJECT DURATION | | | |
|---|---|---|---|
| 1. Budget Period (Check One): | First X | Second ____ | Third ____ |
| 2. Project Start Date: | August 1, 1989 | | |
| 3. Project End Date: | July 31, 1990 | | |
| 4. Project Duration (Months): | Twelve | | |

| PROJECT COST | | |
|---|---|---|
| 1. Required Federal Funding Level: | $ | 167,580 |
| 2. Minimum Non-Federal Contribution: | $ | N/A |
| 3. Total Project Cost: | $ | 167,580 |

| PROJECT MINIMUM PERFORMANCE GOAL LEVELS | | |
|---|---|---|
| 1. Combined Financial Package and Procurement Minimum Goal Level: | $ | 6,450,500 |
| 2. Hours of M&TA Minimum Goal Level: | | 2,200 |
| 3. Number of Clients Minimum Goal Level: | | 127 |

| OTHER PROJECT SPECIFICATIONS |
|---|
| 1. Closing Date for Submission of this Application: March 3, 1989 |
| 2. Geographic Specification: The Indian Business Development Center shall offer assistance in the geographic area of: State of New Mexico |
| 3. Eligibility Criteria: There are no eligibility restrictions for this project, except that applicants must have documented experience in providing business development services to American Indian businesses and individuals, and have working relationships with organizations and agencies, and tribal governments unique to American Indians. Eligible applicants may include individuals, non-profit organizations, for-profit firms, American Indian tribes, state and local governments, and educational institutions. |
| 4. Budget Period: The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the IBDC's performance and Agency priorities. |

[FR Doc. 89-1739 Filed 1-30-89; 8:45 am]
BILLING CODE 3510-21-C

## Indian Business Development Center Applications; State of North Dakota

January 20, 1989.

**AGENCY:** Minority Business Development Agency, Commerce.

**ACTION:** Notice.

**SUMMARY:** The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Indian Business Development Center (IBDC) Program to operate an IBDC for a 3-year period, subject to available funds. The cost of performance for the first 12 months is estimated at $105,840 for the project performance period of August 1, 1989 to July 31, 1990. The IBDC will operate in the North Dakota Statewide Area. The first year cost for the IBDC will consist of $105,840 in Federal Funds.

The funding instrument for the IBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The IBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The IBDC program is designed to assist those Native American owned businesses that have the highest potential for success. In order to accomplish this, MBDA supports IBDC programs that can: coordinate and broker public and private sector resources on behalf of Native American individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of Native American individuals and firms; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The IBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as satisfactory performance, the availability of funds, and Agency priorities.

*Closing Date:* The closing date for receipt of applications is March 3, 1989. Applications must be postmarked on or before March 3, 1989.

**ADDRESS:** Dallas Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 1100 Commerce, Room 7B23, Dallas, Texas 75242–0790, (214) 767–8001.

**FOR FURTHER INFORMATION CONTACT:** Deselene Crenshaw, Business Development Clerk, Dallas Regional Office at the above address and phone number.

**SUPPLEMENTARY INFORMATION:** Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.801 American Indian Program (AIP)

(Catalog of Federal Domestic Assistance)

A pre-bid conference will be held in Dallas on February 17, 1989 at 1:00 p.m. Conference site information may be obtained by contacting the individual designated above.

Additional RFAs will be available at the conference site.

**Victor M. Casaus,**

*Deputy Regional Director, Dallas Regional Office.*

### Section B—Project Specifications

(To be completed by the Regional Offices)

BILLING CODE 3510-21-M

| PROJECT IDENTIFICATION | |
|---|---|
| 1. Program Number and Title: | 11.801 American Indian Business Development |
| 2. Project Name: | North Dakota IBDC (Geographic Area or SMSA) |
| 3. Project Identification Number: | 08-10-89009-01 |

| PROJECT DURATION | |
|---|---|
| 1. Budget Period (Check One): | First X Second ____ Third ____ |
| 2. Project Start Date: | August 1, 1989 |
| 3. Project End Date: | July 31, 1990 |
| 4. Project Duration (Months): | Twelve |

| PROJECT COST | |
|---|---|
| 1. Required Federal Funding Level: | $ 105,840 |
| 2. Minimum Non-Federal Contribution: | $ N/A |
| 3. Total Project Cost: | $ 105,840 |

| PROJECT MINIMUM PERFORMANCE GOAL LEVELS | |
|---|---|
| 1. Combined Financial Package and Procurement Minimum Goal Level: | $ 4,074,000 |
| 2. Hours of M&TA Minimum Goal Level: | 1,389 |
| 3. Number of Clients Minimum Goal Level: | 79 |

OTHER PROJECT SPECIFICATIONS

1. Closing Date for Submission of this Application: March 3, 1989

2. Geographic Specification: The Indian Business Development Center shall offer assistance in the geographic area of:
State of North Dakota

3. Eligibility Criteria: There are no eligibility restrictions for this project, except that applicants must have documented experience in providing business development services to American Indian businesses and individuals, and have working relationships with organizations and agencies, and tribal governments unique to American Indians. Eligible applicants may include individuals, non-profit organizations, for-profit firms, American Indian tribes, state and local governments, and educational institutions.

4. Budget Period: The competitive award period will be for approximately three (3) years consisting of three (3) separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three (3) budget periods. The IBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the IBDC's performance and Agency priorities.

[FR Doc. 89-1740 Filed 1-30-89; 8:45 am]
BILLING CODE 3510-21-C

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Announcement of Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

January 25, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs establishing import levels for the new agreement year.

**EFFECTIVE DATE:** February 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377–3715.

**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).

A copy of the current bilateral textile agreement between the Governments of the United States and the People's Republic of Bangladesh 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).

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

January 25, 1989.

Commissioner of Customs

*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton and Man-Made Fiber Textile Agreement of February 19 and 24, 1986, as amended, between the Governments of the United States and the People's Republic of Bangladesh; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on February 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Bangladesh and exported during the twelve-month period which begins on February 1, 1989 and extends through January 31, 1990, in excess of the following restraint limits:

*Category and twelve-month restraint limit*

338/339—674,160 dozen.
342/642—222,473 dozen.
638/639—870,790 dozen.
645/646—204,495 dozen.

Imports charged to these category limits for the period February 1, 1988 through January 31, 1989 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The levels set forth above are subject to adjustment in the future according to the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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.(a)(1).

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89–2134 Filed 1–30–89; 8:45 am]

BILLING CODE 3510-DR-M

### Announcement of Requests for Bilateral Consultations with the Government of Thailand on Certain Cotton, Wool and Man-Made Fiber Textile Products

January 25, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Notice.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories on which consultations have been requested, call (202) 377–3740.

**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); Article 3 of the Arrangement Regarding International Trade in Textiles.

On January 1, 1989, the Government of the United States requested consultations with the Government of Thailand regarding cotton, wool and man-made fiber textile products in Categories 345, 347/348, 363, 369–D, 445/446, 448 and 635, produced or manufactured in Thailand.

The purpose of this notice is to advice the public that, if no solution is agreed upon in consultations with Thailand, the Commitee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumptions of textile products in Categories 345, 347/348, 363, 369-D, 445/446, 448 and 635, produced or manfactured in Thailand and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989, at the following levels:

*Category and call levels*

345—183,296 dozen.
347/348—262,382 dozen.
363—14,554,325 numbers.
369–D (dish towels)—120,524 kilograms.
445/446—15,765 dozen.
448—7,677 dozen.
635—67,217 dozen.

Summary market statements concerning these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 345, 347/348, 363, 369–D, 445/446, 448 and 635, or to comment on domestic production or availability of products included in these categories, is invited to submit 10 copies of such comments or information to James H. Babb, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in reponse to this notice will be available for public inspection in the Office of Textiles and Apparel, Room H3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreement considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating

to matters which constitute "a foreign affairs functions of the United States."

The United States remains committed to finding a solution concerning Categories 345, 347/348, 363, 369–D, 445/446, 448 and 635. Should such a solution be reached in consultations with the Government of Thailand, further notice will be published in the Federal Register.

All shipments of products in Category 369–D (dish towels) from Thailand shall continue to require a 369–O visa for entry for consumption into the United States until further notice.

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).

**Jams H. Babb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Thailand—Market Statement**

*Cotton Sweaters—(Category 345)*

January 1988.

*Summary and Conclusions*

U.S. imports of cotton sweaters (Category 345) from Thailand reached 183,296 dozen during the year ending October 1988, 16 percent above the 158,291 dozen imported a year earlier. During the first ten months of 1988, imports of Category 345 from Thailand reached 163,700 dozen, 21 percent above the 135,705 dozen imported during the same period in 1987, and 5 percent above the total imported in calendar year 1987.

The U.S. market for cotton sweaters is being disrupted by the sharp and substantial increase of imports from Thailand. This market is threatened with even greater disruption following the expiration of the U.S./Thailand bilateral agreement at the end of 1988, as imports from Thailand can be expected to continue to grow rapidly in the absence of restrictions. Thailand has ample capacity to increase these shipments as evidenced by the high level of imports attained in 1985. At that time Thailand exceeded its apparel group limit and the subsequent drop in imports in part reflected the reduction in quota available after deducting for the amount of the overshipments. With the group limit removed and the previous group overshipments already paid back, the market disruption in Category 345 threatens to become more widespread.

*U.S. Production, Import Penetration and Market Share*

U.S. production of cotton sweaters peaked in 1985 and has been on the decline ever since, dropping from 4,683,000 dozen in 1985 to 3,320,000 dozen in 1987, a 29 percent decline. Production continued to decline in 1988, dropping 27 percent in the first half of 1988 compared with the same period in 1987. The year ending June 1988 production level fell to 2,832,000 dozen, 15 percent below the calendar year 1987 level.

Imports of cotton sweaters on the other hand have increased in every year since 1982 reaching a record level 2,128,165 in 1987. Imports more than doubled between 1982 and 1985 and increased another 23 percent between 1985 and 1987. Imports are down slightly through the first ten months of 1988 from the comparable 1987 record level period, but remain at the second highest level ever.

The ratio of imports to domestic production increased 34 percentage points, rising from 37 percent in 1985 to 71 percent for the year ending June 1988. The U.S. manufacturers' share of the cotton sweater market fell from 73 percent in 1985 to 61 percent in 1987, and to 59 percent in the first half of 1988.

*Duty-Paid Value and U.S. Producers' Price*

Approximately 90 percent of Category 345 imports from Thailand during the first ten months of 1988 entered under TSUSA numbers 381.4160—men's cotton knit sweaters, not ornamented, and 384.2850—women's cotton knit sweaters not ornamented. These sweaters entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable sweaters.

**Thailand—Market Statement**

*Cotton Trousers, Slacks and Shorts—(Category 347/348)*

January 1989.

*Summary and Conclusions*

U.S. general imports of cotton trousers, slacks and shorts—Category 347/348—from Thailand reached 262,227 dozen in the year ending October 1988 and were 232,532 dozen through the first ten months of 1988. Thailand's 1988 cotton trouser shipments to the U.S. were inhibited because Thailand overshipped its 1987 limit and the overshipment was charged against its 1988 limit. Thailand's 1988 Specific Limit for Category 347/348 was 262,382 dozen. Thailand's Category 347/348 imports embargoed on December 7, 1988.

The U.S. market for cotton trousers, slacks, and shorts—Category 347/348 is being disrupted by imports from Thailand. This market is threatened with even greater disruption following the expiration of the U.S./Thailand bilateral agreement at the end of 1988, as imports from Thailand can be expected to continue to grow rapidly in the absence of restrictions. Thailand has ample capacity to increase these shipments as evidenced by the fact that Thailand overshipped its 1987 Specific Limit and its 1988 imports embargoed in December. With the specific limit, the group limit, and the mechanism for paying back overshipments removed, the market disruption in Category 347/348 threatens to become more widespread.

*U.S. Production, Market Share, and Import Penetration*

U.S. production of cotton trousers, slacks, and shorts remained relatively flat between 1982 and 1986 while imports nearly doubled. The domestic manufacturers' share of the market dropped from 75 percent in 1982 to 61 percent in 1986. U.S. production increased in 1987 reaching 43,378,000 dozen and then fell during the first half of 1988 resulting in a year ending June 1988 production level of 42,153,000 dozen, three percent below the 1987 level. U.S. imports reached a record level 29,132,000 dozen in 1987, 14 percent above the 1986 level, and were up another five percent in the first half of 1988 over the January–June 1987 level. The domestic manufacturers' share of the market continued to drop, falling to 60 percent in 1987 and 58 percent for the year ending June 1988. The domestic manufacturers' share of the market fell to 55 percent in the first half of 1988. The ratio of imports to domestic production doubled, increasing from 33 percent in 1982 to 67 percent in 1987. The import to production ratio reached 80 percent in the first half of 1988.

*Duty-Paid Value and U.S. Producers' Price*

The majority of the Category 347/348 imports from Thailand during the first ten months of 1988 were entered under TSUSA numbers 381.6210—men's and boys' cotton woven shorts, not ornamented; 381.6240—men's cotton woven trousers and slacks except those of denim or corduroy, not ornamented; 384.4724—women's and girls' cotton woven shorts, not ornamented; and 384.4765—women's cotton woven trousers and slacks except those of denim, corduroy, and velveteen, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

**Thailand—Market Statement**

*Category 363—Cotton Towels*

January 1989.

*Summary and Conclusions*

U.S. imports of cotton towels—Category 363—from Thailand were 15.3 million units during the year ending October 1988, nearly double the 8.9 million units imported a year earlier. Thailand is the third largest supplier and the largest uncontrolled supplier, accounting for eleven percent of the total imports in the year ending October 1988. During the first ten months of 1988, imports from Thailand were 13.5 million units, up 62 percent from the 8.3 million units imported a year earlier.

The U.S. market for cotton towels is being disrupted by the sharp and substantial increase of imports from Thailand. With the expiration of the bilateral agreement at the end of 1988, restraints on these imports in effect during the latter half of 1988 are no longer in place. In the absence of these restraints, the rapid import growth in Category 363 from Thailand is expected to continue.

*U.S. Production, Market Share, and Import Penetration*

Between 1982 and 1987 U.S. production of cotton towels fluctuated, increasing in some years and declining in other years. U.S. production increased to 560.7 million units in 1987 but dropped five percent in the first half of 1988. U.S. imports on the other hand have increased in every year since 1982 reaching

record level 132.4 million units in 1987. U.S. cotton towel imports continue to increase through the first ten months of 1988, rising seven percent above the January-October 1987 level. The import to production ratio increased six percentage points, increasing from 18 percent in 1982 to 24 percent in 1987. The ratio increased another 3 percentage points in the first half of 1988, rising to 27 percent. The U.S. manufacturers' share of the cotton towel market declined from 85 percent in 1982 to 81 percent in 1987, and to 79 percent in the first half of 1988.

*Duty Paid Import Values and U.S. Producer's Prices*

Approximately 93 percent of Category 363 cotton terry towel imports from Thailand enter under TSUSA Nos. 366.1965 and 366.2460. These towels are being entered at duty-paid landed values well below U.S. producer prices for comparable towels.

**Thailand—Market Statement**

*Category 369 Pt.—Cotton Dish Towels*

January 1989.

*Summary and Conclusions*

United States imports of cotton dish towels—Category 369 Pt.—from Thailand were 337 thousand pounds (207 thousand dozen) during the year ending October 1988, double the 164 thousand pounds (156 thousand dozen) imported a year earlier. During the first ten months of 1988, imports from Thailand reached 304 thousand pounds (190 thousand dozen), more than three times the amount imported during the same period of 1987.

The U.S. market for cotton dish towels is being disrupted by the sharp and substantial increase of imports from Thailand. With the expiration of the bilateral agreement at the end of 1988, restraints on these imports in effect during the latter half of 1988 are no longer in place. In the absence of these restraints, the rapid import growth in Category 363 from Thailand is expected to continue.

*U.S. Production, Market Share, and Import Penetration*

U.S. production of cotton dish towels declined from 8.1 million dozen in 1984 to 6.6 million in 1985, a decrease of 19 percent. Production partially recovered in 1986, reaching 7.3 million dozen, but fell again in 1987 to a level of 5.2 million dozen, 28 percent below the 1986 level and 36 percent below the 1984 level. During the first half of 1988, production dropped 31 percent below the level in the comparable period of 1987.

U.S. imports of Category 369 Pt. cotton dish towels from all sources have been on the rise since 1984, reaching a record level 10.5 million dozens in 1987, an increase of 51 percent over the 1984 level. During the first ten months of 1988, imports of cotton dish towels were up one percent over the comparable period in 1987.

The ratio of imports to domestic production more than doubled between 1984 and 1987, increasing from 85 percent in 1984 to 202 percent in 1987. The ratio increased another 32 percent, reaching 266 percent during the first half of 1988.

The U.S. producers' share of the market for domestically produced and imported cotton dish towels declined in every year since 1984, falling from 54 percent in 1984 to 33 percent in 1987. The U.S. producers' share continued its decline during the first half of 1988, dropping to 27 percent.

*Import Values*

During the period January-August 1988, 69 percent of Thailand's Category 369 Pt. cotton dish towel imports entered under TSUSA No. 366.1720, cotton terry dish towels. The duty-paid landed values of Category 369 Pt. dish towels from Thailand are well below the U.S. producers' prices for comparable dish towels.

**Thailand—Market Statement**

*Wool Sweaters—(Category 445/446)*

January 1989.

*Summary and Conclusions*

U.S. imports of wool sweaters (Category 445/446) from Thailand reached 12,409 dozen during the year ending October 1988, 21 percent above the 10,263 dozen imported a year earlier. During the first ten months of 1988, imports of wool sweaters (Category 445/446) from Thailand reached 11,884 dozen, 32 percent increase above the 8,979 dozen imported during the same period of 1987 and 25 percent above the total imported in calendar year 1987.

The U.S. market for wool sweaters (Category 445/446) is being disrupted by imports from Thailand. This market is threatened with even greater disruption following the expiration of the U.S./Thailand bilateral agreement at the end of 1988, as imports from Thailand can be expected to continue to grow rapidly in the absence of restrictions. Thailand has ample capacity to increase these shipments as evidenced by the high level of imports attained in 1986. With the specific limit, the group limit, and other agreement mechanisms removed, the market disruption in Category 445/446 threatens to become more widespread.

*U.S. Production, Market Share, and Import Penetration*

U.S. production of wool sweaters (Category 445/446) has been on the decline since 1982, falling from 1,742,000 dozen in 1982 to 626,000 dozen in 1987, a 64 percent decline. Production in the first half of 1988 dropped 20 percent below the January-June 1987 level. Wool sweater imports increased from 2,582,000 dozen in 1982 to 3,185,000 in 1987, a 23 percent increase. The domestic manufacturers' share of the wool sweater market declined by 60 percent, falling from 40 percent in 1982 to 16 percent in 1987. The domestic manufacturers' share continued to fall in the year ending June 1988. The ratio of imports to domestic production increased nearly three and one-half times, increasing from 148 percent in 1982 to 509 percent in 1987. The import to production ratio reached 517 percent in the year ending June 1988.

*Duty-Paid Value and U.S. Producers' Price*

Approximately 95 percent of Category 445/446 imports from Thailand during the first ten months of 1988 entered under TSUSA number 381.7630—men's wool knit sweaters, valued over 5 U.S. dollars per pound, not ornamented; and 384.6371—women's wool knit sweaters, other than cashmere, valued over 5 U.S. dollars per pound, not ornamented. Approximately 28 percent of Thailand's shipments under TSUSA 381.7630 entered at an average landed duty-paid value of 212.45 U.S. dollars per dozen, while approximately 72 percent entered at 110.89 U.S. dollars per dozen on average. These sweaters entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable sweaters.

**Thailand—Market Statement**

*Women's and Girls' Wool Trousers, Slacks, and Shorts (Category 448)*

January 1989.

*Summary and Conclusions*

U.S. imports of women's and girls' wood trousers, slacks, and shorts (Category 448) from Thailand reached 7,677 dozen during the year ending October 1988, 40 percent above the 5,496 dozen imported a year earlier. During the first ten months of 1988, Category 448 from Thailand reached 7,192 dozen, 35 percent above the 5,345 dozen imported during the same period in 1987 and 23 percent above the total imported in calendar year 1987.

The U.S. market for women's and girls' wool trousers, slacks, and shorts (Category 448) is being disrupted by imports from Thailand. This market is threatened with even greater disruption following the expiration of the U.S./Thailand bilateral agreement at the end of 1988, as imports from Thailand can be expected to continue to grow rapidly in the absence of restrictions. Thailand has ample capacity to increase these shipments as evidenced by the high level of imports attained in 1986. With the designated consultation level, the group limit, and other agreement mechanisms removed, the market disruption in Category 448 threatens to become more widespread.

*U.S. Production, Market Share, and Import Penetration*

U.S. production of women's and girls' wood trousers, slacks, and shorts has been on the decline since 1982 falling from 885,000 dozen in 1982 to 611,000 dozen in 1987, a 31 percent decline. Production in the first half of 1988 was down 21 percent from the January-June 1987 level. Women's and girls' wool trouser, slack, and short imports (Category 448) more than doubled between 1982 and 1987, increasing from 129,000 dozen in 1982 to 291,000 dozen in 1987. Imports through the first ten months of 1988 reached 316,000 dozen, 13 percent above the January-October 1987 level. The domestic manufacturers' share of the women's and girls' wool trouser, slack, and short market declined from 87 percent in 1982 to 68 percent in 1987. The domestic manufacturers' share of the market fell to 65 percent in the year ending June 1988. The ratio of imports to domestic production tripled, increasing from 15 percent in 1982 to 48 percent in 1987. The import to production ratio reached 53 percent in the year ending June 1988.

*Duty-Paid Value and U.S. Producers' Price*

Approximately 79 percent of Category 448 imports from Thailand during the first ten months of 1988 entered under TSUSA number 384.6385—women's, girls', and infants' wool knit trousers, slacks, and shorts, valued over 5 U.S. dollars per pound, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

**Thailand—Market Statement**

*Women's and Girls' Man-Made Fiber Coats—(Category 635)*

January 1989.

*Summary and Conclusions*

U.S. imports of women's and girls' man-made fiber coats (Category 635) from Thailand reached 67,217 dozen during the year ending October 1988, 8 percent above the 61,977 dozen imported a year earlier. During the first ten months of 1988, imports of Category 635 from Thailand reached 49,037 dozen, 4 percent above the 46,971 dozen imported during the same period in 1987.

The U.S. market for women's and girls' man-made fiber coats is being disrupted by imports from Thailand. This market is threatened with even greater disruption following the expiration of the U.S./Thailand bilateral agreement at the end of 1988, as imports from Thailand can be expected to accelerate in the absence of restrictions. Thailand has ample capacity to increase these shipments as evidenced by the high level of imports attained in 1984. At that time Thailand exceeded its apparel group limit and the subsequent drop in imports in part reflected the reduction in quota available after deducting for the amount of the overshipments. With the Category 634/635 specific limit and the group limit removed, and the previous group overshipments already paid back, the market disruption in Category 635 threatens to become more widespread.

*U.S. Production, Import Penetration and Market Share*

U.S. production of women's and girls' man-made fiber coats peaked in 1983 and has been on the decline ever since, falling from 5,793,000 dozen in 1983 to 3,832,000 dozen in 1986, a 34 percent decline. Production recovered to 4,224,000 dozen in 1987 but is down 41 percent in the first half of 1988. The year ending June 1988 production level fell to 3,280,000 dozen, 14 percent below the 1986 level.

Imports increased from 3,454,000 dozen in 1982 to 4,023,000 dozen in 1987, a 16 percent increase. Imports through the first ten months of 1988 are up nearly nine percent over the January-October 1987 level.

The U.S. manufacturers' share of the women's and girls' man-made fiber coat market dropped from 62 percent in 1982 to 51 percent in 1987. The U.S. manufacturers' share fell to 41 percent in the first half of 1988. The ratio of imports to domestic production reached the record level of 147 percent during the first half of 1988, 60 percentage points above the 87 percent ratio for the first half of 1987.

*Duty-Paid Value and U.S. Producers' Price*

Approximately 70 percent of Category 635 imports from Thailand during the first ten months of 1988 entered under TSUSA Numbers 376.5612—women's, girls' and infants' coats and jackets coated, filled or laminated with rubber or plastics; 384.2318—women's and girls' coats of man-made fiber net or lace, whether or not ornamented; 384.9135—women's woven raincoats of man-made fiber, of three quarters in length or longer, not ornamented, and 384.9152—other women's woven coats of man-made fiber, not ornamented. These garments entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

[FR Doc. 89-2133 Filed 1-30-89; 8:45 am]

BILLING CODE 3510-DR-M

## Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Uruguay

January 25, 1989.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** January 26, 1989.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

**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)

The current limit for wool fabrics in Category 410 is being increased for carryover.

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 2524, published on January 28, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**James H. Babb,**

*Chairman, Committee of the Implementation of Textile Agreements.*

January 25, 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 January 25, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of wool fabric in Category 410, produced or manufactured in Uruguay and exported during the period which began on February 1, 1988 and extends through January 31, 1989.

Effective on January 26, 1989, the directive of January 25, 1988 is amended to increase to 2,113,569 square meters the current limit for wool fabric in Category 410, as provided under the terms of the current bilateral agreement between the Governments of the United States and Uruguay.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions 5 U.S.C. 553(a) [1].

Sincerely,

James H. Babb,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 89-2135 Filed 1-30-89; 8:45 am]

BILLING CODE 3510-DR-M

## DEPARTMENT OF DEFENSE

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44. U.S.C. Chapter 35).

*Title, Applicable Form, and Applicable OMB Control Number:* Defense Acquisition Regulation, Control Number 0704-0189.

*Type of Request:* Revision.

*Average Burden Hours/Minutes Per Response:* 24 Hours.

*Frequency of Response:* On occasion.

*Number of Respondents:* 40,000.

*Annual Burden Hours:* 3,520,000.

*Annual Responses:* 120,000.

*Needs and Uses:* This request concerns information supporting the administration of contracts (acquisition

[1] The limit has not been adjusted to account for any imports exported after January 31, 1988.

programs) resulting from solicitations issued prior to April 1, 1984 and still containing Defense Acquisition Regulation clauses/provisions.

*Affected Public:* Businesses or other for-profit.

*Respondent's obligation:* Mandatory.

*OMB Desk Officer:* Ms. Eyvette R. Flynn.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eyvette R. Flynn at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

January 26, 1989.

[FR Doc. 89–2250 Filed 1–30–89; 8:45 am]

BILLING CODE 3810-01-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### DOD Advisory Group on Electron Devices; Advisory Committee Meeting

**SUMMARY:** Working Group C (Mainly Opto Electronics) of the DoD Advisory Group of Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Wednesday and Thursday, 15 & 16 February 1989.

**ADDRESS:** The meeting will be held at U.S. Army Strategic Defense Command, USASDC, Sensors Directorate, 106 Wynn Drive, Room 2D700, Redstone Arsenal, Huntsville, Alabama 35907.

**FOR FURTHER INFORMATION CONTACT:** Gerald Weiss, AGED Secretariat, 201 Varick Street, New York, 10014.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging devices, infrared detectors and lasers. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

January 26, 1989.

[FR Doc. 89–2246 Filed 1–30–89; 8:45 am]

BILLING CODE 3810-01-M

### DOD Advisory Group on Election Devices Advisory Committee Meeting

**SUMMARY:** Working Group B (Microelectronics) of the DOD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATE:** The meeting will be held at 0900, Wednesday, February 22, 1989.

**ADDRESS:** The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Becky Terry, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with Section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

January 26, 1989.

[FR Doc. 89–2247 Filed 1–30–89; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

### Notification of Availability of Draft Feasibility Study for Remediation of Landfill, Hamilton Air Force Base, Novato, CA

The U.S. Army Corps of Engineers made available for public review, on January 9, 1989, the Draft Feasibility Study for remediation of Landfill 26, Hamilton Air Force Base (AFB), Novato, California. This document specifically describes and addresses possible remedial alternatives to clean up the sale property landfill. The landfill was identified in the 1987 remedial investigation at Hamilton AFB as a site containing soil and refuse that, in some locations, exceeds criteria developed by the State of California for identification of hazardous waste.

The Draft Feasibility Study major findings include:

Landfill 26 presents insignificant health risks (both toxic and carcinogenic effects) to persons currently living or working at Hamilton AFB.

Left in its current condition, Landfill 26 will continue to pose no threat to human health. Development of Landfill 26 for residential or other restricted-use purposes requires extensive remediation within guidelines determined by Federal and State regulatory agencies to assure protection of human health.

The Draft Feasibility Study describes eight remedial alternatives for addressing contamination in the soil/refuse. These alternatives range from no action (requiring continued groundwater monitoring) to excavation and disposal of contaminated soil/refuse in appropriate commercial landfills and range in costs from $2.8 million to $53.5 million. The following eight remedial alternatives were identified:

No Action—No clean up actions taken at the landfill. Continued groundwater monitoring at the site would be necessary to establish and record that leachate is not moving off site. Cost is $2.8 million. Time frame is 30 years of monitoring.

Excavation and Disposal in a Commercial Landfill—All material equaling or exceeding State levels defining a hazardous waste would be

removed from the site and transported to an off-site commercial Class I landfill. Materials not exceeding hazardous levels would be removed and transported to an off-site commercial Class II landfill. Excavated material would be replaced with clean fill. Cost is $53.5 million. Time frame is 2 years.

Closure in Place as Class I Landfill—The site would be closed where it is as a Class I hazardous waste landfill. No material would be removed. A engineered cap would be placed over the landfill to prevent erosion and water infiltration. A slurry wall would be placed around the landfill to control groundwater flow in and out of the landfill. Public access would be restricted. Cost is $10.6 million. Time frame is less than 2 years.

Fixation of Hazardous Material, Closure as a Class II Landfill— Material equaling or exceeding State levels defining hazardous waste would be excavated and mixed with materials such as Portland cement to fix and bind the contaminants. These fixed materials would be redeposited into the landfill. The site would then be capped and closed as a Class II landfill. This closure would require a variance permit from the California Department of Health Services. Cost is $13.2 million. Time frame is 3 years.

Excavation of Hazardous Waste and Closure as a Class II Landfill—All material equaling or exceeding hazardous definition levels would be excavated and removed to an off-site commercial Class I landfill. An engineered cap would be constructed on the landfill and the site would be closed as a Class II landfill. Cost is $30.9 million. Time frame is 2.5 years.

Soil Washing and Closure as a Class II Landfill—All material equaling or exceeding hazardous definition levels would be excavated and processed over a period of 4 years in an above ground washing system to remove metals and pesticides. Cleaned material would be redeposited in the landfill area. The washing solution would be treated and recycled into the washing system, then treated and discharged either to the Novato Sanitary District or nearby surface waters. The site would be closed as a Class II landfill. Cost is $19.4 million.

Biological Treatment and Excavation and Commercial Landfill Disposal of Hazardous waste—All material equal or exceeding hazardous definition levels would be excavated and disposed on an off-site commercial Class I Landfill. Petroleum product-contaminated soil exceeding 100 parts per million (mg/kg) would be excavated and treated on site in a land farm operation that would allow naturally occurring micro-organisms to feed on the petroleum and reduce the contamination. This material would then be removed and, with other material not exceeding definition levels, would be disposed in a Class III landfill. Cost is $39.4 million. Time frame is 7 years.

Fixation and Class I Closure of Landfill—All material equaling or exceeding hazardous definition would be excavated and fixed with material such as Portland cement. This material would be redeposited into the landfill area. An engineered cap would be constructed, and a slurry wall constructed around the landfill area. Security would be required. Cost is $15.7 million. Time frame is 3.5 years.

Remediation of soil/refuse will subsequently require localized groundwater remediation at the landfill. The Draft Feasibility Study describes six groundwater remedial alternatives utilizing various processes ranging in cost from $4.7 million to $18 million.

The Corps of Engineers has been conducting environmental investigation of the sale property at Hamilton AFB since May, 1985. To date, clean up actions on the sale property have included removal of containerized hazards (1985) and removal of 65 underground fuel structures (1986). Total cost expenditure for the Hamilton AFB clean up and investigations to date has been $13.8 million.

Copies of the Draft Feasibility for Landfill 26 will be available on 9 January 1989. At that time, copies may be obtained by calling the Sacramento District Corps of Engineers, (916) 551–2254, or by writing the Sacramento District Corps of Engineers, ATTN: CESPK–ED–M, 650 Capitol Mall, Sacramento, California 95814–4794. A limited number of copies of the study will also be available at the Hamilton Army Airfield Installation Manager's Office, Building No. 501, Hamilton Army Airfield.

Due to its large size, the remedial investigation report for the landfill referenced in the feasibility study, as well as a copy of the feasibility study, is available for review by the public at the following locations:

Marin County Library, Civic Center, San Rafael, California

Santa Rosa City Library, Main Branch, Santa Rosa, California

Building 501, Hamilton Army Airfield, Novato, California

6th Army Public Affairs Office, Bldg. 38, Presidio of San Francisco, San Francisco, California

Presidio of San Francisco Public Affairs Office, Bldg. 37, Presidio of San Francisco, San Francisco, California

A public meeting to discuss the environmental investigations at Hamilton and receive public comment on the landfill feasibility study is scheduled for February 17, 1989. The public meeting will be held at Hamilton Army Airfield in the Post Theater, Building 507. The meeting time and further details will be published at a later date.

**John O. Roach II,**

*Army Liaison Officer With the Federal Register.*

[FR Doc. 89–2162 Filed 1–30–89; 8:45 am]

BILLING CODE 3710–08–M

## Open Meeting; Coastal Engineering Research Board

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 committee: Coastal Engineering Research Board (CERB).

Date of Meeting: February 16, 1989.

Place: Pulaski Building, Washington, DC.

Time: 8:30 a.m. to 2:00 p.m.

Proposed agenda: A review of the Dredging Research Program will be conducted. The session will consist of presentations and discussions on the Background to the Development of the Dredging Research Program, Present Status of Dredging Research Program, and general discussion and questions.

This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Inquiries and notice of intent to attend the meeting may be addressed to Dr. James R. Houston, Chief, Coastal Engineering Research Center, U.S. Army Engineer Waterways Experiment Station, P.O. Box 631, Vicksburg, Mississippi 39181–0631.

**Kenneth L. Denton,**

*Department of the Army, Alternate Liaison Officer for the Federal Register.*

[FR Doc. 89–2057 Filed 1–30–89; 8:45 am]

BILLING CODE 3710–08–M

## Corps of Engineers, Department of the Army

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) on Proposed Flood Control for the Rio Guanajibo Basin Near Mayaguez/Hormigueros and San German, Puerto Rico

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The proposal consists of structural measures to control flooding within portions of the subject basin.

**CONTACT FOR FURTHER INFORMATION:** Questions about the proposed action and DEIS can be answered by: Dr. Gerald Atmar, Chief, Environmental Studies Section, U.S. Army Corps of Engineers, Post Office Box 4970, Jacksonville, Florida 32232–0019, (904) 791–2615.

**SUPPLEMENTARY INFORMATION:**

1. The proposal consists of structural measures such as channelization (with and without lining), levees, gabions, and debris basins. No dams or reservoirs are being considered.

2. The following action alternatives will be considered:

a. 25-year flood protection.

b. 100-year flood protection.

c. Standard Project Flood (SPF) protection (approximately 200 to 250 years).

3. a. Public involvement will be solicited through a Scoping letter. Comments on alternatives and environmental concerns are invited from any affected Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and parties.

b. Significant issues to be analyzed in depth in the DEIS are means to protect the mangrove and *Pterocarpus* forest at Cano Corazones near the mouth of the Rio Guanajibo.

c. Coordination with appropriate Federal and State agencies is required under provision of the Endangered Species Act and the National Historic Preservation Act.

4. A Scoping meeting is not contemplated.

5. The DEIS is expected to be available for review in the 4th quarter of FY 89.

Dated: January 26, 1989.

**John O. Roach II,**

*Army Liaison Officer with the Federal Register.*

[FR Doc. 89–2163 Filed 1–30–89; 8:45 am]

BILLING CODE 3710–AJ–M

## Army Corps of Engineers

### Meetings: Inland Waterways Users Board

January 24, 1989.

**AGENCY:** Department of the Army, Corps of Engineers, DOD.

**ACTION:** Notice of open meeting.

**SUMMARY:** 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 Committee:* Inland Waterways Users Board.

*Date of Meeting:* March 7, 1989.

*Place:* Quality Inn—Capitol Hill, 415 New Jersey Avenue NW., Washington, DC 20001.

*Time:* 9:00 a.m. to 5:00 p.m.

**Proposed Agenda**

*A.M. Session*

9:00 Business Session
- —Call to Order
- —Installation of Newly Appointed and Reappointed Members
- —Disposition of Prior Meeting Minutes
- —Summary of 1988 Activities and Second Annual Report

9:30 Presentation of Information to Board
- —State of the Ohio River System
- —Selection of Olmsted L&D Navigable Pass Design
- —Non-Federal Involvement in Planning, Design, and Construction
- —Summary and Explanation of 1988 Inland Waterways Review

11:30 Lunch

*P.M. Session*

12:30 Status of Appropriations Activities: The FY 90 Budget

1:00 Discusson of Congressional Testimony
- —FY 90 Budget Priorities
- —Supporting Rational and Policy Recommendations
- —Preparation and Presentation of Testimony
- —Board Objectives for 1989

3:15 Other Business

3:45 Public Comment Period

4:15 Instructions to Support Staff

4:45 Adjournment

This meeting is 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.

For further information contact: Mr. William C. Holliday, Headquarters, U.S. Army Corps of Engineers, CECW–P, Washington, DC 20314–1000 at (202) 272–0146.

**Wilbur T. Gregory, Jr.,**

*Colonel, Corps of Engineers, Executive Director of Civil Works.*

[FR Doc. 89–2164 Filed 1–30–89; 8:45 am]

BILLING CODE 3710–92–M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests Under OMB Review

**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 comment on or before March 2, 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 26, 1989.

**Carlos U. Rice**

*Director for Office of Information Resources Management.*

*Office of Bilingual Education and Minority Languages Affairs*

*Type of Review:* Reinstatement
*Title:* Annual Survey of Bilingual Education
*Frequency:* Annually
*Affected Public:* State or local governments
*Reporting Burden:*
*Responses:* 57
*Burden Hours:* 3420
*Recordkeeping:*
*Recordkeepers:* 0
*Burden Hours:* 0
*Abstract:* State Educational Agencies are required to collect, aggregate, analyze and publish data and information on their population of limited English proficient persons and report this data to the Department. The Department uses this information to make its annual report to Congress.

[FR Doc. 89-2183 Filed 1-30-89; 8:45 am]
BILLING CODE 4000-01-M

## Advisory Council on Education Statistics; Meeting

**AGENCY:** Advisory Council on Education and Statistics (ACES).

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATE:** February 16-17, 1989.

**ADDRESS:** 555 New Jersey Avenue NW., Room 326, Washington, DC 20208.

**FOR FURTHER INFORMATION CONTACT:** Iris Silverman, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 400J, Washington, DC 20208-5574. Telephone: (202) 357-6831.

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Education Statistics is established under section 406(c)1) of the Education Amendments of 1974, Pub. L. 93-380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Eduational Research and Improvement and is responsible for advising on standards to insure that statistics and analysis disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public. The proposed agenda includes the following:

- NELS 88: Supplements to the First Follow-up
- Integrated Postsecondary Education Data System
- Standards for Acceptance of Outside Data
- Review of NCES Program Evaluation Efforts
- Linkages Between CCD and Census Mapping
- Council Business

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW, Room 400J, Washington, DC 20208-5574.

Dated: January 24, 1989.

**Patricia M. Hines,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 89-2189 Filed 1-30-89; 8:45 am]
BILLING CODE 4000-01-M

## DEPARTMENT OF ENERGY

## Voluntary Agreement and Plan of Action to Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following meeting notices are provided:

I. A meeting of the Industry Board (IAB) to the International Energy Agency (IEA) will be held on Tuesday, February 7, 1989, at the offices of the IEA, 2, rue Andre Pascal, Paris, France, beginning at 10:00 a.m. The agenda for the meeting is as follows:

1. Opening remarks.
2. Approval of Record Note for IAB.
3. Proposal for streamlining IAB activities.
4. AST-6 follow-up:
A. AST-6 Appraisal Reports:
1. Report by the Industry Supply Advisory Group (ISAG).
2. Report by the Secretariat.
3. Reports by the National Emergency Sharing Organizations (NESOs).
4. Reports by Reporting Companies.
5. Draft Appraisal by the Standing Group on Emergency Questions (SEQ) to the Governing Board.
B. Work Program for Emergency Management Manual (EMM) update.
5. Other emergency preparedness issues—Seasonality in Trigger Calculation—a Canadian proposal.
6. Workshop—progress report on the workshop on "Practical Aspects of Stockdraw."
7. Future work program.
8. Date of next IAB Meeting.

II. A meeting of the IAB will be held on Wednesday, February 8, 1989, at the offices of the IEA, at the aforesaid address beginning at 9:30 a.m. This meeting is being held in order to permit attendance by representatives of U.S. company members of the IAB at a meeting of the IEA's Standing Group on Emergency Questions (SEQ) which is scheduled to be held at the aforesaid location on that date. The agenda for this meeting is under the control of the SEQ. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda.
2. Summary Record of the 60th Meeting.
3. AST-6 follow-up.
A. AST-6 Appraisal Reports:
1. Report by ISAG.
2. Report by the Secretariat.
3. NESO reports.
4. Reporting Company reports.
5. Draft SEQ appraisal to the Governing Board.
B. Work program for EMM update.
4. Other emergency preparedness issues—Seasonality in Trigger Calculation—a Canadian proposal.
5. Workshop—progress report on the workshop on "Practical Aspects of Stockdraw."
6. Other topics:
A. End-January Oil Market Report.
B. Base Period Final Consumption (4Q87-3Q88).
7. Any other business.
8. Date of next meeting.

III. A meeting of the IAB will be held on Thursday, February 9, 1989, and possibly will continue on Friday, February 10, 1989, at the aforesaid address. The meeting will commence on February 9, following completion of the SEQ meeting which is scheduled to commence on February 8, 1989. This meeting is being held to permit attendance by representatives of U.S. company members of the IAB at a meeting of representatives of Participating Countries which is

scheduled to be held at the aforesaid location on those dates, for the purpose of advising the Secretariat in its preparation for a workshop on the subject of "Practical Aspects of Stockdraw." The agenda for the meeting is under the control of the Secretariat. It is expected that the agenda will cover the following items:

1. Terms of reference for workshop on "Practical Aspects of Stockdraw."
2. Relevant subjects for discussion and development of outlines.
3. Any other business.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, the meetings are open only to representatives of members of the IAB, their counsel, representatives of members of the IEA's Standing Group on Emergency Questions (SEQ), representatives of the Departments of Energy, Justice, State, the Federal Trade Commission, and the General Accounting Office, representatives of Committees of the Congress, representatives of the IEA, representatives of the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, January 25, 1989.

Frank S. Ruddy,
*General Counsel.*

[FR Doc. 89-2206 Filed 1-30-89; 8:45 am]
BILLING CODE 6450-01-M

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## Economic Regulatory Administration

[ERA Docket No. 88-75-NG]

## Coastal Gas Marketing Co., Application To Export Natural Gas to Mexico

**AGENCY:** Economic Regulatory Administration, Department of Energy.

**ACTION:** Notice of applicaton for blanket authorization to export natural gas to Mexico.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on December 30, 1988, of an application filed by Coastal Gas Marketing Company (Coastal Gas), requesting blanket authorization to export up to 105 Bcf of natural gas from the United States to Mexico for short-term and spot market sales over a two-year period beginning on the date of first delivery. The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:**

Larine A. Moore, Natural Gas Division, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3F-056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:**

Coastal Gas, a Delaware corporation with its principal place of business located in Houston, Texas, proposes to export domestically produced natural gas to Mexico from the United States for resale to purchasers in Mexico on an interruptible or firm basis for a term of two years beginning with date of first delivery. Coastal Gas, a marketer of natural gas, states authority would be used primarily to make sales to Petroleous Mexicanos (Pemex) for the local distribution by Pemex to residential and industrial users.

Coastal Gas states it currently is negotiating a sales contract with Pemex for up to 140 MMcf/d at a base price of $2.53 (U.S.) per million Btu, adjusted monthly to an index of interstate gas pipeline sales. Because the applicant contemplates other sales, authorization is requested for 105 Bcf, plus an additional 41 Bcf for potential sales, during the two-year period. Applicant states that sales transactions, including the final arrangement with Pemex, will be the product of arm-length negotiations, and the terms of each arrangement will reflect prevailing market conditions. Coastal Gas intends to use existing facilities in order to export the natural gas requested, and notes it proposes using in connection with the Pemex transaction an interconnection between the pipeline facilities of Texas Eastern Transmission Corporation and Pemex near Reynosa, Tamailipas, Mexico. Coastal Gas intends to comply with the ERA's quarterly reporting requirements.

This export application will be reviewed pursuant to Section 3 of the Natual Gas Act and the authority contained in DOE Delegation Order No. 0204-111. The decision on whether this export of natural gas is in the public interest will be based upon the domestic need for the gas and other matters deemed to be appropriate. The applicant argues that current excess gas supplies evidence a lack of domestic need for this gas to serve regional and national markets. In addition, the applicant states that this export arrangement will reduce trade barriers between the U.S. and Mexico, and aid efforts to reduce the current U.S. trade deficit. Parties opposing this arrangement bear the burden of overcoming Coastal Gas' assertions.

All parties should be aware that if the ERA approves this export, it may permit the export of the gas at any international border point where existing transmission facilities are located.

Coastal Gas requests that an authorization be granted on an expedited basis. The ERA's decision on Coastal Gas' request for expedited treatment will not be made until all responses to this notice have been received and evaluated.

### NEPA Compliance

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposes to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import-export authorization for natural gas in cases not involving new construction. Application of the categorical exclusion in any particular case raises a rebuttable presumption that the ERA's action is not a major Federal action under NEPA. Unless the ERA receives comments indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

### Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests,

motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room 3F-056, RG-23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m. e.s.t., March 2, 1989.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR Sec. 590.316.

A copy of Coastal Gas' application is available for inspection and copying in the Natural Gas Division Docket Room, 3F-056 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 25, 1989.

Anthony J. Como,

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 89-2208 Filed 1-30-89; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 89-04-NG]

## Valero Industrial Gas, L.P.; Application To Amend an Authorization To Export Natural Gas to Mexico

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of application to amend a blanket authorization to export natural gas to Mexico.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on January 19, 1989, of an application filed by Valero Industrial Gas, L.P. (Vigas) requesting that the blanket authorization, previously granted in DOE/ERA Order No. 199 (Order 199), issued October 20, 1987, be amended to increase the 4.38 Bcf of natural gas authorized for export to Mexico by an additional 27.5 Bcf over the remainder of the current term ending November 1, 1989. Vigas requests expedited consideration and approval by February 23, 1989, of its application for amendment to ensure continuity of service to general service customers of Petroleos Mexicanos (Pemex).

The application is filed with the ERA pursuant to Section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

**DATE:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed no later than February 15, 1989.

**FOR FURTHER INFORMATION:**

Edward J. Peters, Jr., Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, U.S. Department of Energy, Forrestal Building, Room 3H-087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8162.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

**SUPPLEMENTARY INFORMATION:** Order 199, issued on October 20, 1987, granted Vigas blanket authorization to export up to 4.38 Bcf of natural gas to Mexico over a two-year period, beginning on the date of first delivery, November 1, 1987, to November 1, 1989. This export volume was based on a contract between the applicant and Pemex for the sale and purchase of up to 6,000 MMBtu per day for a two-year term. Pemex resells the gas to general service customers, including residential, commercial and industrial customers, in the two of Piedras Negras, Coahuila, Mexico.

Vigas requests amended export authority in order to serve Pemex under a second agreement for a term that corresponds to its existing authorization. Pemex has requested additional gas in amounts up to 95,000 MMBtu per day at Reynosa for general service use in and near the city of Monterrey, Mexico. According to the application, additional service is necessary because deliverability from existing local reserves is not sufficient to meet growing requirements of Pemex's distribution customers in the Monterrey area. Vigas commenced additional daily sales of up to 95,000 MMBtu to Pemex at Reynosa on January 16, 1989. This maximum daily quantity correlates to the additional 27.5 Bcf for which Vigas requests export authority through November 1, 1989.

According to Vigas, sales under both agreements are made on a short-term basis only if the gas is available to Vigas and only if Pemex needs and requests the gas. Vigas asserts that the specific terms of the Monterrey and any other contract will reflect arms-length negotiations and will depend on prevailing natural gas market conditions.

In support of its request for expedited action, Vigas states that it began delivery of gas at the new rate of 101,000 MMBtus on January 16, 1989. At such a rate, the balance of its authorized export volume will be depleted by February 2, 1989. Unless its authorization is amended as requested, Vigas will have to stop delivery of gas to Pemex which in turn will curtail Pemex's service to Piedras Negras and Monterrey. Vigas states that it currently is the only supplier for Piedras Negras and that it provides a significant portion of the Monterrey general service requirement. Based on this information, the initial intervention and comment period is limited to 15 days. Further procedures are not waived at this time and will be determined as necessary and appropriate to develop a decisional record.

This application for amendment will be reviewed pursuant to Section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204-111. The decision on whether the increased export of natural gas is in the public interest will be based upon the domestic need for the gas and on whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade

arrangements. The applicant asserts that available gas supplies are more than adequate to provide the proposed increased export, and that the export arrangement will be competitive and in the public interest. Parties, especially those that may oppose this application, should comment in their responses on these matters.

All parties should be aware that if this amendment is granted, only the total additional amount of authorized volumes for the remainder of the term without any daily limit may be designated in order to provide Vigas with maximum flexibility of operation. In addition, the export of gas to Mexico may be permitted at any existing point of exit and through any existing transmission system.

**NEPA Compliance**

On August 9, 1988, the DOE published in the **Federal Register** (53 FR 29934) a notice of proposed amendments to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, effective on an interim basis upon publication. In that notice, the DOE proposed to amend the agency's NEPA guidelines to add to its list of categorical exclusions the approval or disapproval of an import/export authorization for natural gas in cases not involving new construction. Application of the categorical exclusions in any particular case raises a rebuttable presumption that the ERA's action is not a major Federal action under NEPA. Unless the ERA receives comments indicating the presumption does not or should not apply in this case, no further NEPA review will be conducted by the DOE.

**Public Comment Procedures**

In responses to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590.

Protests, motion to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Natural Gas Division, Office of Fuels Programs, Department of Energy, Room 3F–056, RG–23, Forrestal building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., February 15, 1989.

It is intended that a decisional record be developed on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Vigas' application is available for inspection and copying in the Natural Gas Division Docket Room, 3F–056, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 27, 1989.

**Anthony J. Como,**

*Acting Director, Office of Fuels Programs, Economic Regulatory Administration.*

[FR Doc. 89–2333 Filed 1–30–89; 8:45 am]

BILLING CODE 6450–01–M

## Federal Energy Regulatory Commission

**[Docket Nos. EL87–37–002, et al.]**

### Arkansas Power & Light Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

**1. Arkansas Power & Light Company**

[Docket No. EL87–37–002]

January 25, 1989

Take notice that on Arkansas Power & Light Company (AP&L) tendered for filing a rate schedule applicable to North Arkansas Electric Cooperative, Incorporated containing the same terms and conditions as those contained in the Farmers Electric Cooperative Corporation Agreement pursuant to the Commission's order issued September 23, 1988.

*Comment date:* February 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

**2. Metropolitan Edison Company**

[Docket No. ER87–34–004]

January 25, 1989

Take notice that on January 9, 1989, Metropolitan Edison Company (Met-Ed) tendered for filing its compliance filing pursuant to the Commission's Opinion and Order issued on July 13, 1988.

*Comment date:* February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

**3. Coso Energy Developers (BLM Facility)**

[Docket No. QF86–590–003]

January 26, 1989

On January 9, 1989, Coso Energy Developer (Applicant), c/o California Energy Company, Inc., 601 California Street, 9th Floor, San Francisco, California 94108, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located at the Naval Weapons Center of the United States Navy at China Lake, near Ridgecrest, California. The facility will consist of three steam turbine generating units. The primary energy source will be geothermal fluids.

The original application was filed by California Energy Company, Inc., and was granted on August 6, 1986 (36 FERC ¶ 62,149). A prior application for

recertification was filed by Coso Energy Developers, and was granted on October 3, 1988 (45 FERC ¶ 61,003).

The instant recertification is requested due to transfer of the rights to construct, own and operate the transmission line and associated equipment to Coso Transmission Line Partners, a California general partnership. In addition, Public Services Enterprise Group Incorporated and Dominion Resources, Inc., two electric utility holding companies, will have equity interest in the facility.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**4. Coso Power Developers (Navy II Facility)**

[Docket No. QF86-591-002]

January 26, 1989

On January 9, 1989, Coso Power Developer (Applicant), c/o California Energy Company, Inc., 601 California Street, 9th Floor, San Francisco, California 94108, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located at the Naval Weapons Center of the United States Navy at China Lake, near Ridgecrest, California. The facility will consist of three steam turbine generating units. The primary energy source will be geothermal fluids.

The original application was filed by California Energy Company, Inc., and was granted on August 6, 1986 (36 FERC ¶ 62,150). A prior application for recertification was filed by Coso Energy Developers, and was granted on October 3, 1988 (45 FERC ¶ 61,003).

The instant recertification is requested due to transfer of the ownership of the facility from Coso Energy Developers to the Applicant and transfer of the rights to construct, own and operate the transmission line and associated equipment to Coso Transmission Line Partners, a California general partnership.

*Comment date:* Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-2228 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. ER89-177-000 et al.]**

## Florida Power Corp. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

January 24, 1989.

Take notice that the following filings have been made with the Commission:

**1. Florida Power Corporation**

[Docket No. ER89-177-000]

Take notice that on January 12, 1989, Florida Power Corporation (Florida Power) tendered for filing the Contract for Interchange Service dated December 1, 1981 between Florida Power Corporation and the City of St. Cloud: (1) Service Schedule F, "Assured Capacity and Energy Interchange Service"; (2) Service Schedule H, "Reserve Interchange Service"; (3) Service Schedule I, "Regulating Interchange Service"; (4) Service Schedule X, "Extended Economy Interchange Service"; and (5) An amended Article IV of the Contract for Interchange Service listing Schedules F, H, I and X as Service Schedules under the Contract.

Florida Power requests that the filing be made effective as rate schedules retroactive to December 1, 1988, and therefore, requests waiver of the sixty day notice requirements. Alternatively, if the waiver is not granted Florida Power requests an effective date sixty days after the filing date. Copies of the filing have been served on the City of St. Cloud and the Florida Public Service Commission.

*Comment date:* February 7, 1989, in accordance with Standard Paragraph E at the end of this document.

**2. Niagara Mohawk Power Corporation**

[Docket No. ER89-176-000]

Take notice that on January 10, 1989, Niagara Mohawk Powser Corporation (Niagara Mohawk), tendered for filing, as a rate schedule, a supplement agreement between Niagara and Consolidated Edison Company of New York, Inc. (Consolidated Edison) dated September 28, 1988.

Niagara presently has on file an agreement with Consolidated Edison dated April 1, 1979 last amended December 4, 1987. The original agreement is to provide transmission service for the delivery of diversity power and energy from the Power Authority of the State of New York (PASNY) to Consolidated Edison. The diversity power and energy is in turn exchanged by PASNY with Hydro Quebec. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 113. This new agreement is being transmitted as a supplement to the existing agreement and supersedes and amends Supplement No. 10.

The September 28, 1988 agreement, which is a supplement to the original agreement, revises the transmission rates. Niagara requests a waiver of the Commission's prior notice requirements in order to allow the September 28, 1988 agreement to become effective April 1, 1988. Niagara Mohawk states that Consolidated Edison has agreed to the proposed effective date.

Copies of the filing were served upon Consolidated Edison Company of New York, Inc. and the Public Service Commission of New York.

*Comment date:* February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

**3. Mississippi Power & Light Company**

[Docket No. ER89-170-000]

Take notice that Mississippi Power & Light Company (MP&L), on January 9, 1989, tendered for filing three letter agreements for sale of energy to the Tennessee Valley Authority.

MP&L requests an effective date of December 5, 1988 for the First Letter Agreement, December 10, 1988 for the Second Letter Agreement, and January 1, 1989 for the Third Letter Agreement. MP&L requests waiver of the Commission's notice requirements.

*Comment date:* February 6, 1989, in accordance with Standard Paragraph E at the end of this notice.

**4. Niagara Mohawk Power Corporation**

[Docket No. ER89-175-000]

Take notice that Niagara Mohawk Power Corporation (Niagara Mohawk), on January 12, 1989 tendered for filing an agreement between Niagara Mohawk and Consolidated Edison Company of New York, Inc. (Con Ed) dated September 28, 1988, providing for certain transmission services to Con Ed. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule FERC No. 90. This new agreement is being transmitted as a supplement to the existing agreement.

Under Rate Schedule No. 90, Niagara delivers Fitzpatrick power and energy between the New York Power Authority and Con Ed. Paragraph 2.3 of Rate Schedule No. 90, as amended on August 28, 1980, states that Niagara Mohawk will recalculate the annual fixed-charge rate effective September 1 of each year for the ensuing 12-month period using previous year-end data and cost of capital data as determined by the New York State Public Service Commission in Niagara Mohawk's most recent retail electric rate proceeding. Niagara requests an effective date of September 1, 1988.

Copies of the filing were served upon Con Ed and the New York State Public Service Commission.

*Comment date:* February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

**4. SEMASS Partnership**

[Docket No. ER89-174-000]

Take notice that on January 11, 1989, SEMASS Partnership (SEMASS), a qualifying small power production facility, tendered for filing as a rate schedule change an executed Power Sale Agreement (the Agreement) between SEMASS and Commonwealth Electric Company (CEC) for a unit sale of capacity and energy from a solid waste resource recovery and electric generating facility to be located in Rochester, Massachusetts (the "Facility"). The Facility is composed of two parts: The Original Facility, which was the subject of the initial rate schedule (ER87-357-000), and the Expansion Facility, which is the subject of the rate schedule change. SEMASS is subject to the Commission's ratemaking jurisdiction because its power production capacity is in excess of 30 megawatts. SEMASS also requests waiver of the Commission's regulations requiring that the rate schedules be submitted no more than 120 days before the rates are to become effective.

The proposed rates, as set forth in the Agreement, are negotiated rates based on CEC's avoided costs of fuel and energy. The proposed rates are subject to credits due CEC in the event the weighted average of fees per ton received by SEMASS for refuse exceed a certain amount, as more particularly described in Article IV(b) of the Agreement. The proposed rates are further subject to change in the event CEC requires the Facility to operate at Full Capacity, which requires consumption of Alternate Fuel, as more specifically described in Article IV(g) of the Agreement.

Copies of the rate schedule change filing have been served upon CEC and the Massachusetts Department of Public Utilities.

*Comment date:* February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

**6. Niagara Mohawk Power Corporation**

[Docket No. ER89-183-000]

Take notice that on January 17, 1989, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Central Vermont Public Service Corporation (CVPS) dated November 8, 1988 providing for certain transmission services to CVPS. This agreement provides for the transmission and delivery by Niagara Mohawk of 10 MW of firm power purchased by CVPS from New York State Electric and Gas (NYSEG). The term of the agreement is from November 1, 1988 until April 30, 1989.

An effective date of November 1, 1988 is proposed. Niagara Mohawk states that waiver of the Commission's notice requirements is requested. Niagara Mohawk further states that CVPS has consented to the November 1, 1988 effective date.

Copies of this filing were served upon CVPS and the New York State Public Service Commission.

*Comment date:* February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

**7. Pacific Gas and Electric Company**

[Docket No. ER89-169-000]

Take notice that on January 6, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing a Letter Agreement dated August 29, 1984, between PG&E and the Department of Water Resources of the State of California (DWR) which resolves a dispute regarding the 1982 Comprehensive Agreement between the Parties and the December 31, 1982 Settlement Agreement between the Parties. The Letter Agreement addresses operating and billing procedures during certain curtailment periods, and was effective during the period September 25, 1984 through April 30, 1987, after which time the provisions of the Letter Agreement became moot.

Copies of this filing were served upon DWR and the California Public Utilities Commission.

*Comment date:* February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

**8. Arizona Public Service Company**

[Docket No. ER89-181-000]

Take notice that on January 17, 1989, Arizona Public Service Company (APS) tendered for filing an Agreement or Sale of Economy Energy (Economy Energy Agreement and an Interconnection Agreement—Service Schedule A-3—Emergency Assistance (Emergency Assistant Agreement) both between APS and Utah Power and Light (UP&L) executed December 1, 1988 and December 22, 1988, respectively.

The Economy Energy Agreement provides that Economy Energy sales by APS to UP&L shall be priced at one of the following rates: (a) A ceiling rate concept based in part on the fixed costs associated with facilities used to produce the costs associated with facilities used to produce the required energy; (b) a "split-the-savings" concept; or (c) a selling price based on 120 percent of cost to produce such energy. The Emergency Assistance Agreement provides for the supply of emergency power and energy at the rate level specified in the Economy Energy Agreement.

Both Agreements supersede similar such services currently provided pursuant to APS FERC Rate Schedule 26.

APS with the concurrence of UP&L has requested waiver of the Commission's notice requirements so that these agreements may become effective December 1, 1988 as agreed between the parties.

Copies of this filing are being served upon UP&L, the Arizona Corporation Commission and the Public Service Commission of Utah.

*Comment date:* February 7, 1989, in accordance with Standard Paragraph E at the end of this notice.

**9. Sierra Pacific Power Company**

[Docket No. ER88-553-000]

Take notice that on January 4, 1989, Sierra Pacific Power Company (Sierra) tendered for filing an amendment to its rate filing in which Sierra proposed changes in rates for wheeling services Sierra provides to Bonneville Power Administration. The amendment provides no changes to Sierra's

proposed rate filing, but only provides information in response to the Commission's October 6, 1988 deficiency letter.

*Comment date:* February 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

**10. Idaho Power Company**

[Docket No. ER89–180–000]

Take notice that on January 13, 1989, Idaho Power Company (IPC) tendered for filing, a Short-term Agreement for Supply of Power and Energy (Agreement) dated September 12, 1988, between Sierra Pacific Power Company and Idaho Power Company. The term of the Agreement is from May 1, 1988, to May 31, 1989.

IPC requests waiver of the notice requirements in order to permit the agreement to become effective on December 1, 1988.

*Comment date:* February 7, 1989, in accordance with Standard Paragraph E at the end of this document.

**11. Allegheny Power Service Corporation on Behalf of Monongahela Power Company, The Potomac Edison Company, West Penn Power Company (The APS Companies)**

[Docket No. ER88–615–000]

Take notice that on December 27, 1988, Allegheny Power Service Corporation on behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company ("the APS Companies"), filed a response to the request of the Commission Staff for additional information in support of the filing in this docket.

Copies of the filing have been provided to AMP—Ohio, Elkem Metals Company, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia State Corporation Commission, and the West Virginia Public Service Commission.

*Comment date:* February 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protects will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–2177 Filed 1–30–89; 8:45 am]

BILLING CODE 6717–01–M

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**[Project No. 485–017 Georgia]**

## Georgia Power Co.; Availability of Environmental Assessment

January 26, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing (OHL) has reviewed the application requesting approval for nonproject use of lands and waters of the Bartletts Ferry Project on the Chattahoochee River. The staff of OHL's Division of Project Compliance and Administration (DPCA) has prepared an environmental assessment (EA) for the proposed action. In the EA, staff concludes that approval of the nonproject use of project lands and waters 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, located at 825 North Capitol Street NE., Washington, DC 20426.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–2234 Filed 1–30–89; 8:45 am]

BILLING CODE 6717–01–M

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**[Docket Nos. CP89–691–000, et al.]**

## Northern Natural Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

**1. Northern Natural Gas Company Division of Enron Corp.**

[Docket No. CP89–691–000]

January 25, 1989.

Take notice that on January 24, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–691–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for OXY USA Inc. (OXY), a producer, under the blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated June 6, 1988, under its Rate Schedule IT–1, it proposes to transport up to 55,000 MMBtu per day equivalent of natural gas for OXY from point(s) or receipt offshore and onshore listed in Appendix "A" of the agreement to redelivery point(s), also listed in Appendix "A". The subject transportation service may involve interconnections between Northern and various transporters.

Northern further states that the average daily and annual quantities would be equivalent to 55,000 MMBtu and 20,075,000 MMBtu, respectively. Service commenced June 6, 1988, under the provisions of § 284.223(a) as reported in Docket No. ST89–1888 (filed January 24, 1989).

*Comment date:* March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**2. Northern Natural Gas Company Division of Enron Corp.**

[Docket No. CP89–691–000]

January 25, 1989.

Take notice that on January 24, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–691–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a transportation service for Shell Gas Trading Company (Shell Gas Trading), a broker, under the blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated May 1, 1988, under its Rate Schedule FT–1, it proposes to transport up to 30,000 MMBtu per day equivalent of natural gas for Shell Gas Trading from point(s) of receipt offshore and onshore listed in Appendix "A" of the agreement to redelivery point(s), also listed in

Appendix "A". The subject transportation service may involve interconnections between Northern and various transporters.

Northern further states that the average daily and annual quantities would be equivalent to 30,000 MMBtu and 10,950,000 MMBtu, respectively. Service commenced May 1, 1988, under the provisions of § 284.223(a) as reported in Docket No. ST89–1888 (filed January 24, 1989).

*Comment date:* March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**3. Texas Eastern Transmission Corporation**

[Docket No. CP89–612–000]

January 25, 1989.

Take notice that on January 13, 1989, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP89–612–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a pipeline facilities looping its Penn-Jersey system to render tranportation of natural gas for CNG Transmission Corporation (CNG), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern is requesting authority to:

(1) Construct and operate approximately 29.89 miles of 36-inch pipeline loop at three locations on its existing Penn-Jersey pipeline system located in Pennsylvania and additional measuring and regulating facilities at M&R Station No. 1744.

(2) Render for CNG firm transportation of natural gas up to a Maximum Daily quantity (MAXDQ) of 224,332 dekatherms (dt) and such additional quantities on an interruptible basis as Texas Eastern and CNG may mutually agree.

It is claimed that installation of the proposed facilities on Texas Eastern's system would provide increased capacity sufficient to transport and deliver for the account of CNG 224,332 dt per day at the interconnection of Texas Eastern's system and CNG's PL–1 line at Texas Eastern's Perulack compressor station.

Texas Eastern claims that it would receive natural gas from CNG at an existing point of interconnection located at the Oakford Storage Field in Westmoreland County, Pennsylvania, and transport and redeliver equivalent quantities, less applicable shrinkage (currently proposed to be 0%), to CNG at the existing interconnection between Texas Eastern and CNG's Pipeline No. PL–1 located at Perulack, Pennsylvania.

For all gas transported and delivered, Texas Eastern would charge CNG a monthly demand charge of $3.929 per dt for firm quantities and an excess charge of $.1292 per dt for deliveries in excess of the firm quantity.

It is alleged that the estimated cost of the proposed facilities would be $43,138,000. Texas Eastern would initially finance the cost of constructing the facilities from funds on hand or short term borrowings, and that permanent financing would be undertaken as part of Texas Eastern's overall long-term financing program at a later date.

Texas Eastern alleges that this application identifies a superior alternative to the facilities proposed by CNG in Docket No. CP88–871–000, wherein CNG sought authorization for pipeline facilities to connect its existing system to its PL–1 pipeline near Perulack, Pennsylvania. Texas Eastern asserts that Docket No. CP88–871–000 is related to CNG's sales and transportation project to serve 4 new customers in Virginia as proposed in Docket Nos. CP88–712–000 and CP88–712–001.

Texas Eastern claims that in economic terms its alternative is superior to CNG's proposal. Texas Eastern alleges that its proposed facilities would involve a capital outlay of $43,138,000 compared to CNG's estimated cost of $76,157,650 to deliver gas to Perulack. Texas Eastern further claims that translated to delivered cost, Texas Eastern would seek to recover $10,576,860 from its initial rate compared to the $17,346,374 for CNG's first full year cost of service, and thus, in the first year alone, CNG's customers would save almost $7,000,000 under Texas Eastern's proposal.

It is alleged that in terms of environmental impact, there would be no significant impact to the environment in constructing and operating Texas Eastern's proposed facilities because its facilities consist of only pipeline looping along its existing Penn-Jersey pipeline system. Texas Eastern asserts that it has *in hand* existing multiple-line-rights-of-way, for aproximately 26 miles or 87% of the required 29.89 miles right-of-way; approximately 3.9 miles, in ten tracts, of new rights-of-way would be acquired adjacent to the existing pipeline.

*Comment date:* February 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

**4. Paiute Pipeline Company**

[Docket No. CP89–620–000]

January 26, 1989.

Take notice that on January 17, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP89–620–000, a request pursuant to §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for High Sierra Hotel/Casino (High Sierra), and end-user, under its blanket certificate issued in Docket No. CP87–307–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation agreement dated November 14, 1988, under its Rate Schedule IT–1, it would transport up to 250 MMBtu per day of natural gas for High Sierra from the point of receipt at the interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border. Paiute further states that it would transport and redeliver the natural gas to Southwest Gas Corporation-Northern Nevada, a local distribution company, for the account of High Sierra at the Stateline City Gate No. 1 delivery point located in Douglas County, Nevada. Paiute indicates that it would transport approximately 220 MMBtu on an average day and approximately 80,000 MMBtu on an annual basis for High Sierra.

Paiute advises that is commenced the transportation of natural gas for High Sierra on November 22, 1988, as reported in Docket No. ST89–1364–000, for a 120-day period pursuant to section 284–223(a) of the Commission's Regulations (18 CFR 284.223(a)).

*Comment date:* March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**5. Williams Natural Gas Company**

[Docket No. CP89–664–000]

January 26, 1989.

Take notice that on January 18, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–664–000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under its blanket certificate issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act for Lawrence Memorial Hospital (Lawrence), all as more fully

set forth in the request on file with the Commission and open to public inspection.

Williams proposes to transport natural gas for Lawrence, an end user, on an interruptible basis, pursuant to a transportation agreement dated October 21, 1988. Williams explains that service commenced October 21, 1988, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89–1651–000. Williams further explains that the peak day quantity would be 150 MMBtu, the average day quantity would be 100 MMBtu, and that the annual quantity would be 36,500 MMBtu. Williams explains that it would receive natural gas for the account of Lawrence at receipt points located in Kansas, and Oklahoma and would redeliver the gas at various delivery points in Kansas.

*Comment date:* March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**6. Northern Natural Gas Company, Division of Enron Corp.**

[Docket No. CP89–663–000]

January 26, 1989.

Take notice that on January 18, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP89–663–000, a request pursuant §157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Trinity Pipeline, Inc. (Trinity), a broker of natural gas, under its blanket certificate issued in Docket No. CP86–435–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it would transport natural gas for Trinity from points of receipt located in the states of Kansas, Texas, Oklahoma, Wisconsin, Iowa, South Dakota and Minnesota. Northern further states that the points of delivery would be located in the states of Kansas, Texas, Iowa, South Dakota, Nebraska, Minnesota, and Oklahoma. Northern indicates that the maximum daily volume of natural gas that would be transported for Trinity would be 30,000 MMBtu. Northern states that construction of facilities would not be required to provide the proposed service.

Northern states that it commenced the transportation of natural gas for Trinity on November 17, 1988, as reported in Docket No. ST89–1760–000 for a 120-day period pursuant to § 284.233(a) of the Commission's Regulations (18 CFR 284.233(a)).

*Comment date:* March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**7. U–T Offshore System**

[Docket No. CP89–619–000]

January 26, 1989.

Take notice that on January 17, 1989, U–T Offshore System (U–TOS), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89–619–000, an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) construction and operation of certain facilities by U–TOS to provide an interconnection, at U–TOS's Johnson's Bayou Plant in Cameron Parish, Louisiana (Johnson's Bayou Plant), with a pipeline to be constructed and operated by ANR Pipeline Company (ANR) in Cameron Parish; and (2) interruptible transportation of natural gas of up to the dekatherm equivalent of 50,000 Mcf per day for ANR from two points of receipt to a point of redelivery to ANR at the proposed interconnection with ANR's pipeline, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

U–TOS states that ANR has traditionally moved natural gas from the High Island Area on the High Island Offshore System (HIOS) to West Cameron Block 167 (Block 167) for redelivery to an ANR-owned pipeline at Block 167 for transportation to shore. U–TOS also states that ANR has advised U–TOS that during the winter period (November–March), the ANR-owned pipeline operates at substantially full capacity.

U–TOS asserts that the proposed arrangement will provide ANR with an alternate means of moving gas to shore. Such arrangements will enable ANR to reroute up to the dekatherm equivalent of up to 50,000 Mcf per day through U–TOS to a 1.5 mile, 12-inch diameter pipeline to be built by ANR which, in turn, will interconnect with ANR's existing 12-inch diameter West Cameron Lateral north of the Johnson's Bayou Plant. ANR will construct its pipeline and a meter station pursuant to its blanket certificate.

U–TOS also requests inclusion of a receipt point in West Cameron Block 116 to enable it to transport gas reserves committed to ANR in West Cameron Blocks 115 and 116.

*Comment date:* February 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

**8. Questar Pipeline Company**

[Docket No. CP89–557–000]

January 26, 1989.

Take notice that on January 9, 1989, Questar Pipeline Company (Questar), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP89–557–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing elective standby sales service for its Rate Schedule CD–1 customers, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Questar states that it requests authority to provide an elective standby sales service to customers who purchase natural gas under Rate Schedule CD–1 to its FERC Gas Tariff, First Revised Volume No. 1. Questar further states that its filing is made in accordance with the Commission's December 1, 1988, letter order in Docket Nos. RP88–93–005 and RP88–40–005 which required Questar to file for certificate authorization for standby sales service.

*Comment date:* February 16, 1989, in accordance with Standard Paragraph F at the end of this notice.

**9. Natural Gas Pipeline Company of America**

[Docket No. CP89–666–000]

January 26, 1989.

Take notice that on January 19, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89–666–000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for NICOR Exploration Company (NICOR), a producer of natural gas, under its blanket certificate issued in Docket No. CP86–582–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural states that it proposes to transport natural gas for NICOR between receipt and delivery points in offshore Texas.

Natural further states that the maximum daily, averge and annual quantities that it would transport for NICOR would be 3,500 MMBtu equivalent of natural gas (plus any additional volumes accepted pursuant to

the overrun provisions of Natural's Rate Schedule ITS), 3,072 MMBtu equivalent of natural gas and 1,121,280 MMBtu equivalent of natural gas, respectively.

Natural indicates that in a filing made with the Commission on January 19, 1989, it reported that transportation service for NICOR had begun on December 1, 1988 under the 120-day automatic authorization provisions of § 284.223(a).

*Comment date:* March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**10. Panhandle Eastern Pipe Line Company**

[Docket No. CP89–641–000]

January 26, 1989.

Take notice that on January 17, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP89–641–000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Mountain Iron and Supply Company (Mountain Iron), a marketer, pursuant to Panhandle's blanket certificate issued in Docket No. CP86–585–000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Panhandle requests authority to transport up to 100 dt equivalent of natural gas per day on an interruptible basis on behalf of Mountain Iron pursuant to a transportation agreement dated October 31, 1988, between Panhandle and Mountain Iron. Panhandle states that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt points on its system in Illinois, Kansas, Oklahoma, Texas, Wyoming, and Colorado and redeliver the gas, less fuel used and unaccounted for line loss to Central Illinois Light Company (CILCO) in Tazewell, Edgar, Moultrie, Douglas, Vermilion, Logan, Champaign, Sangamon, Peoria, and Knox Counties, Illinois.

Panhandle indicates it would provide the service for a primary term of one month from the date in initial transportation and continue to provide the service on a month-to-month basis until terminated by either party upon at least six month's prior notice to the other. Panhandle states that it would charge the rates and abide by the terms and conditions of its Rate Schedule PT.

It is indicated that the estimated maximum daily volume, average volume, and annual volumes would be 100 dt equivalent of natural gas, 32 dt equivalent of natural gas, and 11,680 dt equivalent of natural gas, respectively. Panhandle states that it commenced a 120-day transportation service for Mountain Iron on December 14, 1988, as reported in Docket No. ST89–1633. It is also indicated that Panhandle would use existing facilities to implement the service.

*Comment date:* March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**11. ANR Pipeline Company**

[Docket No. CP89–647–000]

January 26, 1989.

Take notice that on January 17, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89–647–000 a request pursuant to §§ 157.205 and 284.223(2)(B) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Coastal Gas Marketing Company (Coastal Gas) under ANR's blanket certificate issued in Docket No. CP88–532–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

ANR states that it would transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day for Coastal Gas. ANR states that it would receive the gas at an existing point of receipt in the High Island Area, offshore, Texas, and redeliver the gas for the account of Coastal Gas at existing interconnections located in the state of Texas. ANR indicates that the total volume of gas to be transported for Coastal Gas on a peak day would be 100,000 MMBtu; on an average day would be 100,000 MMBtu; and on an annual basis would be 36,500,000 MMBtu. ANR indicates it would perform the proposed transportation service for Coastal Gas pursuant to a service agreement dated October 28, 1988, between ANR and Coastal Gas.

ANR states that it commenced the transportation of natural gas for Coastal Gas on December 4, 1988, at Docket No. ST89–1660–000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. ANR states that it proposes to continue this service in accordance with §§ 284.221 and 284.223. ANR indicates that it proposes no new facilities in order to provide this transportation service.

*Comment date:* March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**12. Williams Natural Gas Company**

[Docket No. CP89–671–000]

January 26, 1989.

Take notice that on January 19, 1989, Williams Natural Gas Company (Williams) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89–671–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Phillips 66 Natural Gas Company (Phillips 66), under its blanket authorization issued in Docket No. CP86–631–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams would perform the proposed interruptible transportation service for Phillips 66, a gatherer/processor of natural gas, pursuant to an ITS transportation service agreement dated November 8, 1988 (Reference No. TR–C0033). The term of the transportation agreement is from the date of execution and shall continue in full force and effect until January 1, 1993, and shall be considered as renewed and extended beyond such original term for additional periods of one year each unless either party gives the other written notice at least ninety days prior to the expiration date of the original or any succeeding or extended term of its intention to terminate the service agreement on that date. Williams proposes to transport on a peak day up to 40,000 MMBtu per day; on an average day up to 30,000 MMBtu; and on an annual basis 10,950,000 MMBtu of natural gas for Phillips 66. It is stated that Phillips 66 would pay Williams for all service rendered under the transportation agreement in accordance with William's Rate Schedule ITS, and/or any other applicable or superseding rate schedule(s) as filed with the FERC. Williams would receive the volumes from 2 receipt points in Oklahoma for transportation to various delivery points on Williams' pipeline system located in Oklahoma, Kansas, and Missouri.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Williams commenced such self-implementing service on December 1, 1988, as reported in Docket No. ST89–1621–000.

*Comment date:* March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**Standard Paragraphs**

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to apppear or be represented at the hearing.

G. Any person on the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-2229 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP89-658-000, et al.]**

## Texas Gas Transmission Corp. et al.; Natural gas certificate filings

January 25, 1989.

Take notice that the following filings have been made with the Commission:

**1. Texas Gas Transmission Corporation**

[Docket No. CP89-658-000]

Take notice that on January 18, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-658-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Stand Energy Corporation (Stand) under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas requests authorization to transport on a peak day up to 28,000 MMBtu of natural gas for Stand, with an estimated average daily quantity of 1,000 MMBtu. On an annual basis, Stand estimates a volume of 10,220,000 MMBtu. The ultimate consumers of the gas have been identified by Stand as The Kroger Company.

Transportation service for Stand commenced December 1, 1988, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-1386-000.

*Comment date:* March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**2. Natural Gas Pipeline Company of America**

[Docket No. CP89-674-000]

Take notice that on January 23, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-674-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Apache Corporation (Apache), a producer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated October 3, 1988, under its Rate Schedule ITS, it proposes to transport for Apache up to 100,000 MMBtu per day equivalent of natural gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS). Natural states that it would receive the gas at existing receipt points in Illinois, Texas, offshore Texas, Oklahoma, Louisiana, offshore Louisiana, Kansas, Nebraska and Wyoming, and that it would transport and deliver the gas in Louisiana, Illinois, Texas, offshore Texas, Oklahoma, Colorado, Iowa, Kansas and Nebraska.

Natural advises that service under § 284.223(a) commenced November 18, 1988, as reported in Docket No. ST89-1830. Natural further advises that it would transport 30,000 MMBtu on an average day and 10,950,000 MMBtu annually.

*Comment date:* March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

**3. ANR Pipeline Company**

[Docket No. CP89-649-000]

Take notice that on January 17, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-649-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of National Energy Systems, Inc. (National), under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authorization to transport, on an interruptible basis, up to a maximum of 1,000 dekatherms (dt) of natural gas per day for National, a marketer of natural gas, from receipt points located in Kansas, Louisiana, offshore Louisiana, Oklahoma, Texas and offshore Texas to a point of delivery located in Washtenaw County, Michigan. ANR anticipates transporting, on an average day 1,000 dt and an annual volume of 365,000 dt.

ANR states that the transportation of natural gas for National commenced

December 22, 1988, as reported in Docket No. ST89-1662-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88-532-000.

*Comment date:* March 13, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-2235 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CI86-46-004]**

## Chevron U.S.A. Inc.; Application for Extenson of a Blanket Limited-Term Certificate With Pregranted Abandonment

January 26, 1989.

Take notice that on January 17, 1989, as amended by its filing of January 18, 1989, Chevron U.S.A. Inc. (Chevron) of P.O. Box 3725, Houston, Texas 77253-3725, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment in Docket No. CI86-46-003 to extend such authorization for an unlimited term, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By order issued March 31, 1988, in Docket No. CI85-685-003, et al., the Commission consolidated Chevron's authorization in Docket No. CI87-918-000 pertaining to the sale of contractually uncommitted gas with Chevron's limited-term blanket abandonment and blanket certificate with pregranted abandonment in Docket No. CI86-46-003 and extended such authorizations for a term expiring March 31, 1989. Chevron now seeks to extend its blanket limited-term certificate insofar as it pertains to contractually uncommitted gas for an unlimited term.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 15, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Chevron to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-2231 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TM89-2-70-001]**

## Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

January 26, 1989.

Take notice that Columbia Gulf Transmission Company (Columbia Gulf), on January 17, 1989, tendered for filing the following substitute revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1, with the proposed effective date of January 1, 1989:

**Substitute Sixth Revised Sheet No. 5A**

Columbia Gulf states that on December 16, 1988, it tendered for filing Sixth Revised Sheet No. 5A to its FERC Gas Tariff, Original Volume No. 1. This tariff sheet was filed to reflect the Gas Research Institute (GRI) funding unit as authorized by Opinion No. 320 issued by the Federal Energy Regulatory Commission (Commission) on November 30, 1988 in Docket No. RP88-182-000. This Substitute Revised tariff sheet is being filed to correct typographical errors discovered since the filing of December 16, 1988.

Copies of the filing were served upon the Company's jurisdictional 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. All such motions or protests should be filed on or before February 3, 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 Columbia Gulf's filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-2232 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TM89-3-4-000]**

## Granite State Gas Transmission, Inc.; Filing

January 26, 1989.

Take notice that on January 19, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing with the Commission the following tariff sheet in its FERC Gas Tariff, First Revised Volume No. 1, for effectiveness on January 1, 1989:

**First Revised Sheet No. 7-C**

According to Granite State, the purpose of the instant filing is to comply with the Commission's order issued September 28, 1988 in this docket relating to the procedures pursuant to which Granite State will recover from its customers the fixed take-or-pay charges billed by Tennessee Gas Pipeline Company under the provisions of Order No. 500. Granite State proposes to track Tennessee's revised take-or-pay charges authorized by Commission order dated December 29, 1988 in Docket No. RP88-191-005. Granite State requests an effective date of January 1, 1989.

Granite State further states that copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., 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 February 3, 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.

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89-2233 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

**[Docket No. CI87-223-003, et al.]**

## OXY USA Inc., et al.; Application for Extension of Blanket Limited-Term Certificates With Pregranted Abandonment [1]

Take notice that each Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1989, to extend such authorization for an unlimited term, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 13, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Lois D. Cashell,**

*Secretary.*

| Docket No. | Date Filed | Applicant |
|---|---|---|
| CI87-223-003 | 1-10-89 | OXY USA Inc., 110 West 7th Street, Tulsa, Oklahoma 74119. |
| CI87-307-002 | 1-18-89 | MidCon Marketing Corp., 701 E. 22nd Street, P.O. Box 1208, Lombard, Illinois 60148. |

[FR Doc. 89-2230 Filed 1-30-89; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL-3512-3]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA, (202 382-2740).

**SUPPLEMENTARY INFORMATION:**

### Office of Research and Development

*Title:* Application for Permit to Discharge Wastewater and Associated Regulations (EPA ICR #0226; OMB #2040-0086). This is a revision of a currently approved collection.

*Abstract:* Facilities intending to discharge any pollutant into national waters must obtain a permit. Applicants submit data, form(s), and/or supplemental information to permit authority, describing facility location, receiving waters, and nature of discharge. The permit authority approves/disapproves request and sets permit conditions.

*Burden Statement:* The estimated average public reporting and recordkeeping burden for this collection of information is 13 hours per respondent, per year. This estimate includes all aspects of the information collection, including time for reviewing instructions, gathering and maintaining the data needed, carrying out and analyzing tests, and submitting applications.

*Respondents:* Facilities that discharge pollutants into national waters.

*Estimated No. of Respondents:* 27,913.

*Estimated Total Annual Burden on Respondents:* 369,380.

*Frequency of Collection:* On occasion, every five years.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW., Washington, DC 20503.

### OMB Responses To Agency PRA Clearance Requests

EPA ICR #1028.03; Pesticide Manufacturing Facility Census for 1986; OMB #2040—0111; was approved 12/22/88; expires 04/30/90.

EPA ICR #1287; National Operations and Maintenance Excellence Awards Program Questionnaire; OMB #2040-0101; was approved 12/23/88; expires 12/31/91.

EPA ICR #0370.06; Underground Injection Control Program Information Collection; OMB #2040-0042; was approved 12/23/88; expires 09/30/91.

Dated: January 21, 1989.

**Paul Lapsley,**

*Information and Regulatory Systems Division.*

[FR Doc. 89-2187 Filed 1-30-89; 8:45 am]

BILLING CODE 6560-50-M

**[OPP-180800; FRL-3512-4]**

## Pennsylvania Department of Agriculture Receipt of Applications for Emergency Exemptions To Use (±)-2-[4,5-Dihydro-4-Methyl-4-(1-Methylethyl)-5-OXO-1H-Imidazol-2-yl]-5-Ethyl-3-Pyridinecarboxylic Acid; Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUBJECT:** EPA has received specific exemption requests from the Pennsylvania Department of Agriculture (hereafter referred to as the "Applicant") to use the active ingredient (±)−2−[4,5−dihydro−4−methyl−4−(1−methylethyl)−5−oxo−1*H*−imidazol−2−yl]−5−ethyl−3−pyridinecarboxylic acid (Pursuit™) to control broadleaf weeds on 250 acres of lima beans, 8,000 acres of snap beans, and 2,800 acres on green peas in Pennsylvania. Pursuit™ contains an unregistered active ingredient and therefore, in accordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant these exemptions.

**DATE:** Comments must be received on or before February 15, 1989.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP-180800," should be submitted by mail to: Public Docket and Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

In person, bring comments to: Room 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information (CBI)." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Room 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday excluding legal holidays.

**FOR FURTHER INFORMATION:** By mail: Robert Forrest, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue specific exemptions to permit the use of an unregistered herbicide, (±)−2−[4,5−dihydro−4−methyl−4−(1−methylethyl)−5−oxo−1*H*−imidazol−2−yl]−5−ethyl−3−pyridinecarboxylic acid (CAS 81335-77-5), manufactured as Pursuit™, by American Cyanamid Company, on lima beans, snap beans, and green peas in Pennsylvania. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

On June 10, 1988 the Administrator cancelled all labeled uses of the herbicide dinoseb on beans and peas. According to the Applicant, dinoseb was used to control annual broadleaf weeds on almost all the acreages of lima beans, snap beans, and green peas grown in Pennsylvania. The Applicant states that other products that are labeled either do not control a broad spectrum of broadleaf weeds consistently or cannot be used in Pennsylvania without causing crop injury.

The Applicant indicates that weeds in bean and pea fields reduce yields by competing with the crop and cause additional problems. Weeds reduce harvest efficiency and result in field abandonment when weed problems are severe. Weeds interfere with insecticide applications and may result in increased insect problems or additional insecticide applications.

Pursuit™ will be applied preplant or preemergence to the crop at a maximum rate of 0.03125 pounds active ingredient per acre. A single application per crop will be made sometime between March 1, and September 31, 1989 to approximately 8,000 acres of snap beans, 250 acres of lima beans, and 2,800 acres of green peas.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Pennsylvania Department of Agriculture.

Dated: December 27, 1988.

**Anne E. Lindsay,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 89-2188 Filed 1-30-89; 8:45 am]

BILLING CODE 6560-50-M

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[FRL-3508-6]

## Underground Injection Control Program; Casing Cementing Pressure/Single Point Resistivity Log Mechanical Integrity Test for Class III In-Situ Uranium Injection Wells

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of alternative method; request for comments.

**SUMMARY:** The Director of the Office of Drinking Water, Environmental Protection Agency (EPA), is proposing to grant approval for the use of a casing cementing pressure/single point resistivity log mechanical integrity test as an alternative to the test specified in 40 CFR 146.8(b) for the demonstration of no significant leaks in the casing. The Agency intends this approval to apply to Class III in-Situ uranium mining injection wells. The test is referred to as the Casing Cementing Pressure/Single Point Resistivity Test. The Agency is requesting comments and further data on the viability of this alternative.

**DATES:** Written comments and any referenced data must be submitted on or before March 2, 1989. If significant comments are received, EPA will publish a subsequent notice. If no significant comments are received which warrant changes to this notice, approval will become final on April 3, 1989.

**ADDRESSES:** Comments should be adddresed to Bruce J. Kobelski, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M, Street SW., Washington DC 20460. A copy of the comments and supporting documents will be available for review during normal business hours at the EPA, Room 1013 C, East Tower, 401 M Street SW., Washington DC, and at EPA Region VIII, 999 18th St., Suite 500, Denver, CO 80202-2405.

**FOR FURTHER INFORMATION CONTACT:** Bruce J. Kobelski, Office of Drinking Water (WH-550) U.S. EPA, Washington, DC 20460 at: (202) 382-7275 or Paul S. Osborne, Drinking Water Branch, U.S. EPA, Region VIII, 999 18th Street, Suite 500 (8WM-DW) Denver, CO 80202-2405 at: (303) 293-1418.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

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

The EPA intends to grant national approvl for the use of an alternative mechanical integrity test known as the Casing Cementing Pressure/Single Point Resistivity test. This test may be applied to Class III in-situ uranium wells constructed with PVC or fiberglass casing on a national basis. Today's action is being taken in response to a request from the Director of the Class I, III, IV, and V UIC programs for Wyoming that EPA approve this proposed test to demonstrate mechanical integrity as an alternative to the use of portable packers. EPA had previously approved the use of this alternative test for Class III in situ uranium mining wells in the State of Texas in 1983. The test has been utilized successfully in that State.

**II. Application and Description of the Test**

*A. Application*

The in-situ mining of uranium utilizes a series of injection and recovery wells to leach uranium from shallow mineralized sandstone units ("roll front uranium deposits"). The process consists of leaching uranium from the ore bodies in place by circulating ground water fortified with an oxidizing agent, such as oxygen and carbon dioxide, in the appropriate horizon via injection wells and recovering the leach fluid via pumping wells. The uranium-bearing solution recovered from the pumped wells is processed through an ion exchange facility where the uranium is removed from the solution and absorbed onto the surface of the ion exchange resin. The barren fluid leaving the ion exchange facility is enhanced with oxidants and is reinjected into the ore into the ore body to continue the mining cycle.

Well field units are designed such that injection and recovery wells are utilized for both purposes as mining proceeds through the unit. Wells are constructed out of either PVC or fiberglass casing, which is cemented by circulating cement from total depth to the surface. Both injection and recovery wells are operated without tubing and packers.

*B. Testing Method*

1. Phase I—Casing Cementing Pressure Test

After the casing is run into the hole and the cement pumped in, the cementer is used to displace the cement out of the casing with water and up into the annulus until cement returns to the surface. During this displacement, a pressure gauge is attached to the cementing head and the pressure required to displace the cement is measured.

The applied pressure is strictly a function of the depth of the well (or the height of the column to be displaced) and the density of the cement. With well depths of approximately 500 feet and a cement density of 90 lbs/ft$^3$, the maximum casing head pressure required as about 100 psi. The pressure gauge is read during the first 10 to 14 minutes after the pressure stabalizes. The final pressure reading must fall within 5% of the initial shut-in pressure for the casing to pass.

It is important to note that the casing is in its weakest condition at this point in the well completion. The glue joints are not cured, and the cement in the annulus is still fluid, thus not supporting the casing except for the hydrostatic pressure. Therefore, if there is a break in the casing or weak glue joint, it is most likely to fail at this time. If the well passes the test, the pressure is held on the casing until the cement starts to cure, which is generally overnight.

2. Phase II—Single Resistivity Log

Following the overnight curing of the cement, the casing head is removed and the well is completed by drilling the cement in the base of the casing and drilling an open hole in the ore zone using an underreaming device. At this point, the casing and cement sheath exhibit significantly increased mechanical strength because the casing glue joints have cured, and the cement has cured sufficiently to support the casing. Damage to the casing during these last steps of installation, if it occurs, is generally massive in nature, such as smashing the casing wall with drill bit or splitting the casing with an underreaming tool with its blades stuck in the open position. Therefore, the final MIT is generally not conducted to detect subtle damage, but rather to detect massive damage. The resistance log is run after the liner assembly has been inserted into the casing and each time that drilling tools are run into the well.

The single point resistance logging is based on the insulating characteristic of the PVC theremoplastic casing material relative to the conductivity of the formation and the cement sheath. The resistance log, termed a "differential single-point resistance", is a measurement of the total electrical resistance between the lead nose and the casing of the probe. The current utilized in this measurement is high in frequency (5,000 to 10,000 Hz) and low in magnitude (microamperes). The unit of measurement is in ohms. Single point resistance measurements are common in the minerals industry because of the simplicity of the apparatus and the sharpness of definition. However, such measurements are subject to certain limitations: 1) they are difficult to quantify; and 2) they cannot be used to determine salinity or porosity. Single point resistivity logs are excellent for drill hoel correlation, stratigraphy, and fine detail discrimination.

With the logging probe inside the electrically-insulating casing, the applied electrical potential results in a current flowing between the electrode at the tip of the probe and the return path to the recording isntrumentation. This return path is through the fluid in the borehole to the upper part of the probe and to the shielding on the outside of the cable on which the probe is hung. If the casing is intact, the resistance of this electrical path (and therefore the current flow) is relatively constant. If, however, the casing has a crack or a small hole, the electrical return path is altered by the presence of the crack or hole. In this case, the crack or hole presents a small, locally conductive path relative to the normally intact PVC casing and borehold fluid interface. This small conductive path is recorded as a spike of lower resistance in the resistance record. The size of the recorded spike can be altered by changing the scale factor on the resistance meter.

In essence, the single-point resistivity test is an "electrical pressure test" of the casing. In explaining direct current (DC) circuits, the analogy between electrical flow and water flow in pipes is commonly used. Voltage (electrical potential) is analogous to pressure, and current is analogous to water flow. The fluid-filled casing is subjected to a voltage (pressure) and the current (flow) is recorded. At a constant applied voltage as the hole is logged, the electrical flow responds to changes in the insulating character of the casing, that is, cracks or holes. Therefore, the single-point resistivity is a pressure test which is very specific in pinpointing the casing defect.

**III. Basis for Approval**

Based on an evaluation of the supporting data for this test and previous experience with application of the test in the field in Texas, EPA believes this test will provide more information regarding the dept of casing failures than the pressure test.

The usual MIT method used for detecting leaks in a well casing utilizes a pressure test with a gas or liquid. For Class III uranium in-situ injection wells, operators typically have used inflatable packers run on a wireline inside the casing. The utilization of the standard pressure test with inflatable packers has been accompanied by difficulties: (1) The casing can be stressed or broken by inadvertently exceeding the maximum working pressure rating of the casing in order to properly seat the packer; (2) packer seating and data interpretation problems can be caused by residual cement inside the casing and casing extrusion imperfections; (3) packer retrieval is often difficult because of improper deflation of the packer or wedging of the wire line, which has often resulted in ultimate well failure; and (4) the sensitivity of the packer test is such that small holes may go uindetected in special cases.

All technical documentation supporting the Casing Cementing Pressure/Single Point Resistivity Log will be available for public review at EPA offices mentioned in the Summary of this notice. EPA developed the requirements and limitations of the testing method for demonstrating mechanical integrity pursuant to 40 CFR 146.8(b), after considering data submitted as the result of testing the effectiveness of this alternative MIT at Everest Minerals Highland Uranium Mine in Wyoming.

**IV. Special Conditions**

*A. Limitations for Conducting The Casing Cementing Pressure/Single Point Resistivity Test*

The following are limitations for conducting the casing cementing pressure/single point resistivity test:

1. The use of this test is restricted to Class III uranium in-situ injection wells constructed with PVC or fiberglass casing.
2. Wells must be cemented by displacing cement through the casing with at least 10% excess over the calculated volume of the drill hole/casing annulus.
3. Water levels in the casing must be maintained within 10 feet of the surface during the running of the single-point resistivity log.
4. The single-point resistivity log should be run using a full-scale value which is greater than that of the most resistive bed in the wellbore, but no less than 500 ohm.

*B. Determination.*

The casing cementing pressure and single-point resistance test, subject to the conditions and procedures discussed in this notice, provides the necessary information to demonstrate reliably whether a well constructed out of PVC or fiberglass has casing leaks. This test is beign approved for Class III in-situ uranium wells nationally.

Dated: January 13, 1989.

**Michael B. Cook,**

*Director of Office of Drinking Water.*

[FR Doc. 89-1934 Filed 1-30-89; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirement Submitted to the Office of Management and Budget for Review

January 27, 1989.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507. Persons wishing to comment on this information collection request should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

*Please note:* The Commission has requested expedited review of this item by January 31, 1989 under the provisions of 5 CFR 1320.18.

*OMB No.:* 3060-0093.
*Title:* Application for Renewal of Radio Station License in Specified Services.
*Form No.:* FCC 405.
*Action:* Revision.
*Respondents:* Business.
*Frequency:* On Occasion.
*Estimated Annual Burden:* 10,100 Respondents; 30 minutes each.
*Needs and Uses:* This renewal application must be filed by the licensee between 30 and 60 days prior to the expiration of the license. The data is used to renew the authorization. Additional information not currently on the form is being requested on certain renewal applications as follows:

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**Common Carrier Public Mobile Radio Service Information; Renewals**

Pursuant to § 22.45(b) of the Rules, Station licenses for Public Land Mobile non-wireline common carriers will expire April 1, 1989. Section 22.11(b) requires that an application, FCC Form 405, be filed in duplicate by the licensee between thirty (30) and sixty (60) days prior to the expiration date of the license. Renewal applications will be accepted accompanied by the appropriate fee between February 1, 1989 to March 1, 1989. Untimely filed Renewal applications will be returned as unacceptable for filing.

There have been several inquiries from the public in regards to the proper response to Item 3(a) of FCC Form 405. The proper response for Item 3(a) will depend upon whether the station, in question is one where the initial license authorization was never issued or if it is a station with an existing license authorization but has one or more construction authorizations for which a license authorization was never issued.

In the first instance, where a license was never issued, the information submitted in response to Item 3(a) should include an exhibit listing the file number of the construction authorization and the date the Notification of Completion of Construction (FCC Form 489) was filed with the FCC. In the second instance, which involves an existing authorization but one or more construction authorizations for which licenses were never issued, the response to Item 3(a) should include an exhibit listing the file number of the latest license authorization, file numbers of all

construction authorizations and dates on which the notifications of completion of construction (FCC Form 489) were filed with the FCC. The exhibit should also include the dates that all minor modifications and fill-in notification applications were filed.

A reminder, an original FCC Form 405 and duplicate is required for each call sign.

If there are questions concerning other Items on the Form 405 for Public Land Mobile Service, please direct them to Garveyette Brown at 3202–653–5560.

[FR Doc. 89–2321 Filed 1–30–89; 8:45 am]
BILLING CODE 6712-01-M

## Low Power Television and Television Translator Filing Window From March 6, 1989 Through March 10, 1989

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Notice of filing window.

**SUMMARY:** This action gives notice of an application filing window for the tendering of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. This notice sets forth filing procedures including when and where to file and the applicable application form to be used, and information concerning application filing fees.

**EFFECTIVE DATE:** March 6, 1989 through March 10, 1989.

**FOR FURTHER INFORMATION CONTACT:** Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau (202) 632–3894.

**SUPPLEMENTARY INFORMATION:**

Commencing March 6, 1989, and continuing to and including March 10, 1989, the Commission will permit the filing of applications for new construction permits and for major changes in existing facilities for low power television and television translator stations. These applications must be filed at the below specified locations.

No more than five (5) applications for new low power television or television translator stations may be tendered for filing by any applicant, or by any individual or entity having an interest of one percent (1%) or greater in any applicant(s) filing in the March 6–March 10, 1989, window. This restriction does not apply to major change applications.

All applications must be "complete and sufficient" when tendered for filing, in accordance with § 73.3564 of the Commission's rules. As noted below, a fee of $375.00 must accompany each application. Further, applicants filing during this window period *MUST* use the February 1988 edition of FCC Form 346. See 53 FR 15225 (April 28, 1988). All applications filed on obsolete editions will be returned as defective and unacceptable for filing. FCC Form 346 can be obtained from the FCC's Operations Support Division, Services and Supply Branch, Room B–10, 1919 M Street NW., Washington, DC 20554, telephone number (202) 632–7272.

In this window application filing process, the Commission will utilize the facilities of the Treasury Department lockbox bank. Window application filings can be made, either by mail or by person, at the following locations *ONLY*:

If mailed—

Federal Communications Commission, Low Power Television Window Filing, P.O. Box 371994M, Pittsburgh, PA 15250–7995.

If hand-delivered—

Federal Communications Commission, Low Power Television Window Filing, Strip Commerce Center, 28th and Liberty Avenue, Pittsburgh, PA 15222.

Hand-carried or couriered applications can be delivered daily at the Strip Commerce Center location during normal business hours (8:30 a.m. to 5:00 p.m.). Detailed instructions to get to this location are included in this Public Notice as Attachment I. Submissions tendered after close of business (5:00 p.m.) on Friday, March 10th 1989, will not be accepted. Mailed applications must be *actually received* no later than March 10th. *Window application filings WILL NOT be accepted at the offices of the Federal Communications Commission in Washington, DC.*

An original and two copies of the application and all required exhibits must be filed. To facilitate the initial processing of these applications, all applicants are requested to enclose in a single envelope the original and duplicate copies of the application, with each duplicate copy clearly denoted as such by the applicant. Where more than one new station or major change application is being filed, separate envelopes enclosing the individual application (*i.e.*, an original and two copies) can be mailed in a single package. Receipts will not be provided by the lockbox bank facility. However, for mailed window application filings, a "return copy" of the application can be furnished *provided* the applicant clearly identifies the "return copy" and attaches to it a stamped, self-addressed envelope. For hand-carried or couriered applications delivered to the Strip Commerce Center location, bank personel, if requested in person, will date stamp as received a proffered copy of the application and return it to the requestor.

Generally, applicants seeking to construct a new low power television or television translator station or to make a major change in the facilities of an existing low power television or television translator station are required to pay and submit a fee with the filing of the application. A *separate* fee payment of $375.00, attached to each original application, must be submitted for *each* new station or major change application filed during this window; a single fee payment for multiple applications will *not* be accepted. Payment of the required fee can be made by check, bank draft or money order payable to the Federal Communications Commission.

Applications submitted with insufficient payments or without any payments will be dismissed and returned, along with the insufficient payment, to the applicant without processing. See § 1.1107 of the Commission's rules. Following the fee review process, applications that are found to be patently defective, not "complete and sufficient," or filed on an obsolete edition of FCC Form 346 will be rejected and returned to the applicant.

Governmental entities are exempt from the $375.00 fee. As defined by the Commission's rules, governmental entities include "any possession, state, city, county, town, village, municipal corporation or similar political organization or subpart thereof controlled by publicly elected and/or duly appointed public officials exercising sovereign direction and control over their respective communities or programs." Also exempted from this fee are noncommercial educational FM and full service television broadcast station licensees seeking to make major change in the facilities of their existing low power television or television translator stations or to construct new low power television or television translator stations, provided those stations operate or will be operated on a noncommercial educational basis. See § 1.1112 of the Commission's Rules. To avail itself of any fee exemtpion an applicant must indicate its eligibility by checking the appropriate box on page 1 of FCC Form 346 (February 1988 edition).

Applicants are advised that on April 21, 1988, the Commission adopted a *Policy Statement* providing for limited consideration of terrain shielding in the

evaluation of television translator and low power television applications. 3 FCC Rcd 2664, *recon. granted in part,* FCC 88–342, released December 15, 1988. In the *Policy Statement* the Commission described the limitations on its consideration of requests for waiver of its low power television service application acceptance requirements concerning interference protection standards and provided guidance for the submission of these waiver requests.

For further information concerning the filing window, contact Keith A. Larson or Molly Fitzgerald, Low Power Television Branch, Mass Media Bureau at telephone number (202) 632–3894.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

**Attachment I**

*Directions to Strip Commerce Center*

From Greater Pittsburgh International Airport and Interstate 79:
- Proceed east on Parkway (Interstate 279) towards downtown Pittsburgh.
- Go through the Fort Pitt tunnels and across the Fort Pitt bridge to Liberty Avenue.
- Take Liberty Avenue to 28th Street (28 blocks).
- Turn right on 28th Street and follow FCC signs to parking lot.
- Enter building at designated area and follow signs.

From Pennsylvania Turnpike:
- Take Exit 6 (Monroeville) to Parkway (Interstate 376). Go west on Parkway to the Grant Street Exit (Exit 3).
- Proceed on Grant Street to Liberty Avenue (Approximately 6–7 blocks).
- Bear right on to Liberty Avenue.
- Take Liberty Avenue to 28th Street.
- Turn right on 28th Street and follow FCC signs to parking lot.
- Enter building at designated area and follow signs.

[FR Doc. 89–2172 Filed 1–30–89; 8:45 am]

BILLING CODE 6712–01–M

## Applications for Consolidated Hearing; Compass Rose Communications Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

| Applicant, City, and State | File No. | MM Docket No. |
|---|---|---|
| A. Compass Rose Communications Corp., Phoenix, Az. | BPCT–880610KG | 88–581 |
| B. Sun World Communications, Phoenix, Az. | BPCT–880801LJ | ..... |
| C. Channel 61 Partners, Limited, Phoenix, Az. | BPCT–880801LK | ..... |
| D. Maricopa Community Television Project, Phoenix, Az. | BPCT–880802KF | ..... |
| E. Gregory R. Brooks d/b/a Brooks Broadcasting, Phoenix, Az. | BPCT–880802KI | ..... |

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 entirety 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.

*Issue Heading and Applicant(s)*

Air Hazard—A, B, C, D, E
Duopoly—C
Comparative—A, B, C, D, E
Ultimate—A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) 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 No. (202) 857–3800).

**Roy J. Stewart,**

*Chief, Video Services Division.*

[FR Doc. 89–2171 Filed 1–30–89; 8:45 am]

BILLING CODE 6712–01–M

# FEDERAL HOME LOAN BANK BOARD

## Federal Home Loan Bank Board Adjudication Process

Date: January 18, 1989.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Notice.

**SUMMARY:** The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, with revision, an information collection request, "Federal Home Loan Bank Board Adjudication Process," formerly titled "FSLIC Receivership Rules—Claims," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The information provided allows the Office of General Counsel to adjudicate disputes between FSLIC as Receiver and either the claimant (in Requests for Review of the Claims Determinations) or petitioner (the Requests for Expedited Relief). Without it, the claimant or petitioner would be denied due process. We estimate it will take approximately 3 hours per respondent to complete the information collection.

**DATES:** Comments on the information collection request are welcome and should be received on or before February 15, 1989.

**ADDRESS:** Comments regarding the paperwork-burden aspects of the request should be directed to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below:

Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 801 17th Street, NW., Washington, DC 20552, Phone: 202–653–2751.

**FOR FURTHER INFORMATION CONTACT:** Mary Ellen Mallonee, Office of General Counsel, 202–377–6472, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary.*

[FR Doc. 89–2239 Filed 1–30–89; 8:45 am]

BILLING CODE 6720–01–M

## Federal Savings and Loan Advisory Council; Renewal of Charter

Date: January 12, 1989.

Pursuant to the provisions of section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a), the following notice has been adopted by the Federal Home Loan Bank Board for publication in the **Federal Register.**

Pursuant to the provisions of section 9 of the Federal Advisory Committee Act (5 U.S.C. Appendix), and the implementing regulations issued by the

Office of Management and Budget, the Federal Home Loan Bank Board, having determined, that the continuation of the Federal Savings and Loan Advisory Council is in the public interest in connection with the performance of the duties imposed on it by law, hereby renews the existence of the Federal Savings and Loan Advisory Council for two years to January 31, 1991, and in connection therewith reissues the following charter (which appears as section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a)) to the said Council:

**Federal Savings and Loan Advisory Council Charter**

There is hereby created a Federal Savings and Loan Advisory Council, which shall continue to exist as long as the Bank Board bi-annually determines, as a matter of formal record, with timely notice in the **Federal Register**, to be in the public interest in connection with the performance of duties imposed on the Council by law. The Council shall, in all other respects, be subject to the provisions of the Federal Advisory Committee Act. The Council shall consist of one member for each Federal Home Loan Bank district to be elected annually by the board of directors of the Federal Home Loan Bank in such district and twelve members to be appointed annually by the Bank Board to represent the public interest. Each such elected member shall be a resident of the district for which he is elected. All members of the Council shall serve without compensation, but shall be entitled to reimbursement from the Bank Board for subsistence, and transportation and other incidental travel expenses in accordance with the Federal Travel Regulations, as amended. The Council shall meet in Washington, District of Columbia, at least twice a year and more often if requested by the Bank Board. The Council may select its chairman, vice chairman, and agenda committee chairman, and adopt methods of procedure, and shall have power—

(1) To confer with the Bank Board on general business conditions, and on special conditions affecting the Federal Home Loan Banks and their members and the Federal Savings and Loan Insurance Corporation.

(2) To request information, and to make recommendations, with respect to matters within the jurisdiction of the Bank Board and the Federal Savings and Loan Insurance Corporation.

**Federal Home Loan Bank Board**

The Federal Home Loan Bank Board also has directed, in connection with the foregoing, that—

1. The Federal Savings and Loan Advisory Council's estimated budget of $58,000 shall be paid for by the self-supporting Federal Home Loan Bank System, and none of its annual operating costs shall be charged to or paid by the United States;

2. The said Charter of the Federal Savings and Loan Advisory Council shall not be amended, altered, or repealed except by Congress or by the Federal Home Loan Bank Board, unless reissued prior to that date by the Federal Home Loan Bank Board.

The Federal Savings and Loan Advisory Council.

**John M. Buckley, Jr.,**

*Executive Secretary.*

The Federal Home Loan Bank Board.

**John F. Ghizzoni,**

*Assistant Secretary for Technical Affairs.*

[FR Doc. 89-2238 Filed 1-30-89; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202-002744-064
*Title:* Atlantic and Gulf/West Coast of South America Conference
*Parties:*
Compania Chilena De Navigacion Interoceania, S.A.
Compania Sud Americana De Vapores
Lykes Bros. Steamship Co., Inc.
Compania Peruana De Vapores
Lineas Navieras Bolivianas, S.A.M.
Naviera Neptuno, S.A.
*Synopsis:* The proposed modification would prohibit Members from taking independent action to enter into loyalty contracts.
*Agreement No.:* 202-010012-016
*Title:* Australia-Pacific Coast Rate Agreement
*Parties:*
Columbus Line
Australia Container Transportation (Australia) Ltd.
*Synopsis:* The proposed modification would prohibit member lines from taking independent action to enter into loyalty contracts.
*Agreement No.:* 202-010390-017
*Title:* United States Atlantic and Gulf/Ecuador Freight Association
*Parties:*
Crowley Caribbean Transport, Inc.
Lykes Bros. Steamship, Inc.
Ecuadorian Line, Inc.
*Synopsis:* The proposed modification would prohibit Members from taking independent action to enter into loyalty contracts.
*Agreement No.:* 211-011213-004
*Title:* Spain-Italy/Puerto Rico Island Pool Agreement
*Parties:*
Compania Trasatlantica Espanola, S.A.
Nordana Line AS
Sea-Land Service, Inc.
*Synopsis:* The proposed modification would delete language pertaining to specific Pool Point values established for the first Pool Period in connection with the Spanish and Italian Pool Sections. It would further clarify the procedure to which a member may withdraw from a Pool Section.
*Agreement No.:* 206-011228
*Title:* Israel Interconference Agreement
*Parties:*
Israel Eastbound Conference
Israel Westbound Conference
*Synopsis:* The proposed Agreement would permit the parties to agree upon, inter alia, rates, charges, terms, conditions, and practices for cargo moving in the trade between U.S. Atlantic, Gulf, Great Lakes and Pacific Coast ports and U.S. inland and coastal points via such ports, and Mediterranean ports of Israel, and Israeli inland and Mediterranean coastal points via such ports.

By order of the Federal Maritime Commission.

Dated: January 26, 1989.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 89-2209 Filed 1-30-89; 8:45 am]

BILLING CODE 6730-01-M

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the

following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 224–011062–003
*Title:* Maryland Port Administration Terminal Agreement
*Parties:*
Maryland Port Administration (MPA)
Evergreen Marine Corporation (Taiwan) Ltd. (EMC)
*Synopsis:* The agreement provides that MPA will grant EMC a discount of $50.00 per loaded container moved by EMC into and out of the Port of Baltimore (the Port) and drayed to either CSX or CONRAIL railheads in Baltimore. The $50 discount is restricted to containers moving between the Port and Louisville, Kentucky or Chicago, Illinois or Detroit, Michigan.

*Agreement No:* 224–200087–001
*Title:* Port of Oakland Terminal Agreement
*Parties:*
Port of Oakland (the Port)
Maersk Line Pacific, Ltd.
*Synopsis:* The Agreement amends Agreement No. 224–200087, the basic nonexclusive preferential assignment agreement, by establishing a rental of $49,998.00 per month for Option area "A", based on an estimated total cost of improvements constructed upon Option area "A" of $2,363,000, a current land value of $6.00 per square foot and the Port's cost of financing.

By Order of the Federal Maritime Commission.

Dated: January 25, 1989.

**Joseph C. Polking,**
*Secretary.*

[FR Doc. 89–2110 Filed 1–30–89; 8:45 am]
BILLING CODE 6730–01–M

## FEDERAL RESERVE SYSTEM

### The Frankford Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 17, 1989.

**A. Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *The Frankford Corporation,* Horsham, Pennsylvania; to acquire 9.65 percent of the voting shares of Dime Financial Corp., West Chester, Pennsylvania, and thereby indirectly acquire The Bank of Chester County, formerly The Dime Savings Bank of Chester County, West Chester, Pennsylvania.

**B. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *LCB Corporation, Inc.,* Fayetteville, Tennessee; to acquire 37.5 percent of the voting shares of North Alabama Bank, Hazel Green, Alabama, a *de novo* bank.

**C. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Lake Shore Bancorp, Inc.,* Chicago, Illinois; to acquire 100 percent of the voting shares of Illinois Center Bancorporation, Inc., Glen Ellyn, Illinois, and thereby indirectly acquire Center Bank-Glen Ellyn, Glen Ellyn, Illinois.

2. *Midlothian State Bank Employee Stock Ownership Trust,* Midlothian, Illinois; to acquire 12 percent of the voting shares of Midlothian State Bank, Midlothian, Illinois.

**D. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Kansas Holding Company,* Junction City, Kansas; to acquire 100 percent of the voting shares of Valley Holdings, Inc., Junction City, Kansas, and thereby indirectly acquire First State Bank, Junction City, Kansas.

**E. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. **First National Bowie Bancorp, Inc.,** Bowie, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Bowie, Bowie, Texas.

Board of Governors of the Federal Reserve System, January 25, 1989.

**Jennifer J. Johnson,**
*Associate Secretary of the Board.*

[FR Doc. 89–2116 Filed 1–30–89; 8:45 am]
BILLING CODE 6210–01–M

### Northwest Georgia Financial 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 and 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 17, 1989.

**A. Federal Reserve Bank of Altanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Northwest Georgia Financial Corporation,* Dallas, Georgia; to engage *de novo* in management consulting regarding the location, construction, operation and marketing of branch banks located in supermarket stores pursuant to § 225.25(b)(11) of the Board's Regulation Y.

**B. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Irwin Union Corporation,* Columbus, Indiana; to engage *de novo* through its subsidiary, Irwin Union Capital Corporation, Columbus, Indiana, in consumer financial counseling pursuant to § 225.25(b)(20) of the Board's Regulation Y.

2. *Irwin Union Corporation,* Columbus, Indiana; to engage *de novo* through its subsidiary, Irwin Union Capital Markets, Inc., Columbus, Indiana, in securities brokerage activities pursuant to § 225.25 (b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 25, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-2117 Filed 1-30-89; 8:45 am]

BILLING CODE 6210-01-M

## Change in Bank Control; Acquisitions of Shares of Banks or Bank Holding Companies; Bernard Weindruch et al.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 14, 1989.

**A. Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bernard Weindruch,* Rock Island, Illinois, to acquire an additional 1.0 percent; Ira J. Weindruch, Rock Island, Illinois, to acquire an additional 1.0 percent; Benjamin D. Farrar, Aledo, Illinois, to acquire an additional 4.0 percent; Sandra & Douglas Kratz, Decorah, Iowa, to acquire an additional 1.0 percent; and Perry B. Hansen, Bettendorf, Iowa, to acquire an additional 1.0 percent of the voting shares of Financial Services Corporation of the Midwest, Rock Island, Illinois, and thereby indirectly acquire The Rock Island Bank, Rock Island, Illinois.

**B. Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *George L. Clark,* Alburquerque, New Mexico; to acquire an additional 11.6 percent of the voting shares of the Bank of New Mexico Holding Company, Albuquerque, New Mexico, and thereby indirectly acquire The Bank of Albuquerque, Albuquerque, New Mexico; The Bank of New Mexico, Las Vegas, New Mexico; and Western Bank, Springer, New Mexico.

**C. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Sam K. Kendrick Testamentary Trust,* Dallas, Texas; to acquire 17.12 percent of the voting shares of Parker County Bancshares, Inc., Weatherford, Texas, and thereby indirectly acquire First National Bank of Weatherford, Weatherford, Texas.

**D. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Theodore E. Gildred,* Solana Beach, California; to acquire an additional 1.9 percent of the voting shares of Torrey Pines Group, Solana Beach, California, and thereby indirectly acquire Torrey Pines Bank, Solana Beach, California.

2. *M. Dale Rust,* Sandy, Utah; to acquire an additional 0.93 percent of the voting shares of Guardian Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Guardian State Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, January 25, 1989.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 89-2118 Filed 1-30-89; 8:45 am]

BILLING CODE 6210-01-M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: JAN. 9, 1989 AND JAN. 19,1989

| Name of Acquiring Person/Name of Acquired Person/Name of Acquired Entity | PMN No. | Date terminated |
|---|---|---|
| Donal J. Trump/Caesars World, Inc./Caesars World, Inc. | 89-0694 | 01/09/89 |
| JWP Inc./James F. Hart/Superior Engineering Corporation | 89-0760 | 01/09/89 |
| The Tokio Marine and Fire Insurance Co., Ltd./The Continental Corporation/First Insurance Company of Hawaii, Ltd | 89-0777 | 01/09/89 |

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: JAN. 9, 1989 AND JAN. 19,1989—Continued

| Name of Acquiring Person/Name of Acquired Person/Name of Acquired Entity | PMN No. | Date terminated |
|---|---|---|
| China National Chemicals Import & Export Corporation/USX Corporation/USX's Agri-Chemicals Division | 89-0779 | 01/09/89 |
| Arthur Goldberg/Checker Motors Corporation/Checker Motors Corporation | 89-0792 | 01/09/89 |
| Albertsons, Inc./Morgan Stanley Group, Inc./Cullum Companies, Inc | 89-0632 | 01/10/89 |
| Samuel J. Heyman/Cabot Corporation/Cabot Corporation | 89-0783 | 01/10/89 |
| Kinder-Care, Inc./Kysor Industrial Corporation/Kysor Industrial Corporation | 89-0803 | 01/10/89 |
| Northwestern Steel & Wire Company/Armco, Inc./Armco, Inc | 89-0816 | 01/10.89 |
| Leggett & Platt, Incorporated/Culp Industries, Inc./Culp's Aluminum Smelting Division | 89-0826 | 01/10/89 |
| Mitsubishi Mining and Cement Co., Ltd./Gregory J. Burden/Owl Rock Products Co | 89-0767 | 01/12/89 |
| Gerald L. Wolken/The Kroger Co./Superx Drugs Corporation | 89-0778 | 01/12/89 |
| Midial S.A./Nestle S.A./The Original Cookie Company, Inc. (OCC) | 89-0798 | 01/12/89 |
| Gould Investors L.P./One Liberty Properties, Inc./One Liberty Properties, Inc | 89-0810 | 01/12/90 |
| Fiskars OY AB/Cooper Industries, Inc./RTE Deltec Corporation | 89-0724 | 01/13/89 |
| Sun Alliance and London Insurance plc/Guardian Royal Exchange plc/Royal Exchange Assurance of America, Inc | 89-0726 | 01/13/89 |
| Transamerica Corporation/WMR-I Leasing Corp./Interpool Limited | 89-0812 | 01/13/89 |
| Harken Oil & Gas, Incorporated/Tejas Power Corporation/Tejas Power Corporation | 89-0820 | 01/13/89 |
| First Pacific Company Limited/Crown Corporation Limited/Crown Richter, Inc., c/o Corporate Service Company | 89-0824 | 01/13/89 |
| Household International, Inc./Great American Corporation/American Bank & Trust Company | 89-0849 | 01/13/89 |
| Motel Associates, L.P./Donald E. Sodaro/Sixpence Inns of America, Inc | 89-0725 | 01/15/89 |
| Pennzoil Company/Kaiser Steel Resources, Inc./Kaiser Coal Corp., Kaiser Coal of New Mexico and York | 89-0689 | 01/16/89 |
| Gerald S. Fahringer/General Electric Company/General Electric Company (Electric Systems Project) | 89-0787 | 01/17/89 |
| Aaron Spelling/American Financial Corporation/Worldvision Enterprises, Inc | 89-0838 | 01/17/89 |
| American Financial Corporation/Aaron Spelling/Spelling Entertainment, Inc | 89-0839 | 01/17/89 |
| Soyland Power Cooperative, Inc./Western Illinois Power Cooperative, Inc./Western Illinois Power Cooperative, Inc | 89-0483 | 01/18/89 |
| Robert E. Tuden—Everett I. Mundy/Communications & Cable Inc./Village Communications, Inc | 89-0627 | 01/18/89 |
| Everett I. Mundy/Communications & Cable Inc./Village Communications, Inc | 89-0628 | 01/18/89 |
| American Telephone and Telegraph Co./Eaton Financial Corporation/Eaton Financial Corporation | 89-0802 | 01/18/89 |
| Tele-Communications, Inc./CSI Management, Inc./CSI Management, Inc | 89-0807 | 01/18/89 |
| Capital Blue Cross/Plan Investment Fund, Inc./Plan Investment Fund, Inc | 89-0837 | 01/18/89 |
| BIA-COR Holdings, Inc./Texas Air Corp./Eastern Air Lines, Inc. and New York Airlines, Inc | 89-0850 | 01/18/89 |
| Newell Co./NACCO Industries, Inc./WearEver-Proctor Silex, Inc | 89-0734 | 01/19/89 |
| Marcel Bleustein-Blanchet/Foote, Cone & Belding Communications, Inc./Foote, Cone & Belding Communications, Inc | 89-0736 | 01/19/89 |
| Advanced Telecommunications Corporation/Clayton W. Williams, Jr., c/o Clajon Holding Corporation/ClayDesta Communications, Inc | 89-0751 | 01/19/89 |
| The Fulcrum Partnership/Coachmen Industries, Inc./Marlette Homes, Inc | 89-0769 | 01/19/89 |
| Smiths Industries Public Limited Company/LPL Investment Group Inc./Times Microwave Systems, Inc | 89-0793 | 01/19/89 |
| Affiliated Publications, Inc./Lin Broadcasting Corporation/Lin Broadcasting Corporation | 89-0794 | 01/19/89 |
| Craig O. McCaw/Lin Broadcasting Corporation/Lin Broadcasting Corporation | 89-0795 | 01/19/89 |
| Boston Ventures Limited Partnership/POA Acquisition Corporation/POA Acquisition Corporation | 89-0800 | 01/19/89 |
| John W. Kluge/Stanadyne Holdings Corp./Precision Products Division | 89-0801 | 01/19/89 |
| Ohio River Associates Inc./Jeremy M. Jacobs Family Trust/Aluminum Smelting & Refining Company, Inc | 89-0805 | 01/19/89 |
| Sun-Times Partners, c/o Adler & Shaykin/Marshall Field V, c/o The Field Corporation/Pioneer Press Limited Partnership | 89-0817 | 01/19/89 |
| The Seagram Company, Ltd./Brown-Forman Corporation/Brown-Forman Corporation | 89-0823 | 01/19/89 |
| Boston Ventures Limited Partnerships II/John W. Hartman/Bill Communications, Inc | 89-0830 | 01/19/89 |
| Takata Corporation/Halle & Stieglitz, Inc./Irvin Industries, Inc | 89-0831 | 01/19/89 |
| Blue Cross of Iowa/Blue Shield of Iowa/Blue Shield of Iowa | 89-0833 | 01/19/89 |
| Blue Cross of Iowa/Blue Cross of Western Iowa and South Dakota/Blue Cross of Western Iowa and South Dakota | 89-0834 | 01/19/89 |
| Salant Corporation/Goldome/Denton Mills, Inc | 89-0853 | 01/19/89 |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Federal Trade Commission, Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 89-2114 Filed 1-30-89; 8:45 am]

BILLING CODE 6750-01-M

## Enforcement of Nondiscrimination on the Basis of Handicap in Programs and Activities Conducted by the Federal Trade Commission

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of self-evaluation; request for comments.

**SUMMARY:** The Federal Trade Commission is evaluating its current policies and practices to determine if discrimination against handicapped persons occurs in its programs and activities. Interested persons, including handicapped persons and organizations representing handicapped persons, are invited to participate in this evaluation by submitting comments.

**DATE:** Comments must be received on or before March 2, 1989.

**ADDRESS:** Written comments may be submitted to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580, telephone (202) 326-2515, or TDD (202) 326-2502. These are not toll-free numbers.

Oral comments may be submitted to Jerome A. Tintle, Office of the General Counsel, Federal Trade Commission, at the above address or by telephone (202) 326-2458 or TDD (202) 326-2502. These are not toll-free numbers.

**FOR FURTHER INFORMATION CONTACT:** Jerome A. Tintle, Office of the General Counsel, Federal Trade Commission, at the address and telephone number listed above.

**SUPPLEMENTARY INFORMATION:** Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits Federal Executive agencies from discriminating on the basis of handicap in agency programs and activities and requires each agency to promulgate implementing regulations. On December 1, 1987, the Commission published its implementing regulations as Part 6 of the Commission's Rules of Practice, 16 CFR Part 6, effective February 1, 1988. 52 FR 45619 (Dec. 1, 1987). Section 6.110 of the regulations requires the Commission to conduct a self-evaluation of its compliance with the regulations within one year of their effective date and to provide interested persons an

opportunity to participate in this self-evaluation by submitting comments.

As part of the self-evaluation process, the Commission's Executive Director has prepared a report detailing the progress on the making of alterations to existing Commission facilities and on the Commission's compliance with its implementing regulations in other respects. A copy of the Executive Director's report and related background papers is on file and available for inspection in the Commission's Public Reference Room, Room 130, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

The Executive Director's report indicates that the Commission's facilities already have been renovated to make them accessible to and usable by handicapped persons. Specifically, all buildings occupied by the Commission are accessible to handicapped persons at the street level. Ramped entrances and automatic door openers have been installed where necessary. Restrooms and drinking fountains accessible to and usable by handicapped persons also have been installed. All buildings occupied by the Commission have elevators accessible to the handicapped. Finally, a telecommunications advice (TTY/TDD) for the hearing impaired has been installed in the Commission's headquarters, and the telephone number of this device appears on all Commission press releases.[1]

Commission job announcements include language indicating that applicants for Commission positions will be considered without regard to disability, and at the present time 20 of the Commission's 920 employees are handicapped persons.

In addition, other improvements are planned for introduction within the next few months. It is planned that by April 1, 1989, notices will be posted in the Commission headquarters and regional offices notifying employees, applicants, and other interested persons of the provisions of section 504 of the Rehabilitation Act, as amended, and the Commission's regulations implementing those provisions. It is also planned that by July 1, 1989, toilet seat cover dispensers, paper towel dispensers, and wastepaper containers will be made accessible to handicapped persons in restrooms which otherwise have been made accessible to and usable by handicapped persons. In sum, the Commission believes that it has been operating its programs and activities so that, when viewed in their entirety, such programs and activities are readily accessible to and usable by handicapped persons.

Comments are invited on the Commission's programs and policies as they affect handicapped persons and on the Commission's self-evaluation, a summary of which is set forth above. Written or oral comments may be submitted as indicated above.

Upon completion of the comment period, the Commission will review all comments and, to the extent warranted, take appropriate steps to address matters brought to its attention. In addition, the Commission will maintain on file its self-evaluation, comments received, a description of any areas examined and any problems identified, and a description of any modifications made. This file will be made available for public inspection upon request in the Commission's Public Reference Room, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, Washington, DC 20580, for a period of three years following the completion of this evaluation.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 89-2113 Filed 1-30-89; 8:45 am]

BILLING CODE 6750-01-M

[1] The Commission does not plan to install telecommunications devices in its regional offices. A telecommunications message intended for a regional office can be received on the Commission headquarter's TDD and then transmitted by regular telephone to the regional office. The reverse of this procedure can be followed with respect to a message from a regional office to a hearing impaired recipient.

## GOVERNMENT PRINTING OFFICE

### Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer will meet March 8–10, 1989, at the Pittsburgh Hilton, 600 Commonwealth Place, Pittsburgh, PA 15220. Reservations: (412) 391–4600 or 1–800–HILTONS.

The purpose of the meeting is to discuss the Depository Library Program.

The meeting is open to the public. Anyone who wishes to attend should notify the Conference Manager, David H. Brown, U.S. Government Printing Office (SM), Washington, DC 20401. Telephone: (202) 275–2255.

General participation by members of the public, or questioning of Council members or other participants, shall be permitted with approval of the Chair.

Dated: January 18, 1989.

**Joseph E. Jenifer,**

*Acting Public Printer.*

[FR Doc. 89-2236 Filed 1-30-89; 8:45 am]

BILLING CODE 1505-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 89N-0023]**

### Drug Export; Haldol® (Haloperidol) Decanoate Injection

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that McNeil Pharmaceutical has filed an application requesting approval for the export of the human drug HALDOL® (haloperidol) Decanoate Injection to Canada.

**ADDRESS:** Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

**FOR FURTHER INFORMATION CONTACT:** Rudolf Apodaca, Division of Drug Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8063.

**SUPPLEMENTARY INFORMATION:** The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement,

the agency is providing notice that McNeil Pharmaceutical, Spring House, PA 19477–0776, has filed an application requesting approval for the export of the drug HALDOL® (haloperidol) Decanoate Injection, to Canada. The application was received and filed in the Center for Drug Evaluation and Research on January 12, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by (February 10, 1989), and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: January 19, 1989.

**Daniel L. Michels,**

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

[FR Doc. 89–2122 Filed 1–30–89; 8:45 am]

BILLING CODE 4160–01–M

## Public Health Service

### Office of the Assistant Secretary for Health; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on November 23, 1981, by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated all of the authorities under Title XIX, Part D, of the Public Health Service Act (42 U.S.C. 300w *et seq.*), as amended, pertaining to the Immunosuppressive Drug Therapy Block Grant, to the Administrator, Health Resources and Services Administration, with authority to redelegate, excluding the authorities to issue regulations, to submit reports to Congress or a congressional committee, to establish advisory committees or councils, or to appoint members to advisory committees for councils.

#### Redelegation

Provision was made for all delegations and redelegations under Title XIX to continue in effect.

#### Effective Date

This delegation became effective on January 18, 1989.

Dated: January 18, 1989.

**Robert E. Windom,**

*Assistant Secretary for Health.*

[FR Doc. 89–2120 Filed 1–30–89; 8:45 am]

BILLING CODE 4160–15–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

**[Docket No. D–89–892; FR–2569]**

### Delegation of Authority to the President of the Government National Mortgage Association; et al.

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Notice of delegation of authority.

**SUMMARY:** On October 7, 1988, the Department published in the **Federal Register** (53 FR 39535) a notice of delegation of authority which became effective October 1, 1988. That delegation, which designates debarring and suspending officials for the agency, is being amended to also delegate to the President of the Government National Mortgage Association (GNMA) the authority to impose debarments and suspensions of contractors and participants.

**EFFECTIVE DATE:** January 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Marylea W. Byrd, Office of General Counsel, Room 10266, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 755–9886 (this is not a toll free number).

#### Authority Delegated

The Secretary of Housing and Urban Development delegates to the President of GNMA, the Assistant Secretaries, and the Inspector General the authority to impose suspension or debarment on contractors and participants pursuant to the provisions of 24 CFR Part 24.

Dated: January 23, 1989.

**J. Michael Dorsey,**

*Acting Secretary.*

[FR Doc. 89–2111 Filed 1–30–89; 8:45 am]

BILLING CODE 4210–32–M

**[Docket No. D–89–893; FR–2595]**

### Delegation of Authority to the Office of General Counsel

**AGENCY:** Office of the Secretary, HUD

**ACTION:** Notice of Delegation of Authority.

**SUMMARY:** This Delegation of Authority pertains to the Office of General Counsel. It consolidates and updates past delegations from the Secretary to the General Counsel.

**EFFECTIVE DATE:** January 19, 1989.

**FOR FURTHER INFORMATION CONTACT:** David D. White, Office of General Counsel, Department of Housing and Urban Development, Room 10244, Washington, DC 20410, phone (202) 755–7205. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Delegations of Authority from the Secretary to the General Counsel are being updated and consolidated into a single instrument.

Accordingly, the Secretary delegates the following authority to the General Counsel:

Section A. *Authority delegated.* The General Counsel, the Deputy General Counsel and the Deputy General Counsel (Operations) each is authorized to exercise the following authority of the Secretary of Housing and Urban Development (Secretary).

1. To interpret the authority of the Secretary and to determine whether the issuance of any rule, regulation, statement of policy, or standard promulgated by the Department is consistent with that authority. However, nothing contained in this subsection shall affect the validity of any rule, regulation, statement of policy or standard once it has been promulgated by the Department.

2. To direct all litigation affecting the Department and to sign, acknowledge and verify on behalf of and in the name of the Secretary all declarations, bills, petitions, pleas, complaints, answers, and other pleadings in any court proceeding brought in the name of or against the Secretary or in which he is named as a party.

3. To direct the referral of cases and other matters to the Attorney General for appropriate legal action and to transmit information and material pertaining to the violation of law or Department rules and regulations. There are excepted from this authority, however, those referrals and transmittals which the Inspector General is authorized to make by law or by delegation of authority.

4. To accept on behalf of the Secretary service of all summons, subpoenas, and other judicial, administrative, or legislative processes directed to the Secretary or to an employee of the Department in an official capacity.

5. Where not inconsistent with other regulations pertaining to proceedings before administrative law judges, to approve the issuance of subpoenas or interrogatories pertaining to investigations for which responsibility is vested in the Secretary.

6. To consider, ascertain, adjust, determine, compromise and settle claims under the Federal Tort Claims Act, 28 U.S.C. 2671, and the Military Personnel and Civilian Employees' Claims Act of 1974, 31 U.S.C. 241–3.

7. To act upon the appeals and issue final determinations on appeals of denial of access or record correction under the Privacy Act of 1974 (Pub. L. 93–579), 5 U.S.C. 552(c).

8. To act upon appeals under the Freedom of Information Act, 5 U.S.C. 552, except appeals from decisions of the office of the Inspector General.

9. To appoint, and fix the compensation of, foreclosure commissioners and alternate commissioners, in accordance with the Multifamily Mortgage Foreclosure Act of 1981, 12 U.S.C. 3701, *et seq.*, and to promulgate regulations necessary to carry out the provisions of the Act.

10. To act as the designated official under: (a) Section 6(a) of Executive Order 12612, *Federalism*, issued October 26, 1987 (52 FR 41685, October 30, 1987), and the Notice implementing the Order for HUD's programs (I53 FR 31926, August 22, 1988);

(b) Executive Order 12606, *The Family*, issued September 2, 1987 (52 FR 34188, September 9, 1987); and

(c) Section 5(a) of Executive Order 12630, *Governmental Actions and Interference With Constitutionally Protected Property Rights*, issued March 15, 1987, (53 FR 8859, March 18, 1988).

Section B. *Authority to redelegate.* The General Counsel is authorized to redelegate to employees of the Department any of the authority delegated under Section A of this document.

Section C. *Additional authority delegated.* In additiion to the authority delegated in Section A:

1. The General Counsel, the Deputy General Counsel, the Deputy General Counsel (Operations) and the Associate General Counsel for Litigation each is authorized (a) to approve the production or disclosure of HUD material or information by HUD employees or former employees in response to subpoenas or demands of courts or other authorities, pursuant to regulations of the Department set forth in 24 CFR Part 15, Subpart H and (b) to waive any policy or procedure prescribed by the regulations of the Department set forth in 24 CFR Part 15, Subpart I, concerning testimony of HUD employees in legal proceedings.

2. In response to subpoenas or demand of courts or other authorities pursuant to the regulation set forth in 24 CFR Part 15, Subpart H:

(a) Each Associate General Counsel is authorized to approve the release of documents by HUD Headquarters employees for those programs for which the Associate provides legal advice.

(b) Each Regional Counsel is authorized to approve the release of documents by HUD employees within the territorial jurisdiction of his region.

3. The General Counsel shall serve as the Designated Agency Ethics Official under the Ethics in Government Act of 1978 (Pub. L. 95–521, as amended). The Associate General Counsel for Administrative and General Law shall serve as Alternate Agency Ethics Official in accordance with regulations of the Office of Government Ethics. The designated Agency Ethics Official and the Alternate Agency Ethics Official are authorized to coordinate and manage the ethics programs of the Department.

4. The General Counsel and the Associate General Counsel for Administrative and General Law may determine, in accordance with 18 U.S.C. 208(b), whether a financial interest is so substantial as to be deemed likely to affect the integrity of the services which the Department may expect from an officer or employee.

5. The General Counsel, Deputy General Counsel, Associate General Counsel for Administrative and General Law, and Assistant General Counsel for Administrative Law may make the determinations and certifications required under section 1114 of the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.*

Section D. *Authority to Designate.* The General Counsel is authorized to:

1. Designate one or more employees to serve as Acting General Counsel during the absence of the General Counsel.

2. Designate one or more employees to serve as an acting capacity during the absence of an appointee to a position in the Office of General Counsel or during a vacancy in such a position.

*Delegations Revoked*

1. 36 FR 11052 (June 8, 1971)
   [Docket No. D–71–102], as amended by
39 FR 29212 (August 14, 1974)
   [Docket No. D–74–283],
41 FR 13980 (April 1, 1976)
   [Docket No. D–76–416],
52 FR 27859 (July 24, 1987)
   [Docket No. D–87–854; FR 2373], and
52 FR 41782 (October 30, 1987)
   [Docket No. D–87–854; FR 2373];
2. 47 fR 5468–9 (February 5, 1982)
   [Docket No. D–82–663];
3. 46 FR 43312 (August 27, 1981)
   [Docket No. D–81–655];
4. 46 FR 21450 (April 2, 1981)
   [Docket No. D–81–644];
5. the unpublished delegation of authority of November 4, 1969, pertaining to determinations under 18 U.S.C. 208(b);
6. 29 FR 31356 (August 28, 1974)
   [Docket No. D–74–19887]; and
7. 45 FR 27996 (April 5, 1980)
   [Docket No. D–80–12893].

**Authority:** Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Dated: January 19, 1989.

**Samuel R. Pierce, Jr.,**

*Secretary, U.S. Department of Housing and Urban Development.*

[FR Doc. 89–2112 Filed 1–30–89; 8:45 am]

BILLING CODE 4210–32–M

## DEPARTMENT OF THE INTERIOR

### Great Lakes Coastal Barrier Act of 1988; Extension of the Comment Period

**AGENCY:** Department of the Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces the extension of the public review and comment period for draft maps that identify undeveloped, unprotected coastal barriers along the Great Lakes shoreline which will be recommended to Congress for inclusion in the Coastal Barrier Resources Ssytem.

These maps were made available on January 12, 1989 (see **Federal Register**, Vol. 54, No. 8, pages 1250–1251). Comments originally were to be received no later than February 6, 1989.

**DATE:** Comment period will close on March 14, 1989.

**ADDRESS:** Great Lakes Coastal Barriers Study Group, U.S. Department of the Interior, National Park Service—473, Washington, DC 20013–7127.

**FOR FURTHER INFORMATION CONTACT:** Dr. Albert G. Greene, Jr., Great Lakes Coastal Barriers Coordinator, National Park Service, Washington, DC 20013–71217, (202) 343–5881.

Date: January 26, 1989.

**Becky Norton Dunlop,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 89-2200 Filed 1-30-89; 8:45 am]

BILLING CODE 4310-70-M

## Privacy Act of 1974—Revision of Notices of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising two notices describing systems of records maintained by the Office of Congressional and Legislative Affairs in the Office of the Secretary. Except as noted below, all changes being published are editorial in nature, and reflect minor administrative revisions which have occurred since the previous publication of the material in the **Federal Register**. The two notices being revised, which are published in their entirety below, are:

1. Private Relief Claimants, Department—Interior, Office of the Secretary—12 (Previously published at 46 FR 12146 on February 12, 1981).

2. Personnel Correspondence Files—Interior, Office of the Secretary—99 (Previously published at 43 FR 49579 on October 24, 1978).

The notice titled "Private Relief Claimants, Department" is being revised to reflect the establishment of a computer database system to facilitate the tracking, filing, and retrieval of the records. In the notice titled "Personnel Correspondence Files," the statement describing the categories of records in the system has been revised, and the existing routine disclosure to congressional offices is clarified.

In both notices, the existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget (OMB) in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. Also, in both notices the retention and disposal statements are amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum to Agency Records Officers dated June 11, 1985.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective on January 31, 1989. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

**Oscar W. Mueller, Jr.,**

*Director, Office of Management Improvement.*

Date: January 24, 1989.

### INTERIOR/OS-12

**SYSTEM NAME:**

Private Relief Claimants, Department—Interior, Office of the Secretary—12.

**SYSTEM LOCATION:**

Office of Congressional & Legislative Affairs, Legislative Counsel, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individual claimants against the United States seeking remedy through private relief bills for claims involving the programs and activities of the Department of the Interior.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Copies of relief bills and congressional committee reports. Department reports on bills, correspondence, comments of bureaus and offices.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, U.S.C. 1457, 44 U.S.C. 3101.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary use of the records is to support legislation for the relief of private claimants. Disclosures outside the Department of the Interior may be made (1) to Congress to report on the basis and validity of claims; (2) to another Federal agency having a subject matter interest in the claim; (3) to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19, at any stage of the legislative coordinates and clearance process as set forth in that Circular; (4) to the Congressional sponsor of a private relief bill and to representatives of the individual who is the subject of the legislation; (5) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained manually in file folders, and in computer media.

**RETRIEVABILITY:**

Cross-indexed by name of claimant, through a computer legislative tracking database.

**SAFEGUARDS:**

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for manual and computer records.

**RETENTION AND DISPOSAL:**

Retired to Federal Records Center after two Congresses. Office of the Secretary, Records Disposal Schedule, Category H, Items 3 and 6 govern the disposal of records.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Congressional & Legislative Affairs, U.S. Department of the Interior, Washington, DC 20240.

**NOTIFICATION PROCEDURE:**

An individual may inquire whether or not the system contains a record pertaining to him by addressing a written request to Legislative Services Center, Office of Congressional & Legislative Affairs, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20240. The inquiry must be in writing and state that the individual seeks information concerning records pertaining to him. See 43 CFR 2.60.

**RECORD ACCESS PROCEDURE:**

Same as Notification. See 43 CFR 2.63 for additional content requirements for requests.

**CONTESTING RECORD PROCEDURES:**

A petition for amendment should be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

**RECORD SOURCE CATEGORIES:**

Congress, individual claimants, bureaus and offices of the Department.

### INTERIOR/OS-99

**SYSTEM NAME:**

Personnel Correspondence Files—Interior, Office of the Secretary; OS/99.

**SYSTEM LOCATION:**

Office of the Secretary, Office of Congressional and Legislative Affairs, Division of Congressional Services, U.S. Department of the Interior, 18th and C Streets NW., Washington, DC 20240.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Those who have corresponded directly or indirectly through Members of Congress with the Office of Congressional and Legislative Affairs concerning personnel and employment matters within the Department.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Correspondence is filed in State files in alphabetical order under Members of Congress names. Correspondence may contain applications, résumés, or other personal materials in support of the reason for the individual's inquiry.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301; 44 U.S.C. 3101; 43 U.S.C. 1457; and Reorganization Plan 3 of 1950.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The primary use is to maintain a temporary record of the personal interest of the subject of the correspondence. Usually the correspondence is advising the constituent of the status of his or her application for a position with the Department, or advising of the current availability of opportunities, or of the procedures for applicant must undergo in order to be eligible for Federal work within the Department. These records are maintained alphabetically by calendar year basis and are destroyed after the yearly file has become 2 years old. The applications submitted may be provided in the subject's wishes to other personnel authorities within the Department for current consideration should there be possible opportunities or vacancies of possible interest to the applicant.

Disclosures outside the Department of the Interior may be made (1) to a Federal agency so that the agency may respond to an inquiry from the named individual; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigation or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; and (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in metal file cabinets in locked rooms.

**RETRIEVABILITY:**

Filing system maintained on yearly basis in alphabetical name order.

**RETENTION AND DISPOSAL:**

Filing system maintained on calendar year basis and the 2d yearly file is destroyed December 31 at the end of the 2d year. General Records Schedule 1, Items 3, 15, and 33b govern the disposal of records.

**SYSTEM MANAGER(S) AND ADDRESS:**

Congressional Liaison Officer, Office of the Secretary, Office of Congressional and Legislative Affairs, 18th and C Streets NW., Washington, DC 20240.

**NOTIFICATION PROCEDURE:**

To determine if records are maintained on you in this system write to the System Manager. See 43 CFR 2.60 for submission requirements.

**RECORD ACCESS PROCEDURE:**

Same as above. See 43 CFR 2.63 for submission requirements.

**CONTESTING RECORD PROCEDURES:**

Same as above. See 43 CFR 2.71 for submission requirements.

**RECORD SOURCE CATEGORIES:**

Correspondence or documents signed within the Office of the Secretary, Office of Congressional and Legislative Affairs, or presented to the Office in person by constituents and this material became a record of the interview or visit, etc.

[FR Doc. 89-2123 Filed 1-30-89; 8:45 am]

BILLING CODE 4310-RN-M

## Bureau of Land Management

[NM 65739; NM 060-4760-90]

## Availability Planning Area Analysis; Realty Action Direct Sale of Public Lands, Guadalupe County, NM

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability: planning area analysis/notice of realty—noncompetitive sale of public lands.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the National Environmental Policy Act, the following parcel of land has been evaluated through a Planning Area Analysis/Environmental Assessment and found suitable for direct sale at no less than appraised fair market value of $250.

T.6 N., R.19 E., N.M.P.M.,
Sec. 9, NE¼NE¼NW¼NW¼, Containing 2½ acres

The land is to be offered to the County of Guadalupe for use as a sanitary landfill near the Village of Pastura, New Mexico. The land described is hereby segregated from appropriation under the pubic land laws, including the mining laws, until a patent is issued or 270 days from the date of publication of this notice, whichever occurs first. The above described lands will be sold to the County of Guadalupe, New Mexico, at 10:00 p.m., on March 17, 1989, at the Roswell Resource Area Conference Room, Federal Building, 5th and Richardson Streets, Roswell, New Mexico.

The patent, when issued, will be subject to all valid and existing rights and will contain the following reservations:

1. A right-of-way to the United States for ditches and canals constructed under the authority of the Act of August 30, 1890 (27 Stat., 391, 43 U.S.C. 945).

2. All minerals, together with the right to prospect for, mine, and remove the minerals shall be reserved to the United States.

3. The patent will be subject to a 20' buried telephone line right-or-way, NM 58338, granted to Eastern New Mexico Rural Telephone Cooperative, Inc.

**DATE:** Interested parties may submit comments regarding this realty action through March 14, 1989, to the District Manager, Roswell District, P.O. Box 1397, Roswell, New Mexico 88201. Any adverse comments will be evaluated by the District Manager who may sustain, vacate or modify this action. Any person who participated in the planning process and has an interest which may be

adversely affected by the Planning Area Analysis may submit a protest through March 14, 1989. Any protest must be filed with the Director (760) Bureau of Land Management, Department of the Interior, 18th and C Streets, Washington DC 20240.

**SUPPLEMENTARY INFORMATION:** Detailed information concerning the sale, and planning and environmental documents are available for review at or may be obtained upon request from the Roswell Resource Area Office, Federal Building, 5th and Richardson Streets, Roswell, New Mexico.

Dated: January 20, 1989.

**Monte G. Jordan,**

*Associate State Director.*

[FR Doc. 89-2125 Filed 1-30-89; 8:45 am]

BILLING CODE 4310-FB-M

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[MT-060-09-4410-02]

### Resource Management Plans; Judith, Valley and Phillips Resource Areas, MT

**AGENCY:** Bureau of Land Management—Lewistown District Office, Interior.

**ACTION:** Notice of call for Area of Critical Environmental Concern (ACEC) nominations to be addressed through the Judith, Valley, Phillips Resource Managment Plan.

**SUMMARY:** Nominations of areas to be considered for ACEC designation within the Judith, Valley, and Phillips Resource Areas of the Lewistown District, Montana are requested at this time. An ACEC is defined under 43 CFR 1610.0-5(a) as an area within the public lands where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources, or other natural systems or processes, or to protect life and safety from natural hazards. Nominations much meet both the relevance and importance criteria under 43 CFR 1610.7-2(a) to be considered as a potential ACEC.

**SUPPLEMENTARY INFORMATION:** The Judith, Valley, Phillips Resource Managment Plan geographic area is in north-central Montana and consists of BLM-administered lands in Valley, Phillips, Fergus, Petroleum, and Judith Basin counties, and the southern half of Chouteau county. This notice complies with new public notice standards contained in the Bureau of Land Management 1613 ACEC Manual, finalized on October 13, 1988.

Public nominations for potential ACECs at this point include: Seven Blackfoot Area, Azure Cave, Itchpair Slough, Larb Hills, Ole Scraggy Peak, Shed Lake, Lower Judith River, Rock Creek Canyon, Beaver Creek Ponds, Joiner Coulee, and Woody Island Coulee.

Nominations should be sent to: District Manager, Bureau of Land Management, Lewistown District Office, 80 Airport Road, Lewistown, MT 59457.

**DATES:** Nominations will be accepted at any time however, they would be timely to the planning process if submitted prior to March 31, 1989.

**FOR FURTHER INFORMATION CONTACT:** Wayne Zinne, District Manager at (406) 538-7461 or write to: Lewistown District, 80 Airport Road, Lewistown, Montana 59457-9699.

Dated: January 23, 1989.

**Wayne Zinne,**

*District Manager.*

[FR Doc. 89-2124 Filed 1-30-89; 8:45 am]

BILLING CODE 4310-DN-M

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## Minerals Management Service

### Pacific Northwest Outer Continental Shelf Task Force; Establishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is establishing the Pacific Northwest Outer Continental Shelf (OCS) Task Force Charter.

The purpose of the Pacific Northwest OCS Task Force is to provide advice to the Secretary of the Interior and other officers of the Department of the Interior in the performance of discretionary functions of the OCS Lands Act, as amended (43 U.S.C. 1331 *et seq.*), including all aspects of leasing, exploration, development, and protection of the resources of the OCS off Washington and Oregon.

Further information regarding the Committee may be obtained from the Pacific Regional Director, Minerals Management Service, Department of the Interior, 1340 West 6th Street, Suite 244, Los Angeles, California 90017.

The certification of establishment is published below.

### Certification

I hereby certify that the establishment of the Pacific Northwest Outer Continental Shelf Task Force Charter is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 1331 *et seq.*

Dated: January 19, 1989.

**Donald Paul Hodel,**

*Secretary of the Interior.*

[FR Doc. 89-2059 Filed 1-30-89; 8:45 am]

BILLING CODE 4310-MR-M

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## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

## Agency for International Development

### Joint Committee on Agricultural Research and Development of the Board for International Food and Agricultural Development

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Meeting of the Joint Committee on Agricultural Research and Development (JCARD) of the Board for International Food and Agricultural Development (BIFAD) on February 22, 1989 from 1:30 p.m. to 4:30 p.m.

The purposes of the Meeting are to update and review the CRSPS; to review the Agency's Procurement/Acquisition/Contracting Process for university services; and to update on the subject of sustainable agriculture.

The February 22nd Meeting will be held in the Department of State, Room 1205, 21st and Virginia Avenue, Washington, DC 20523. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

Dr. Keys MacManus, BIFAD Support Staff, is the designated A.I.D. Advisory Committee Representative at the meetings. It is suggested that those desiring further information write to her in care of the Agency for International Development, BIFAD/S, Washington, DC 20523-0059.

Date: January 24, 1989.

**Keys MacManus,**

*Deputy Executive Director, BIFAD Support Staff.*

[FR Doc. 89-2210 Filed 1-30-89; 8:45 am]

BILLING CODE 6116-01-M

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### Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the Ninety Second Meeting of the Board for International Food and Agricultural Development (BIFAD) on February 24, 1989.

The purposes of the Meeting are: (a) To hear a Report on the Nutrition CRSP, (b) to be presented a report on the African Study Groups including African Universities and Agricultural Policy and Marketing, (c) to hear a soils CRSP Report and (d) to discuss items for the Board's Action such as the CRSP Program Expansion.

The February 24, 1989 Meeting will be held in the Department of State, Room 1107, 21st and Virginia Avenue, Washington, DC 20523. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, SA 18, Washington, DC 20523–1807, or telephone him on (703) 235–8929.

Date: January 24, 1989.

**Dr. Lynn Pesson,**

*Executive Director, BIFAD.*

[FR Doc. 89–2244 Filed 1–30–89; 8:45 am]

BILLING CODE 6116–01–M

## INTERSTATE COMMERCE COMMISSION

**[Section 5a Application No. 75 [1] (Amendment No. 2)]**

### Pacific Motor Tariff Bureau, Inc.—Agreement

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of decision and request for comments.

**SUMMARY:** Pacific Motor Tariff Bureau, Inc. (PMB or Bureau) has filed, pursuant to section 14(e) of the Motor Carrier Act of 1980 (MCA), an application for approval of its ratemaking agreement under 49 U.S.C. 10706(b). Because several modifications are required before the agreement receives final approval, and because new and complex questions are involved in determining whether the agreement is consistent with the MCA and the decision implementing it, the Commission solicits public comment on its interpretation and application of specific rate bureau provisions. Copies of PMB's proposed amendment agreement are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Avenue NW., Washington, DC 20423, and from PMB's representative: Eldon M. Johnson, Esq., 825 Van Ness Ave. (Suite 601), San Francisco, CA 94109.

**DATES:** Comments from interested persons are due March 2, 1989. Replies are due 15 days thereafter.

**ADDRESS:** An original and 10 copies, if possible, of comments referring to Section 5a Application No. 75 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Richard Felder, (202) 275–7691. [TDD Services for hearing impaired (202) 275–1721]

**SUPPLEMENTARY INFORMATION:** Pacific Motor Tariff Bureau, Inc. (PMB), has filed an application for approval of its proposed amended collective ratemaking agreement as required by section 14(e) of the Motor Carrier Act of 1980, Pub. L. 96–296 (MCA). Since filing its application, PMB has been obligated to observe the requirements of the MCA and the standards set forth in our decisions implementing section 14, found in Ex Parte No. 297 (Sub-No. 5), *Motor Carrier Rate Bureaus—Implementation of P.L. 96–296,* 364 I.C.C. 464 (1980), and 364 I.C.C. 921 (1981) (*Rate Bureau*).

We have provisionally approved PMB's agreement as consistent with 49 U.S.C. 10706(b) and *Rate Bureau, supra,* subject to certain modifications in the following subject areas: submission of by-laws and rules of procedure; identification and description of member carriers; proxy voting; final disposition of cases; subcommittees; and emergency procedures. We have also offered comments and imposed requirements concerning the agreement generally. PMB has been directed to file a revised agreement conforming to the imposed conditions within 120 days of the service date of the decision, and to comply with those conditions pending final approval.

In light of the complexity of interpretation involved in determining whether PMB's agreement is consistent with the MCA and the *Rate Bureau* case, *supra,* we request PMB and other interested parties to comment on our interpretation of the controlling statutory and administrative criteria and their application to PMB's agreement.

A copy of any comments filed with the Commission shall also be served on PMB, which shall have 15 days from the expiration of the comment period to reply. These comments will be considered in conjunction with our review of the modifications that PMB must submit to the Commission as a condition to final approval of its agreement.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275–7428. [Assistance for the hearing impaired is available through TDD services (202) 275–1721.]

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**Authority:** 49 U.S.C. 10321 and 10706, and 5 U.S.C. 553.

Decided: January 24, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89–2178 Filed 1–30–89; 8:45 am]

BILLING CODE 7035–01–M

**[Finance Docket No. 31012; Docket No. 31012]**

### Railroad Operation; Feeder Line Acquisitions; Cheney Railroad Co. et al.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of findings.

**SUMMARY:** Pursuant to 49 U.S.C. 10910, Feeder Railroad Development Program, the Commission finds that Cheney Railroad Company (CRC) and Tyson Foods, Inc. (Tyson) are financially responsible and able to provide adequate service. CSX Transporation, Inc. must negotiate a sale with: (1) Either CRC for a 1.46-mile segment, at Ivalee, AL or Tyson for a 1.61-mile segment at Ivalee; and (2) CRC for the remainder of the 54.61 miles of its rail lines between Greens and Ivalee, AL.

**DATES:** CRC and Tyson must notify the Commission and CSX accepting or rejecting the Commission's determination by February 9, 1989. If CRC and Tyson accept the Commission's determination, CSX must select the applicant with whom it wishes to transact business and notify the Commission and applicants by February 14, 1989.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired (202) 275–1721]

[1] Section 5a was recodified as section 10706.

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, Telephone: (202) 289-4357/4359.

[Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: January 10, 1989.

By the Commission, Chariman Gradison, Vice Chairman Andre, Commissioners Simmons, Lamboley, and Phillips. Commissioner Lamboley dissented in part with a separate expression.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 89-2179 Filed 1-30-89; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Joint Newspaper Operating Agreement; Manteca News and Manteca Bulletin, CA

Notice is hereby given that the Attorney General, by Order of January 19, 1989, has extended the period for public comment on the application for a Joint Operating Agreement between the Manteca *News* and Manteca *Bulletin*, filed pursuant to the Newspaper Preservation Act, 15 U.S.C. 1801 *et seq.* The period for public comment has been extended until March 3, 1989. The period in which persons may reply in writing to the report of the Antitrust Division and to other comments is extended until April 2, 1989. Comments should be filed by mailing or delivery five copies to the Assistant Attorney General, Justice Management Division, Department of Justice, Washington, DC 20530.

Date: January 23, 1989.

**Harry H. Flickinger,**

*Assistant Attorney General for Administration.*

[FR Doc. 89-2129 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-01-M

### Lodging Two Final Judgments by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; Gerald L. Moore et al.

In accordance with Departmental policy, 26 CFR 50.7, notice is hereby given that on January 23, 1989 two proposed Settlement Agreements in *United States v. Gerald L. Moore, et al.*, Civil Action No. 87-101-NW, were lodged with the United States Court for the Eastern District of Virginia.

The complaint filed by the United States alleged that Gerald L. Moore, Bonnie F. Moore, Moor-Fite Corporation of Virginia, Patrick O'Brien, Certified Testing Corporation, and Gary Moore were responsible to reimburse the United States for costs incurred by the Environmental Protection Agency ("EPA") in responding to the release and threatened release of hazardous substances from 2463-2469 Pembroke Avenue, Hampton, Virginia (the "site") in June 1983. The complaint alleged that Gerald and Bonnie Moore arranged for the transport and disposal of approximately 3750 compressed gas cylinders and 17 drums containing hazardous substances at the site. The complaint also alleged that Gerald and Bonnie Moore were the owners and operators of the site; that Moor-Fite Corporation of Virginia was an operator of the site; and that Gary Moore, Patrick O'Brien, and Certified Testing Corporation arranged for the transport to and disposal of the cylinders and the drums at the site. The United States, on behalf of EPA, sought judgment against the Defendants jointly and severally for reimbursement of response costs in excess of $289,000, under section 107(a) of CERCIA, 42 U.S.C. 9607(a). The United States, on behalf of the Department of Defense, Defense Logistics Agency, sought contribution from Defendants under section 113 of CERCIA, 42 U.S.C. 9613(f), in the amount of $200,000, as a result of payment by the Department of Defense, Defense Logistics Agency, of $200,000 into the Hazardous Substances Response Trust Fund on or about November 26, 1986, pursuant to a Memorandum of Understanding and Agreement with EPA dated August 6, 1986.

The United States also sought an injunction and civil penalities of up to $25,000 per day of violation against Gerald Moore for failure to respond to information requests under section 3007(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6927(a) and section 104(e) of CERCLA, 42 U.S.C. 9604(e).

In their Settlement Agreement, Gerald Moore, Bonnie Moore, and Moor-Fite Corporation of Virginia, have agreed to reimburse the Hazardous Substance Response Trust Fund in the amount of $57,000, and to dismiss with prejudice their four counterclaims against the United States brought under the following theories: Fifth Amendment taking, breach of contract or warranty, indemnification, and contribution under CERCIA. The United States, on behalf of the Department of Defense, Defense Logistics Agency, has agreed to dismiss its claims for contribution under section 113 of CERCLA, 42 U.S.C. 9613(f). The United States, on behalf of EPA, has also agreed to dismiss its claims for penalties under section 3007(a) of RCRA, 42 U.S.C. 6927(a) and section 104(e) of CERCLA, 42 U.S.C. 9604(e), against Gerald Moore.

In a separate Settlement Agreement, Defendant Patrick O'Brien has agreed to confess judgment in favor of the United States in the amount of $10,000.

The Department of Justice will receive comments relating to the proposed Settlement Agreements for a period of thirty days from the date of publication of this notice. 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. Gerald L. Moore, et al.* Civil Action No. 87-101-NN, Ref. No. 90-11-3-51. The proposed Settlement Agreements may be examined at the office of the United States Attorney, Eastern District of Virginia, U.S. Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Copies of the Settlement Agreements may also be examined and obtained in person at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 6314, Tenth and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Box 7611, Ben Franklin Station, Washington, DC 20044.

**Donald A. Carr,**

*Acting Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 89-2128 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-01-M

### Lodging of Consent Decree Pursuant to the Clean Air Act; New York State Office of Mental Health, et al.

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. New York State Office of Mental Health, et. al.*, Civ-87-1066L was lodged in the United States District Court for the Western District of New York on January 24, 1989.

The proposed Decree concerns alleged violations of the Clean Air Act ("Act"), 42 U.S.C. 7401 *et seq.*, and the smoke emission limits set forth in Part 227 of the New York State Implementation Plan ("SIP") established pursuant to

section 110 of the Act, 42 U.S.C. 7410. The alleged violations occurred during the operation of four coal-fired boilers at the Rochester Psychiatric Center in Rochester, New York. The proposed Decree requires the Defendants to comply with the New York SIP and to convert the boilers from coal to natural gas under a conversion schedule. Stipulated penalties for failure to meet the conversion schedule are provided. The proposed Decree also requires the Defendants to pay a $10,000 civil penalty for past violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to the *United States v. New York State Office of Mental Health, et al.*, D.J. No. 90–5–2–1–984.

The proposed Decree may be examined at the Office of the United States Attorney, 233 United States Courthouse, 100 State Street, Rochester, New York 14614, and at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York New York 10278. Copies of the proposed Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW Washington, DC 20530. A copy of the proposed Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

**Donald A. Carr,**

*Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice.*

[FR Doc. 89–2127 Filed 1–30–89; 8:45 am]

BILLING CODE 4410–01–M

## Lodging of Consent Decree Pursuant to the Clean Air Act; Ottumwa, IA, et al.

In accordance with Departmental policy, 28 50.7, notice is hereby given that on *24 January 1989* a proposed Partial Consent Decree in *United States v. City of Ottumwa, Iowa, et al.*, (S.D. Iowa) Civil Action No. 88–164–E was lodged with the United States District Court for the Southern District of Iowa, Central Division. The Partial Consent Decree concerns violations of the Asbestos National Emission Standards for Hazardous Air Pollutants ("NESHAP"), 40 CFR 61.140, *et seq.*, and the Clean Air Act, 42 U.S.C. 7401 *et seq.* The proposed Partial Consent Decree requires defendants City of Ottumwa, Iowa and the Ottumwa Industrial Airport Authority, among other things, to comply with the requirements of NESHAP for asbestos in 40 CFR 61.140, *et seq.*, to pay a civil penalty of $50,000 to pay costs to the United States of $1,102.64, to initiate an asbestos control program, and to initiate an EPA-approved asbestos training program.

The Department of Justice will receive comments relating to the proposed Partial Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Ottumwa, Iowa, et al.*, D.J. No. 90–5–2–1–1143.

The proposed Partial Consent Decree may be examined at the office of the United States Attorney for the Southern District of Iowa, 115 U.S. Courthouse, Des Moines, Iowa 50309 and the U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101. The Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Partial 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 $3.20 (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. 89–2126 Filed 1–30–89; 8:45 am]

BILLING CODE 4410–01–M

## Antitrust Division

## National Cooperative Research Act of 1984; Cooperative Research and Development Project; Industrial Consortium for Research and Education

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 University of Illinois at Urbana-Champaign has filed a written notfication on behalf of itself and other members of the Industrial Consortium for Research and Education ("ICRE") simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in the membership of ICRE. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the notifications stated that Exxon Prodduction Company, P.O. Box 2189, Houston, Texas 77252, will be added as a member of ICRE.

Accordingly, at present the members of ICRE are those companies listed below:

University of Illinois at Urbana-Champaign (Department of Geology).
Exxon Production Company.
Mobile Research and Development Corporation.
Union Oil Company of California.

On November 8, 1988, the University of Illinois at Urbana-Champaign filed its original notification on behalf of itself and the other members of ICRE 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 49613.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 89–2130 Filed 1–30–89; 8:45 am]

BILLING CODE 4410–01–M

## Immigration and Naturalization Service

**[INS #1132–88]**

## Legalization; English Language/ Citizenship, Standard Test

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of program.

**SUMMARY:** The Immigration and Naturalization Service (INS) previously published two notices in the Federal Register concerning the development and implementation of a standardized English language/basic citizenship skills test. These notices appeared as follows: Notice of Proposed Solicitation, 53 FR 8702, published on March 16, 1988, and Notice of Solicitation, 53 FR 21535, published on June 8, 1988. This notice announces the proposals that the INS has accepted under this program and extends the opportunity for participation in this effort by interested and capable entities. To avoid confusion over the use of the term "Notice of Solicitation" which appeared as the type of action in

the previous two notices and was not intended to imply a contract or procurement action, the type of action is now listed as "Notice of Program."

**DATE:** Written proposals from parties interested in developing and administering an alternative testing process based on the criteria in the supplementary information may be submitted any time within six (6) months from the date of publication of this notice. In order for a proposal to be considered, it must be received by close of the business day (5:00 p.m.) on or before July 31, 1989.

**ADDRESS:** Written proposals should be mailed in triplicate to the Deputy Assistant Commissioner, Legalization, Immigration and Naturalization Service, 425 "I" Street NW., Washington, DC 20536, or delivered to Room 5250 at the same address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terrance M. O'Reilly, Deputy Assistant Commissioner, Legalization, (202) 786–3658.

The information collection requirements contained in this notice of proposed rulemaking are being submitted to OMB for clearance in accordance with the provisions of the Paperwork Reduction Act.

Comments concerning and questions regarding the public use information collection contained in this notice should be directed to: Office of Management and Budget, Office of Information Regulatory Affairs, 3225 17th Street and Pennsylvania Avenue, Washington, DC 20010, Attention: DOJ Desk Officer, Room 3203; and to the Department of Justice Clearance Office.

**SUPPLEMENTARY INFORMATION:** The Immigration and Naturalization Service (INS) previously announced its consideration of and intention to pursue the development and implementation of a standardized English language/basic citizenship skills test for legalization purposes via public notices published in the **Federal Register** (Notice of Proposed Solicitation, 53 FR 8702, March 16, 1988, and Notices of Solicitation, 53 FR 21535, June 8, 1988). Although the non-financial nature of the agreement by INS to accept any qualified testing program was stated in these notices, some confusion has arisen as a result of the use of the term "solicitation". This term was not intended to imply a contract or procurement action. This is not a competitive action. INS intended, by means of these notices, to announce an open program. The Service has not limited the number of proposals it will accept for consideration or approve under this program.

Section 245A(b)(1)(D)(i) of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, Pub. L. 99–603 ("Act") provides in pertinent part that legalized aliens seeking adjustment of status to permanent resident under section 245A(a) of the Act must, unless otherwise exempt, demonstrate that they "* * * meet the requirements of section 312 (relating to minimal understanding of ordinary English and a knowledge and understanding of the history and government of the United States)". In order to facilitate the manner in which legalized aliens can demonstrate that they comply with these requirements, the INS is pursuing the development and implementation of a standardized English language (reading and writing) and basic citizenship skills examination as an alternative testing method. The passing of a standardized "section 312" type examination authorized by INS will serve to relieve the individual of the basic citizenship skill requirement at the time of application to petition for naturalization.

The Service received a total of six written submissions in response to the July 8, 1988 **Federal Register** notice. The Service carefully reviewed each of the submissions and found that only two were actual proposals responsive to the criteria and requirements specified in the notice.

One respondent was unable to submit a proposal timely but expressed interest in participating in any future initiative to provide testing services. One respondent did not address the criteria and requirements as specified in the June 8, 1988 notice. Two respondents provided comment only. One urged that any test approved by INS be reasonable and not unnecessarily burden either the applicant or the examination process. The other suggested that the Service examine the applicant's knowledge of issues that he or she needs to know about in order to function in American society and recommended that the test establish minimal language requirements and be written with a finite vocabulary.

One of the actual proposals was submitted by the Legalization Assistance Board with the Educational Testing Service (ETS). The other actual proposal was submitted by the California State Department of Education with the California Adult Student Assessment System (CASAS). The Service carefully evaluated these proposals and found both entities capable of participating in this program. The Service has approved both proposals and has authorized the Legalization Assistance Board with ETS and the California State Department of Education with CASAS to proceed with implementation of the standardized English language/civics examination.

Those respondents who expressed interest in participating in this effort but were unable to submit their proposals timely, are welcome to do so under the provisions of this notice. Acceptance of a particular program will not restrict the INS from accepting or developing other alternative testing methods. The agreement by INS to accept any alternative testing program will be non-financial. The INS shall incur no financial liability and intends to make no payments to any entity participating in this program. The INS agrees to accept the test results of the program or programs it has approved.

The following criteria and requirements are provided for submission of proposals: (1) The testing entity must have demonstrated experience in developing and administering reliable standard examinations in the English language and Civics areas (for example, tests are currently recognized and accepted by an established public or private institution of learning recognized as such by a qualified state certifying agency); (2) The testing entity will be required to meet with INS representatives to review the test copy and to set the standards for passing test scores. The test should be structured as a pass/fail and should be accomplished within a maximum of thirty (30) minutes; (3) Once the INS approves a test, the contents will not be changed by the testing entity unless explicitly approved or otherwise directed by the INS; (4) The content of test questions must come from the revised (1987) Federal Textbooks on Citizenship. The level of the test questions must be compatible with the lowest level of readability of these textbooks; (5) The testing entity will be required to field test the examination prior to implementation in cooperation with the INS; (6) The testing entity must be capable of administering the examination over a broad geographical area of not less than a statewide basis. In administering the examination, the testing entity will be responsible for obtaining and managing adequate testing locations, controlling the time period in which the testing is to be accomplished, staffing the administration of the test, and furnishing supplies; (7) Any fee charged the applicant by the testing entity to cover the cost of the administration and scoring of the test will be a reasonable fee to be agreed upon by INS and the

testing entity. If the applicant fails the test, he/she shall be given the opportunity to be re-tested one time at no additional cost. The re-test shall be a variance of the initial test; (8) The testing entity will be required to publicize the availability of the examination to legalization applicants. The INS will also maintain a register of the approved entity or entities. This register will be made available to the public; (9) The testing entity will be responsibile for scoring the examination and must provide the results to the applicant and INS within fifteen (15) business days from the date of the test; (10) The testing entity must provide for test security. INS will review the procedures the entity has or will establish to provide for test security and integrity; (11) INS reserves the right to determine, through inspection or other means, the continued reliability and integrity of the test. Any testing entity approved by INS may be removed from the register for good cause. The testing entity will be notified of its removal from the register in writing and must cease administering the examination immediately upon receipt of the notice; (12) The testing entity will be responsible for verifying the identity of the person taking the test; and (13) The testing entity must provide INS with quarterly management reports throughout the duration of the testing entity's participation in this program.

**Richard E. Norton,**

*Associate Commissioner, Examinations.*

Date: December 9, 1988.

[FR Doc. 89-2201 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-10-M

## Antitrust Division

### Notice Pursuant to the National Cooperative Research Act of 1984; Software Productivity Consortium

Notice is hereby given that pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. No. 98-462 ("Act"), the Software Productivity Consortium, on December 27, 1988, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in the membership of the Software Productivity Consortium by the withdrawal of Science Applications International Corporation and correcting the membership roster in the following respects: (1) Ford Aerospace & Communications Corp. has changed its name to Ford Aerospace Corporation, and (2) Grumman Aerospace Corporation has erroneously been identified in previous notifications and **Federal Register** notices as a member of Software Productivity Consortium, when, in fact, it was Grumman Corporation that, in 1985, became a member of Software Productivity Consortium and that has continued to be a member since that time. The additional notification was filed for the purpose of maintaining the protections of the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to Software Productivity Consortium and its general areas of activity are given below.

Software Productivity Consortium, with the withdrawal of Science Applications International Corporation, consists of the following firms as of December 27, 1988: Allied Corporation; The Boeing Company; Ford Aerospace Corporation; General Dynamics Corporation; Grumman Corporation; Harris Corporation; Lockheed Missiles & Space Company, Inc.; Martin Marietta Corporation; McDonnell Douglas Corporation; Northrop Corporation; TRW Inc.; United Technologies Corporation; and Vitro Corporation. The nature and objectives of the venture remain as described in the original notification of December 21, 1984 to the Attorney General and the Federal Trade Commission: to undertake research and developmental engineering in advanced technologies relating to productivity tools and techniques to be used in the development of complex computer software.

**Joseph H. Widmar,**

*Director of Operations, Antitrust Division.*

[FR Doc. 89-2211 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

#### Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

#### List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Office will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

#### Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Office, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

#### New Collection

Department of Labor, Bureau of Labor Statistics

May, August and November 1989, February 1990 CPS Supplement on Unemployment Insurance Compensation

1220 CPS-1

On occasion

Individuals or households
1000 respondents per survey; 34 hours per FY; 1 minute per response; 1 form

This supplement will provide data on why a growing proportion of the unemployed are not receiving or have not been applying for benefits under the Unemployment Insurance (UI) Program. Information of this type will assist the Labor Department in managing the UI program and will be useful to Congress for legislative purposes.

**New Collection**

Occupational Safety and Health Administration
Operation and Maintenance of Electric Power Generation, Transmission, and Distribution Installations (Part 1910)
On occasion
State or local government; Business or other for-profit; Federal agencies or employees; Small business or organizations
35 respondents; 2800 total hours; 80 hours per response

This information is needed by employers to enable them to provide specific control measures and documented procedures for employee protection when working conditions expose employees to the hazards of unexpected energization, start-up, or the release of stored energy of machines, equipment, or process.

**Revision**

Employment Standards Administration
Claims for Compensation by Dependents and Dependents Information Reports
1215–0155; CA–5, CA–5b; CA–1031; CA–1074; CA–1085; CA–1093; CA–1615; CA–1617; CA–1618

| Form No. | Affected public | Respondents | Frequency | Average time per respondent |
|---|---|---|---|---|
| CA–5 | Individuals or households | 235 | On occasion | 90 minutes. |
| CA–5b | do | 70 | do | Do. |
| CA–1617 | do | 300 | Semiannual | 30 minutes. |
| CA–1085 | do | 450 | On occasion | 45 minutes. |
| CA–1031 | do | 1700 | do | 15 minutes. |
| CA–1074 | do | 70 | do | 60 minutes. |
| CA–1093 | do | 50 | do | 30 minutes. |
| CA–1618 | do | 160 | Semiannual | 30 minutes. |
| CA–1615 | do | 120 | On occasion | Do. |

Note: 1,835 total hours.

Reports are claims for compensation by survivors due to the death of a Federal employee, and supplemental reports concerning dependency status in various types of cases.

**Revision**

Employment Standards Administration
Application for a Farm Labor Contractor Certificate of Registration
1215–0038; WH–510
Annually
Individuals or households; Farms; Businesses or other for profit; small businesses or organizations
9800 respondents; 4,500 total hours; .5 hours per response; 1 form

The Migrant and Seasonal Agricultural Worker Protection Act provides that no individual may perform labor contracting activities without a certificate of registration. Form WH–510 is the application form which provides the Department of Labor with the information necessary to issue a certificate specifying the farm labor contracting activities authorized.

Signed at Washington, DC, this 26th day of January, 1989.

**Terry O'Malley,**

*Acting Departmental Clearance Officer.*

[FR Doc. 89–2213 Filed 1–30–89; 8:45 am]

BILLING CODE 4510–26–M

## Occupational Safety and Health Administration

### Alaska State Standards

#### 1. Background

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaskan plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated September 6, 1988 from Tom Stuart, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard comparable to 29 CFR 1910.272, Grain Handling Facilities Standard, as published in the **Federal Register** (52 FR 49625) on December 31, 1987, and subsequently corrected on May 18, 1988 (53 FR 17696).

This State standard, which is contained in AAC 16., Grain Handling Facilities, was adopted on June 23, 1988. A public hearing was held on June 13, 1988. Notifications of the hearing was published in statewide media on May 6 and 13, 1988. The public comment period was open for thirty days by Tom Stuart, Director, under authority vested by AS 19.60.020. The State incorporated editorial modifications, replacement of parentheses with commas, the word *shall* has been changed to *must*, and the words *shall not* have been replaced by *may not* throughout the standard as required by Alaska's Attorney General.

#### 2. Decision

The above State standard has been reviewed and compared with the relevant Federal standard. OSHA has

determined that the State standard is at least as effective as the comparable Federal standard, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standards are minimal and that the standards are thus substantially identical. OSHA therefore approves this State standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

**3. Location of Supplement For Inspection and Copying**

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N-3476, 200 Constitution Avenue NW., Washington, DC 20210.

**4. Public Participation**

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

1. The standards were adopted in accordance with the procedural requirements of State law which included public comments and further public participation would be repetitious.

This decision is effective January 31, 1989.

(Sec. 18, Pub. L. 91-596, 84 STAT. 6108 [29 U.S.C. 667]).

Signed at Seattle, Washington this 20th day of October, 1988.

**Ryan E. Kuehmichel,**

*Acting Regional Administrator.*

[FR Doc. 89-2212 Filed 1-30-89; 8:45 am]

BILLING CODE 4510-26-M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50-325]**

### Carolina Power & Light Co., Brunswick Steam Electric Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-71 issued to the Carolina Power & Light Company (the licensee), for operation of Brunswick Steam Electric Plant, Unit 1, located in Brunswick County, North Carolina.

**Environmental Assessment**

*Identification of Proposed Action*

The proposed amendment would revise the provisions in the Technical Specifications (TS) relating to extended fuel irradiation.

The proposed action is in accordance with the licensee's application for reload dated August 1, 1988. Environmental related information on extended fuel irradiation was also previously provided by letter dated September 25, 1987. An Environmental Assessment for Unit 2 was placed in the **Federal Register** on September 6, 1988 (53 FR 34357).

*The Need for the Proposed Action*

The proposed changes are needed to allow the licensee the flexibility of extending the fuel irradiation, thereby permitting operation with longer fuel cycles.

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel that would be irradiated to levels above 33 gigawatt days per metric ton (GWD/MT) but not to exceed 60 GWD/MT. The safety considerations associated with reactor operation with extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The increase burnup may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with extended irradiation, the proposed changes to the TS involve systems located within the restricted area, as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation are discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," which was published in the **Federal Register** on August 11, 1988 (53 FR 30355) in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of transportation of the increases in the fuel enrichment up to 5% and irradiation limits up to 60 GWD/MT are either unchanged or may, in fact, be reduced from those summarized in Table S-4, as set forth in 10 CFR 51.52(c). These findings are applicable to this amendment for the Brunswick Steam Electric Plant, Unit 1.

Therefore, the Commission concludes that there are no significant radiological or nonradiological environmental impacts associated with the proposed amendment.

*Alternative to the Proposed Action*

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the continued construction and proposed issuance of an operating license for the Brunswick Steam Electric Plant, Units 1 and 2," dated January, 1974.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further information with respect to this action, see the application for the amendment dated August 1, 1988 and letter dated September 25, 1987, which is available for public inspection at the Commission's Public Document Room, 2122 L Street, NW., Washington, DC 20555 and at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland this 24th day, January 1989.

For the Nuclear Regulatory Commission.

**Edward A. Reeves, Jr.,**

*Acting Director, Project Directorate II–1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–2190 Filed 1–30–89; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–461]**

## Illinois Power Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to the Illinois Power Company * (IP), Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc., (the licensees) for Clinton Power Station, Unit 1, located in DeWitt County, Illinois.

**Environmental Assessment**

*Identification of Proposed Action*

The licensees have requested a license amendment that would revise the Technical Specifications (TS) related to four issues. First, the proposed license amendment would allow the Clinton Power Station (CPS) to perform its first reactor refueling, in which new types of reactor fuel will be utilized, and to proceed with subsequent reactor operation with the reloaded core. Second, the licensees propose to expand the current power flow operating domain to permit flows up to 107% of rated core flow and with core flows less than 100%. Additionally, operation is requested for feedwater temperatures down to 370°F at rated conditions. Third, the proposed license amendment would revise the Remote Shutdown System Controls to include additional control switches for valves 1E12–F068B and 1E12–F014B and circuit breaker 252–AT1AA1. Fourth, a change is requested that will modify the jet jump surveillance requirement.

This revision to the Clinton Power Station license would be made in response to the licensees' application for amendment dated September 6, 1988 as supplemented December 22, 1988.

*The Need for the Proposed Action*

Pursuant to 10 CFR 50.50, IP, et al. have proposed an amendment to Facility Operating License No. NPF–62 which consists of changes to the TS concerning four issues.

The first change consists of various revisions to allow CPS to perform its first reactor refueling (in which new types of nuclear fuel will be utilized) and to proceed with subsequent reactor operation with the reloaded core. Two new G.E. BWR fuel types will be utilized for the CPS reload. These fuel types have specified MAPLHGR-vs-Core Exposure requirements. Additionally, General Electric Standard Application for Reactor Fuel (GESTAR), NEDE–24011-P-A–8, which established the MCPR Safety Limit of 1.06 (1.7 for single recirculation loop operation) for the initial fuel cycle for CPS, requires this safety limit to be increased by 0.01 for reload cores. As the reload analysis includes an evaluation of plant operation (including postulated responses to design basis accidents or transients), the Technical Specifications must be changed to reflect the revised safety or power distribution limits. Some of the changes identified as reload-related are not unique to the first reload (for Cycle 2) as they apply to reloads in general. They should, however, minimize the number of Technical Specification changes that would otherwise be required for future reloads.

The second change consists of revisions to various TS to expand the power flow operating domain. The current power flow operating domain is depicted in Technical Specification Bases Section 3/4.2.3 (Bases Figure B3/4.2.3–1, "Reactor Operating Map"). This operating map was developed based on restrictions such as recirculation pump NPSH, plant control characteristics and core thermal power and flow limits. Safe operation in this region is justified by the accident and transient analyses described in Final Safety Analysis Report (FSAR) Chapters 6 and 15. In order to improve the operating flexibility and the capacity factors for CPS, IP contracted General Electric to evaluate the accident and transient scenarios for the modified operating map in the regions of the Maximum Extended Operating Domain (MEOD). Expanding the operating domain allowed on the power flow map can result in greater operational flexibility and improved unit capacity factors. From a core operations and fuel management standpoint, the chief benefits are: 1) better power shaping and fuel preconditioning, 2) xenon compensation, and 3) compensation for reactivity reduction due to exposure. An additional change was requested to support operating the reactor with a feedwater temperature from 420 °F down to 370 °F at rated conditions. This is deisred to allow continued operation with the loss of certain portions of feedwater heating.

The third change consists of a revision to Technical Specification Table 3.3.7.4–2, REMOTE SHUTDOWN SYSTEM CONTROLS, to add controls for motor-operated valves 1E12–F068B and 1E12–F014B and circuit breaker 252–AT1AA1. Current operation of these components, when the normal control switch is inaccessible, requires them to be operated manually. The circuitry is therfore being modified to add control switches for these components. The addition of these cotnrol switches will enhance the operation of the Remote Shutdown System according to the acceptable methods recognized by the NRC for satisfying GDC–19.

The fourth change consists of various revisions to the TS 3.4.1.2 surveillance requirements for the jet pumps. The licensees propose to delete the current prerequisite for performing the surveillance "when both recirculation loop flows are operating at the same flow control valve position." This is a restriction which does not provide any allowance for differences between flow control valve (FCV) positions (or recirculation loop flows) even though Specification 3.4.1.3 allows for some mismatch (within specified limits) between recirculation loop flows. In addition, the wording of the current Specification requires performance of the jet pump surveillances prior to exceeding 25% RATED THERMAL POWER (RTP). However, attempts to perform these surveillances at less than

* Illinois Power Company is authorized to act as agent for Soyland Power Cooperative, Inc. and Western Illinois Power Cooperative, Inc. and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

25% RTP do not provide reliable or consistent data. Therefore, the licensees propose to change the words "prior to THERMAL POWER exceeding 25% of RATED THERMAL POWER and at least once per 24 hours" to "at least once per 24 hours when THERMAL POWER is greater than or equal to 25% of RATED THERMAL POWER."

The fourth change also includes a proposal to condense the wording of the Specification by combining the two existing sections, which separately address single and double reactor recirculation loop operation, into a single section, and a revision of the Surveillance to allow monitoring either jet pump (diffuser-to-lower plenum) differential pressure or jet pump flow with a different (but consistent) acceptance criteria to be specified for each.

*Environmental Impacts of the Proposed Action*

The first of the proposed changes applies to the Clinton Power Station Cycle 2 (CPSC2) reload. The CPSC 2 will retain 456 GE fuel assemblies from Cycle 1, and add 168 new GE fuel assemblies. The new fuel for Cycle 2 has been approved in the Safety Evaluation Report for Amendment 16 to 'General Electric Standard Application for Reactor Fuel,' (GESTAR II). LOCA analyses have been performed for the retained and reload fuel using the SAFE/REFLOOD methods approved by the Staff. Clinton still complies with 10 CFR 50.46, Appendix K. The nuclear design for CPSC2 has been performed by GE with the approved methodology described in GESTAR II. Since the CPSC2 nuclear design parameters have been obtained with previously approved methods and fall within expected ranges, the nuclear design is acceptable. The thermal-hydraulic design for CPSC2 has been performed by GE with the approved methodology described in GESTAR II. The transient and accident analysis methodologies used for CPSC2 are described in GESTAR II. The results are applicable to Clinton. The corewide and the local transient analysis methodologies and results are acceptable because they fall within expected ranges. The limiting pressurization event, the main steam isolation valve closure with flux scram, analyzed with standard GESTAR II methods, gave results for peak vessel pressure of 1247 psig, which is below the ASME Section III limit of 1375 psig.

The General Electric Company analysis of "Maximum Extended Operating Domain and Feedwater Heater Out-of-Service Analysis of Clinton Power Station" describes the results of an evaluation of the safety impact of the second proposed change, operation in the MEOD with reduced feedwater temperatures. This evaluation included consisderation of abnormal operating transients, LOCAs, containment pressures, load impact on vessel internals, flow induced vibration, and fuel mechanical performance. Many transients of Chapter 15 of the FSAR were considered for operation in the MEOD. It was concluded that the current power dependent Minimum Critical Power Ratio (MCPR) limit bounded these cases in the MEOD. The analysis of the loss of feedwater heating (LFWH) transient in the MEOD indicated that the LFHW transient is bounded by the reload anaylsis. For operation in the MEOD, a slow recirculation flow runout transient was reanalyzed on a generic basis (BWR/6) with approved methods to account for initial operation at low flows and a higher power rod line of the ELLR. The two new flow dependent MCPR developed were found acceptable by the staff. The generic analysis of a LOCA in the MEOD obtained with approved methods were considered acceptable by the staff. A conservative containment analysis for operation in the MEOD with feedwater hearters out-of-service (FWHOS) resulted in a peak drywell pressure below the design limit of 30 psig. Calculations of an MSIV closure event with flux scram for operation in the MEOD indicated a peak vessel pressure of 1245 psig, well below the same code limit of 1375 psig.

The General Electric Company analysis supplied with the submittal includes results from analyses made to determine the new initial conditions of fuel thermal limits that would be needed to safisfy the pertinent licensing criteria if APRM setdown were eliminated. The evaluation included operation in the MEOD with reduced feedwater temperature. The new Minimum Critical Power Ratio and Maximum Average Planar Linear Heat Generation Rate factors were found to be acceptable by the staff.

The third proposed change supports the addition of control switches in the control circuits of certain components in the Remote Shutdown System. These modifications were previously reviewed and approved by the staff. The addition of control switches to the division 2 RHR heat exchanger valves and division 1 power supply circuit breaker controls provided a diverse and redundant means of controlling the remote shutdown systems and thus will facilitates remote operation of these components. The proposal stated that the control switches meet the same quality standards and will be installed in accordance with the same requirements as the existing components on the Motor Control Centers and the Remote Shutdown Panel. The proposal also indicated that the normal control and operation of the circuit breaker and the valves will not be affected by the addition of these switches, and the ability to manually operate these components will remain unchanged. The staff concludes the proposed changes to the technical specification represent the modification that was previously approved by the staff, do not involve an unreviewed safety question and, therefore, are acceptable.

The fourth porposed change is a revision to the jet pump operability specifications to allow present Surveillance Requirement 4.4.1.2 to be performed with Thermal Power in excess of 25% of Rated Thermal Power instead of the present prior to exceeding 25% of Rated Thermal Power. The proposed Surveillance Requirement 4.4.1.2 will allow entry into Operational Conditions 1 and 2 without having to perform persent Surveillance Requirement 4.4.1.2; however, jet pump Operability is required to be determined after entering Operational Condition 2 (OC–2) and at least once every 24 hours thereafter by verifying that the diffuser to lower plenum differential pressure is within specified limits. Entry into OC–2 is necessary in order to perform the surveillance required to demonstrate jet pump operability. OC–2 opeation is neede to achieve power levels sufficient for meaningful measurements of flow and differential pressure (dp). When power and flow conditions are too low, the effects of natural circulation, moderator subcooling changes and varying core differential pressure result in large data uncertainties. The changes proposed are acceptable because they are necessary for meaningful surveillance measurements. This proposed change also revises Surveillance Requirement 4.4.1.2 by deleting the requirement that the recirculation flow control valves be in the same position when performing the surveillance. The staff has reviewed the proposal and note that even at the same FCV position, relative loop flows are different because of differing flow path resistances and individual pump characteristics. The effect of the proposed change on measured parameters is, therefore, expected to be insignificant. We conclude that the proposed changes are acceptable. A proposed change to the specified acceptable deviation from patterns

established for infividual jet pump diffuser-to-lower plenum differential pressure from 10% to 20% is consistent with the recommendations of both NUREG/CR-3052 and General Electric Service Information Letter (SIL) No. 330 which established 20% as an acceptable indication of jet pump operability. Therefore, the changes are acceptable.

The Commission has concluded that these changes do not significantly increase the probability or consequences of any accident and that potential radiological releases during normal operations, transients would not be increased. With regard to non-radiological impacts, the proposed amendment involves systems located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the staff also concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Accordingly, the Commission findings in the "Final Environmental Statement related to the operation of Clinton Power Station, Unit No. 1" dated May 1982 regarding radiological environmental impacts from the plant during normal operation or after accident conditions, are not adversely altered by this action. IP is committed to operate Clinton, Unit 1 in accordance with standards and regulations to maintain occupational exposure levels "as low as reasonably achievable."

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with the action was published in the **Federal Register** on November 22, 1988 (53 FR 47285). No request for hearing or petition for leave to intervene was filed following this notice.

*Alternative to the Proposed Actions*

The principal alternative would be to deny the requested amendment. This alternative, in effect, would be the same as a "no action" alternative. Since the Commission has concluded there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impact need not be evaluated.

*Alternative Use of Resources*

This action does not involve the use of resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement dated May 1982 related to this facility.

*Agencies and Persons Consulted*

The NRC staff reviewed the licensees' request of September 6, 1988, as supplemented December 22, 1988, and did not consult other agencies or persons.

**Finding of No Significant Impact**

The Commission has determined not to prepare an environmental impact statement of the proposed license amendment.

Based upon this environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requrest for amendment dated September 6, 1988 as supplemented December 22, 1988, and the Final Environmental Statement for the Clinton Power Station dated May 1982, which are available for public inspection at the Commission Public Document Room, 2120 L Street NW., Washington, DC 20055 and at the Vespasian Warner, 120 West Johnson Street, Clinton, Illinois 61727.

Dated at Rockville, Maryland this 25th day of January 1989.

For the Nuclear Regulatory Commission.

**Daniel R. Muller,**

*Director, Project Directorate III-2, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 89-2194 Filed 1-30-89; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-458]

## Gulf States Utilities Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-47, issued to Gulf States Utilities Company (the licensee), for operation of River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would modify the Technical Specifications (TSs) to provide one-time exceptions to the provision of TS 3.0.4 for three TSs for use during the second refueling outage scheduled to begin March 15, 1989. These exceptions are applicable in Operations Conditions 4 or 5 to allow entry into specified operational conditions without meeting the Limiting Condition for Operation (LCO), provided that the requirements of the associated action statements are met.

TS 3.0.4 states: 3.0.4 Entry into an OPERATIONAL CONDITION or other specified condition shall not be made unless the conditions for the Limiting Condition for Operation are met without reliance on provisions contained in the ACTION requirements. This provision shall not prevent passage through or to OPERATIONAL CONDITIONS as required to comply with ACTION requirements. Exceptions to these requirements are stated in the individual Specifications.

The proposed changes to the TSs would provide exceptions to TS 3.0.4 during the second refueling outage for the following TSs: (1) TSs 3.4.9.2 and 3.9.11.2. These TSs specify the shutdown cooling mode loop LCO's for COLD SHUTDOWN and for low water level during REFUELING OPERATIONS, respectively. The proposed change will add new Action "c" to these TSs to state that provisions of TS 3.0.4 are not applicable. A footnote will be added to each of these new Action statements to state that the change is applicable until startup from the second refueling outage. (2) TS 3.7.2, Main Control Room Air Conditioning System. This TS specifies the LCO for the main control room air conditioning system for all operational conditions. The proposed change will add a new Action "b.3.", to state that the provisions of TS 3.0.4 are not applicable. This change is applicable in COLD SHUTDOWN, REFUELING, and when irradiated fuel is being handled in the primary containment or Fuel Building. A footnote will also be added to this new Action statement to state that the change is applicable until startup from the second refueling outage.

During the second refueling outage presently scheduled to begin in March 1989, various combinations of RHR shutdown cooling mode subsystems and main control room air conditioning subsystems will be made inoperable to perform required maintenance, surveillance testing, and inspections and to make design changes. These activities will require the plant to enter Action statements for these systems at various times during the outage. These proposed changes will provide one-time exceptions to the provisions of TS 3.0.4 for these specifications for the second refueling outage only to allow the plant to enter Operational Conditions 4 and 5 to allow reactor head detensioning and tensioning, reactor cavity draining, and modifications to control building chilled water systems. With the present TS requirements, the above activities would

have to be suspended during a change in Operational Conditions to make the systems operable as required by the LCO. After completing the change in Operational Conditions, the systems would again be made inoperable and the Action statements entered to complete the required maintenance testing and modification activities.

The proposed TS changes will represent a significant savings in the time required to complete the second refueling outage by allowing reactor vessel head tensioning activities, reactor cavity draining evolutions, and modifications to the control building chilled water systems while in Action statements. These changes will result in decreasing the length of the outage by approximately 6–8 days while maintaining the level of safety of the plant in accordance with the appropriate Action statements.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the request for amendment involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has provided an analysis that addressed the above three standards in the December 16, 1988 license application. The licensee's analysis for the three proposed TS changes is provided below.

1. No significant increased n the probability or the consequences of any accident previously evaluated results from this request because:

The proposed exceptions to the provisions of Specification 3.0.4 will allow a change in Operational Conditions or other specified conditions at River Bend Station during the second refueling outage only while complying with the Action requirements of the above Technical Specifications. This operation flexibility would be allowed following implementation of Generic Letter 87-09. The proposed changes will affect the Action statements for: RHR shutdown cooling mode and main control room air conditioning system. The proposed changes provide an acceptable safe alternative to meeting the LCO requirements as evidence by the current requirements in which compliance with the remedial action upon entering a condition is the same as compliance after having been in that condition.

During the second refueling outage at River Bend Station (RBS) various combinations of the above systems/subsystems will be made inoperable to perform required maintenance, surveillance testing and inspections and to make design changes. These activities will require the plant to enter Action statements for these systems at various times during the refueling outage. The proposed changes will provide one-time exceptions to the provisions of Specification 3.0.4 for the above Technical Specifications Action requirements for the second refueling outage only to allow the plant to enter Operational Conditions 4 and 5 by allowing reactor head tensioning and detensioning and allow reactor cavity draining while complying with these Action statements. With the present Technical Specification requirements, the above activities would have to be suspended during a change in Operational Conditions in order to make the systems operable as required by the LCO. After completing the change in Operational Conditions, the systems would again be made inoperable and the Action statements entered to complete the required maintenance and testing activities.

The current schedule for the second refueling outage relies upon approval of the proposed changes to Technical Specifications 3.4.9.2 and 3.9.11.2.

As discussed above, the Action requirements for the RHR shutdown cooling mode Technical Specifications (3.4.9.2 and 3.9.11.2) require establishing an alternate method for the functions(s) of the RHR shutdown cooling mode loop(s) required by the LCO (heat removal capability or coolant circulation, as applicable) within one hour. As such, the alternate method(s) completely replaces the function(s) of the RHR shutdown cooling mode loop(s) required by the LCO and therefore, provides the single failure protection as required by each LCO. Additionally, the proposed changes in Operational Conditions have no effect on decay heat generation or removal capability.

The Action requirements for the main control room air conditioning System (Technical Specification 3.7.2) require that with one subsystem inoperable, placing the operable subsystem in operation in the emergency mode and with both subsystems inoperable, suspending CORE ALTERATIONs, handling irradiated fuel in the primary containment and Fuel Building and operations with a potential for draining the reactor vessel. The only design basis accident conditions for which this system would be required to operate in Operational Conditions 4 or 5 is a fuel handling accident. The required actions eliminate those conditions during which an accident is assumed to occur while in Operational Conditions 4 or 5 and hence, greatly reduced the chance of needing this system. The likelihood of needing the inoperable subsystem(s) while complying with the Action requirements is small and even smaller that they would be needed during the short period of time during the mode change.

As previously stated, the only design basis accident postulated to occur during Operational Conditions 4 or 5 is a fuel handling accident. The proposed changes in no way alter the plant design or administrative controls designed to prevent a fuel handling accident or the current Technical Specification requirements for the minimum equipment required to be operable to mitigate a fuel handling accident. Therefore, the proposed exceptions to the provisions of Specification 3.0.4 do not significantly increase the probability or the consequences of any accident previously evaluated.

2. This request would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed exceptions to the provisions of Specification 3.0.4 do not result in any change to the plant design or Technical Specification requirements while in any Operational Condition or other specified condition. These proposed changes will provide one-time exceptions to the provisions of the Specification 3.0.4 for the second refueling outage only to allow the plant to enter Operational Condition 4 and 5 by allowing reactor head tensioning and detensioning and allow reactor cavity draining while complying with these Action statements. With the present Technical Specification requirements, the above activities would have to be suspended during a change in Operational Conditions in order to make the systems operable as required by the LCO. After completing the change in Operational Conditions, the systems would again be made inoperable and the Action statements entered to complete the required maintenance and testing activities.

The proposed changes do not result in any new operating modes, only a change in the level of protection provided by

these required systems during a change in plant conditions. The required actions eliminate those conditions during which an accident is likely to occur while in Operational Conditions 4 or 5 and hence, greatly reduce the chance of needing the safety systems required by their respective LCOs. The likelihood of needing these systems while complying with the Action requirements is small and even smaller that they would be needed during the short period of time during the mode change.

Therefore, the proposed exceptions to the provisions of Specification 3.0.4 do not create the possibility of a new or different kind of accident from any previously evaluated.

3. This request would not involve a significant reduction in the margin of safety because:

The proposed exceptions to the provisions of Specification 3.0.4 do not result in a change to the plant design or administrative controls designed to prevent a fuel handling accident. Additionally, the proposed changes do not result in a change to any operating limits. The only requirement affected by the proposed change is the availability of systems currently required to be operable when making a change in plant conditions. The proposed changes will affect the Action statements for: RHR shutdown cooling mode and main control room air conditioning system.

The only design basis accident postulated to occur during Operational Conditions 4 or 5 is a fuel handling accident. The proposed changes in no way alter the plant design or administrative controls designed to prevent a fuel handling accident or the current Technical Specification requirements for the minimum equipment required to be operable to mitigate a fuel handling accident. The proposed changes only alter the requirements for the minimum equipment required to be operable during a change in plant conditions. The proposed changes provide an acceptable safe alternative to meeting the LCO requirements as evidenced by the current requirements in which compliance with the remedial actions upon entering a condition is the same as compliance after having been in that condition.

As shown above, the Action requirements for the RHR shutdown cooling mode Technical Specifications (3.4.9.2 and 3.9.11.2) require establishing an alternate method for the functions(s) of the RHR shutdown cooling mode loop(s) required by the LCO (heat removal capability or coolant circulation, as applicable) within one hour. As such, the alternate method(s) completely replaces the function(s) of the RHR shutdown cooling mode loop(s) required by the LCO and therefore, provides the single failure protection as required by each LCO. Additionally, the proposed changes in Operational Conditions have no effect on decay heat generation or removal capability.

The Action requirements for the main control room air conditioning system (Technical Specification 3.7.2) require that with one subsystem inoperable, placing the operable subsystem in operation in the emergency mode and with both subsystems inoperable, suspending CORE ALTERATIONS, handling irradiated fuel in the primary containment and Fuel Building and operations with a potential for draining the reactor vessel. The only design basis accident conditions for which this system would be required to operate in Operational Conditions 4 or 5 is a fuel handling accident. The required actions eliminate those conditions during which an accident is assumed to occur while in Operational Conditions 4 or 5 and hence, greatly reduce the chance of needing this system. The likelihood of needing the inoperable subsystems while complying with the Action requirements is small and even smaller that they would be needed during the short period of time during the mode change.

Therefore, the proposed exceptions to the provisions of Specification 3.0.4 do not result in a significant reduction in the margin of safety.

Based upon the above considerations, the proposed changes do not result in a significant increase in the probability or the consequences of any accident previously evaluated, do not create the possibility of a new or different kind of accident than previously evaluated and do not result in a significant reduction in the margin of safety. Therefore, the licensee proposes that no significant hazards considerations are involved with approval of the proposed changes.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on that review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resource Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 8:15 a.m. to 4:00 p.m. Copies of written comments may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555. The filings of requests for hearing and petitions for leave to intervene is discussed below.

By March 2, 1989, the licensee may file a request for a hearing with respect to issuance to the amendment to the subject facility operating license, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene must be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extend of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which the petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the

first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the request for amendment involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and state comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Jose A. Calvo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Rockville, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Troy B. Conner, Jr., Esq., Conner and Wetterhan, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Room, Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

Dated at Rockville, Maryland, this 25th day of January 1989.

For the Nuclear Regulatory Commission.

**Jose A. Calvo,**

*Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89-2191 Filed 1-30-89; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket Nos. 50-361 and 50-362]**

## Southern California Edison Co., et al, San Onofre Nuclear Generating Station, Units 2 and 3; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied in part a request by the licensees for amendments to Facility Operating Licenses Nos. NPF-10 and NPF-15, issued to Southern California Edison Company, San Diego Gas and Electric Company, the City of Anaheim, California and the City of Riverside, California (the licensees), for the operation of San Onofre Nuclear Generating Station, Units 2 and 3 (the facilities), located in San Diego County, California.

The application for amendments was dated May 6, 1988, as supplemented by letters dated August 25 and December 7, 1988. The Notice of Consideration of Issuance of Amendments was published in the **Federal Register** on September 9, 1988 (53 FR 35138).

The amendments, as proposed by the licensees, would revise (1) License Conditions 2.C(14) and 2.C(12) (Fire Protection) of Units 2 and 3 respectively to reflect the revised fire protection program; (2) License Conditions 2.G (Reporting Requirements) of both units to exempt fire protection program violations from the 24-hour reporting requirement; (3) Table 3.3.9, "Remote Shutdown Monitoring Instrumentation," to allow for plant instrument improvements; and (4) several technical specifications related to the revised fire protection program.

Generic Letter 86-10 allows licensees to make changes to their approved fire protection program without prior Commission approval if those changes would not adversely affect the ability to achieve and maintain safe shutdown. Therefore, that portion of the proposed fire protection license condition change is acceptable. However, Generic Letter 86-10 also adequately defines changes which would adversely affect the ability to achieve and maintain safe shutdown; therefore, it is not appropriate to include in the license condition the definition proposed by the licensees. Therefore, that portion of the proposed fire protection license condition has been denied. In addition to the above partial denial, three other provisions in the proposed fire protection license condition were not included because they were satisfied by the licensee's submittal of August 25, 1988. Also, the proposed addition of Technical Specification 6.9.3 was not included because it is not required.

The licensees were notified of the Commission's denial of this request by letter dated January 20, 1989. The other changes requested by the application have been approved by the issuance of Amendments No. 69 and 38.

By March 2, 1989, the licensees may demand a hearing with respect to the denial described above and any persons

whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for a hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW, Washington, DC, by the above date.

A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, and to Charles R. Kocher, Assistant General Counsel and James Beoletto, Esq., Southern California Edison Company, P.O. Box 800, Rosemead, California 91770, attorneys for the licensees.

For further details with respect to this action, see (1) the application for amendment dated May 6, 1988, as supplemented by letters dated August 25 and December 7, 1988, and (2) the Commission's letter and Safety Evaluation issued with Amendment No. 69 and Amendment No. 38 to NPF 10 and NPF–15, respectively. These documents are available for public inspection at the Commission's Public Document Room 2120 L Street, NW, Washington, DC, and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. Single copies of Item (2) may be obtained upon request address to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 20th day of January, 1989.

For the Nuclear Regulatory Commission.

**Donald E. Hickman,**

*Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects.*

[FR Doc. 89–2192 Filed 1–30–89; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–361 and 50–362]**

## Southern California Edison Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 69 to Facility Operating License No. NPF–10 and Amendment No. 38 to Facility Operating License No. NPF–15, issued to Southern California Edison Company, San Diego Gas and Electric Company, The City of Riverside, California and The City of Anaheim, California (the licensees), which revised the Technical Specifications for operation of the San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California.

The amendments were effective as of the date of issuance.

These amendments revised (1) License Conditions 2.C(14) and 2.C(12) of Units 2 and 3 respectively and the related Technical Specifications to reflect the revised fire protection program; (2) License Conditions 2.G of both units to exempt fire protection program violations from the 24 hour reporting requirement; and (3) Technical Specification table 3.3.9, "Remote Shutdown Monitoring Instrumentation," to allow for plant instrument improvements in response to an application for amendments designated as PCN–243 and PCN–244.

Several portions of the licensee's request were either denied or not acted on. The following is a discussion of these items. Generic Letter 86–10 allows licensees to make changes to their approved fire protection program without prior Commission approval if those changes would not adversely affect the ability to achieve and maintain safe shutdown. Generic Letter 86–10 also defines changes which would adversely affect the ability to achieve and maintain safe shutdown. The licensee has proposed a definition different from that contained in the Generic Letter; the proposed definition has been found unacceptable. Therefore, that portion of the proposed fire protection license condition has been denied. In addition to the above partial denial, three other provisions in the proposed fire protection license condition were not included because they were satisfied by the licensees' submittal of August 25, 1988. Also, the proposed addition of Technical Specification 6.9.3 was not included because it is not required.

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on September 9, 1988 (53 FR 35138). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of the amendments will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated May 6, 1988, as supplemented by letters dated August 25 and December 7, 1988 (2) Amendment No. 69 to License No. NPF–10 and Amendment No. 38 to License No. NPF–15, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., and at the General Library, University of California, P.O. Box 19557, Irvine, California 92713. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland this 20th day of January, 1989.

For the Nuclear Regulatory Commission.

**D.E. Hickman,**

*Project Manager, Project Directorate V, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 89–2193 Filed 1–30–89; 8:45 am]

BILLING CODE 7590–01–M

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

## International Trade in Commercial Launch Services; Guidelines for Implementation of the Memorandum of Agreement With the People's Republic of China

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of guidelines for U.S. implementation of the Memorandum of Agreement Between the United States of America and the Government of the People's Republic of China Regarding International Trade in Commercial Launch Services (the Agreement).

**DATES:** These guidelines are effective upon entry into force of the Agreement, which shall occur upon notification by the Government of the United States of America to the Government of the People's Republic of China that a U.S. license for the export of the ASIASAT or AUSSAT satellite(s) or any other satellites, to the People's Republic of

China for launch therein, has been approved.

**FOR FURTHER INFORMATION CONTACT:** Bruce Wilson (395–7320), Steve Falken (395–4647), Angus Simmons (395–5050), or Warren Maruyama (395–6800), of the Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

**SUMMARY:** Pursuant to the Administration's notification to Congress on September 12, 1988 regarding its intent to issue licenses for the export of three U.S.-made satellites to the PRC, subject to certain conditions, the United States of America and the People's Republic of China signed on January 26, 1989 a Memorandum of Agreement regarding international trade in commercial launch services. The United States Trade Representative considers the Agreement to be a trade agreement for purposes of section 301(a)(1) of the Trade Act of 1974, as amended. (Copies of the Agreement may be obtained from the officials designated above.) In order to assist in the successful operation of the Agreement, certain guidelines that the U.S. government intends to follow to the maxium extent practicable in implementing the Agreement have been elaborated. This notice sets out these guidelines, which have been approved by the Trade Policy Staff Committee (TPSC) and by the United States Trade Representative.

**Guidelines**

*I. Designation of Responsibility*

Subject to the direction of the TPSC, the TPSC Subcommittee on Commercial Launch Services (the Subcommittee) will be responsible for overall implementation of the Agreement.

*II. Subcommittee Organization*

For purposes of carrying out its responsibilities with respect to overall implementation of the Agreement, the Subcommittee will be chaired by the Office of the USTR and will be composed of TPSC agencies and such other departments and agencies as may be invited by the Chairman to participate. A Working Group on Information (the Working Group) will be established to assemble such information as is necessary to enable the Subcommittee to carry out its responsibilities. The Working Group will be chaired by the Department of Transportation and will include the Department of Commerce, the Department of State and such other departments or agencies as are designated by the Chairman of the Subcommittee.

*III. Subcommittee Functions and Procedures*

1. Data Collection and Monitoring of the Agreement

The Subcommittee will monitor PRC compliance with the Agreement. To this end, the Subcommittee will review market and other information relevant to participation in the commercial launch services market by PRC launch service providers and to compliance by those providers with the terms of the Agreement. This information will be assembled, together with a preliminary assessment, and presented to the Subcommittee by the Working Group. Particular attention will be given to information relevant to PRC obligations under the Agreement with respect to the number of launches committed and carried out by the PRC; the distribution of commitments to launch; promotional prices; prices, terms, and conditions of PRC launch commitments; PRC government supports and inducements; insurance; non-discrimination; and launch delays.

The Subcommittee will review and determine which information is to be provided to the PRC to comply with U.S. obligations under the Agreement. This information will be assembled, together with a preliminary assessment, and presented to the Subcommittee by the Working Group. Particular attention will be given to U.S. obligations under the Agreement with respect to the provision of publicly releasable information to the PRC on prices, terms, and conditions prevailing in the international market for commercial launch services, including insurance arrangements relating to such services; U.S. views regarding prevailing international market conditions and likely future developments; U.S. and other government supports or inducements; and the number of commitments U.S. launch service providers have undertaken for international customers.

The Working Group will periodically produce information and preliminary assessments of conditions in the commercial launch services market, including prices, terms and conditions, commitments, and market forecasts, for the Subcommittee as needed to implement effectively the Agreement and at least ninety days prior to annual consultations, or the comprehensive review provided for in Article VII of the Agreement.

The Working Group will also provide to the Subcommittee such additional information and preliminary assessments on compliance by PRC providers of launch services with the provisions of the Subcommittee as needed, and at least sixty days prior to annual consultations or the comprehensive review provided for under Article VII of the Agreement.

2. Annual Consultations

The Subcommittee will meet at least seventy-five days in advance of the annual consultations prescribed in the Agreement to begin preparations for such consultations. After each annual consultation, the Subcommittee will report on the results of the consultations and recommend any follow-up actions to the TPSC and, as appropriate, to other government officials or agencies.

The Subcommittee will seek to hold annual consultations under the Agreement during March of each year and to exchange information with the PRC at least thirty days in advance of such consultations.

3. Application of Market Principles Under Certain Provisions of the Agreement

The Subcommittee will consider ways to carry out Article IV(4) of the Agreement and be prepared to address this issue with the PRC during the first annual consultation under the Agreement.

4. Discussions with Other International Parties

At least annually, the Subcommittee will consider whether discussions with other international parties could be beneficial. If the Subcommittee determines that discussions could be beneficial, it will recommend to the TPSC and to the U.S. Trade Representative that such discussions be initiated.

*IV. Consultations With Domestic Interests*

The Subcommittee and the Working Group will, in carrying out the functions and procedures set forth in section III above, consult with and seek the advice of representatives of U.S. commercial launch service providers, launch vehicle manufacturers and satellite manufacturers, and, as appropriate, interested Congressional committees, the user community, and other interested parties, including the relevant private sector advisory committees. Such contacts will be made in conjunction with the information and assessments referred to in section III(1) above and U.S. preparation for, and follow-up on the results of, meetings with the PRC held under the Agreement. The Subcommittee will also, as appropriate, inform such interests of significant requests or notiifcations

made by the PRC under the Agreement, or significant developments under the Agreement.

*V. Information Sharing*

In the course of consulting with domestic interests, in particular prior to annual consultations under the Agreement, the Subcommittee may provide such information provided by the PRC as is allowed by the Agreement.

*VI. Treatment of Business Confidential Information*

A. General

(1) The Department of Transportation (DOT), as Chairman of the Working Group, will have primary responsibility for soliciting and receiving, and will maintain, information to be collected and reviewed by the Working Group for purposes of this Agreement.

(2) Proprietary or other information collected by the Working Group for which business confidential treatment has been requested as provided in subsection (B) below shall not be made available to the Subcommittee except as determined by the Chairman of the Subcommittee to be necessary, and shall not be released to the PRC or any other party. The Chairman of the Working Group will work with anyone submitting such information to assure that it is not disclosed to any unauthorized person.

B. Procedures

(1) Proprietary or other information submitted to the Working Group through the Chairman of the Working Group may be designated as business confidential by the person or agency furnishing such information.

(2) A request that information be given business confidential treatment shall be made in writing at the time that the information is submitted to the Working Group, and shall state the period of time for which business confidential treatment is required.

(3) Information for which business confidential treatment is requested shall be clearly marked with an identifying legend, such as "Proprietary Information" or "Business Confidential Treatment Requested." Where such a marking proves impracticable, a cover sheet containing the identifying legend shall be securely attached to the compilation of information for which business confidential treatment is requested.

(4) Business confidential treatment requested for information submitted to the Working Group shall not be available to the extent such information is already in the public domain.

*VII. Remedies*

(1) If, as a result of information obtained in any annual consultation or the comprehensive review required under Article VII of the Agreement or, on the basis of information presented to it by the Working Group, the Subcommittee is of the view that PRC providers of launch services are not in compliance with the terms of the Agreement, the Subcommittee will notify the TPSC and recommend consultations with the PRC if appropriate. If consultations proceed and satisfactory resolution is not achieved with the PRC, or, if consultations are deemed to be inappropriate in the circumstances, based on recommendations of the Subcommittee, the section 301 Committee may recommend that the USTR initiate an investigation pursuant to the authority set forth in section 310(a)(1) of the Trade Act of 1974, as amended. The recommendation to the USTR may also be accompanied by such additional advice as the Subcommittee deems appropriate.

(2) Any petition filed under section 320(a)(1) of the Trade Act of 1974, as amended, by a representative of the U.S. commercial launch services industry or any other person with standing alleging a denial of U.S. rights under the Agreement or a violation of the Agreement shall be filed with the section 301 Committee pursuant to USTR regulations for complaints filed under section 302. Upon receipt of the petition, the section 301 Committee will notify the Subcommittee of the petition, and, in addition to its own review of the petition, will seek the advice of the Subcommittee on the petition. If the Subcommittee is of the view that PRC providers of launch services are not in compliance with the terms of the Agreement, it will make such recommendations to the section 301 Committee as it deems appropriate.

(3) If an investigation under section 302 leads to a determination by the USTR that a violation of the Agreement has occurred, the USTR will take such action, subject to the specific direction of the President, if any, as is appropriate under section 301.

(4) The USTR will, from time to time, advise the Secretary of State of the status of the implementation of the Memorandum of Agreement in order that this information may be available to the Secretary with respect to export license responsibilities under the Arms Export Control Act and the implementing regulations, the International Traffic in Arms Regulations, 22 CFR Parts 120–130.

**Alan F. Holmer,**

*Acting United States Trade Representative.*

[FR Doc. 89–2281 Filed 1–30–89; 8:45 am]

BILLING CODE 3190–01–M

## PRESIDENT'S COMMISSION ON FEDERAL ETHICS LAW REFORM

**ACTION:** Notice of Meeting.

**SUMMARY:** This notice announces an upcoming meeting of the President's Commission on Federal Ethics Law Reform. The purpose of the meeting is to begin work on the Commission's assigned task, which is the provision of recommendations to the President regarding any necessary changes and/or improvements in the government wide ethics program. Also included is an explanation of why 15 days notice of the date of this meeting was not provided to the public. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. II, and its implementing regulation, 41 CFR Part 101–6.

**DATE:** February 7, 1989, 9 a.m.

**ADDRESS:** U.S. Department of Justice, 10th Street and Constitution Avenue, NW., Conference Room B, Washington, DC 20530.

**FOR FURTHER INFORMATION CONTACT:** Janis A. Sposato, General Counsel, Justice Management Division, at 202–633–3452.

**SUPPLEMENTARY INFORMATION:** It was not possible to provide 15 days notice of this meeting due to the fact that the advisory committee was not established until Wednesday, January 25, 1989, and the Executive Order requires a report by March 9, 1989.

The meeting, which is open to the press and public, is for the purpose of receiving testimony concerning issues related to the Federal ethics program. Members of the public who wish to present written statements are invited to send such statements to the Commission at the following address:

President's Commission on Federal Ethics Law Reform, U.S. Department of Justice, Tenth and Constitution Avenue, NW., Washington, DC 20530.

Persons who wish to attend should contact Jean Schmidlin at 202–633–4667 prior to the meeting in order that building access may be facilitated. Visitors should use the entrance at the center of the Constitution Avenue side of the building, midway between Ninth and Tenth Streets.

Date: January 27, 1989.

**Dick Thornburgh,**

*Attorney General.*

[FR Doc. 89-2371 Filed 1-30-89; 8:45 am]

BILLING CODE 4410-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-26488; File No. SR-NASD-89-3]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Fees for the Association's Trade Acceptance and Reconciliation Service

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 17, 1989, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act which renders the fee effective upon the Commission's receipt of this filing. 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 to section A.6. of Part IX of Schedule D to the Association's By Laws establishes a $50 per month fee for those TARS subscribers averaging less than 30 trades per day may access TARS through the facilities of an NASD service desk.

### 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 proposed rule change imposes a $50 per month flat fee for those TARS subscribers averaging less than 30 trades per day who access TARS through the facilities of an NASD service desk. The proposed rule change deletes a current provision of section 6 which waives message charges for subscribers averaging 10 or fewer trades per day during any month. The purpose of the proposed rule change is to enable the NASD to implement section 68 of the NASD's Uniform Practice Code which requires that each member that is a participant in a registered clearing agency for purposes of clearing over-the-counter transactions subscribe to and reconcile all eligible transactions through facilities of TARS. The amendment is intended to more equitably allocate the costs of TARS participation for those subscribers having a small number of over-the-counter transactions which would not make procuring the equipment generally necessary for TARS participation economically feasible.

The proposed rule change is consistent with the provisions of section 15A(b)(5) of the Securities Exchange Act of 1934 which requires that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system the Association operates or controls.

*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 Exchange Act.

*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 foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of Rule 19b-4 thereunder in that it affects assessments and fees imposed by the Association exclusively upon its members.

At any time within 60 days of the filing of a proposed rule change, the Commission may summarily abrogate the 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 Act.

### 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 provision of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 21, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR Part 200.30-3(a)(12).

Dated: January 25, 1989.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 89-2176 Filed 1-30-89; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### High Density Traffic Airport Slots by Lottery; Meeting

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

**ACTION:** Notice of meeting to allocate High Density Traffic Airport slots by lottery.

**SUMMARY:** In December 1985, the Secretary of Transportation issued a rule establishing procedures for the allocation and transfer of operating slots at the four airports designated as high denisity traffic airports: Kennedy International, LaGuardia, O'Hare

International, and Washington National Airports. The rule provides that unallocated and returned slots will be distributed by lottery. The previous lottery was conducted on July 22, 1987. This notice announces a meeting to conduct lotteries to allocate air carrier and commuter slots which have become available at three of the four airports since July 1987. Slots are not available in both commuter and air carrier categories at all airports.

**DATES:**

*Meeting:* The meeting will be held on Wednesday, March 8, 1989. The air carrier slot lottery will begin at 9:00 a.m. The commuter slot lottery will begin at 10:30 a.m.

*Requests to participate:* Notice of intent to participate must be received by 5:00 p.m. on the following dates:

Incumbent operators: March 6, 1989
New entrant operators: February 21, 1989

**ADDRESSES:** The meeting will be held at FAA Headquarters, Third Floor Auditorium, 800 Independence Avenue SW., Washington, DC.

Request to participate in the lottery should be submitted to:

Office of the Chief Counsel, Slot Administration Office, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:**

David L. Bennett, Manager, Airspace and Air Traffic Law Branch, AGC–230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. Telephone: (202) 267–3491.

**SUPPLEMENTARY INFORMATION:**

**Availability of Document**

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267–8058. Communications must identify the notice number of the document.

**Background**

On December 16, 1985, the Department of Transportation issued Amendment No. 93–49, "High Density Traffic Airports; Slot Allocation and Transfer Methods; Final Rule" (50 FR 52180, December 20, 1985), adding new Subpart S to Part 93 of the Federal Aviation Regulations (FAR), 14 CFR Part 93, Subpart S. The rule established procedures for the allocation and transfer of operating slots at the four airports designated as high density traffic airports under the High Density Rule, 14 CFR Part 93, Subpart K: Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. The rule provides that unallocated and returned slots will be distributed by lottery.

On July 22, 1987, a lottery of air carrier and commuter slots at all four high density traffic airports was conducted under the provisions of Subpart S. Even though slots are extremely limited at most airports, a few slots have become available, through operation of the use-or-lose provisions of 14 CFR § 93.227 and through the failure of some carriers to use the slots obtained in previous lotteries within the required time. The final rule issued in December 1985 states that lotteries will be held when sufficient slots are available for general distribution, but normally not more than twice each year. In consideration of the availability of slots and the fact that no lottery has been held since July 1987, a lottery of air carrier and communter slots will be held on March 8, 1989.

The list of slots available for distribution by lottery will be determined as of Friday, March 3, 1989.

**General Slot Lotteries Under 14 CFR 93.225**

*Time*

Air carrier lottery: 9:00 a.m., March 8, 1989.

Commuter operator lottery: 10:30 a.m., March 8, 1989.

*Requests to Participate*

For each of the high density airports, each air carrier and commuter operator operating at that airport will be included in the appropriate lottery for the airport upon written notification to the FAA by 5:00 p.m. on March 6, 1989, of the operator's desire to participate.

Any air carrier or commuter operator which (i) is not operating at the airport and (ii) has not failed to operate slots obtained in the previous lottery, but wishes to initiate service at the airport, shall be included in the lottery if that operator notifies the Office of the Chief Counsel in writing. To be eligible to participate, the operator must hold appropriate economic authority under Title IV of the Federal Aviation Act of 1958, as amended, and must hold or have made substantial progress in obtaining FAA operating authority under Part 135 or Part 121 of Title 14 of the Code of Federal Regulations. "Substantial progress" for this purpose is defined in 14 CFR 93.225(g). The notification must also include a statement as to whether there is any common ownership or control of, by, or with any other carrier as defined in 14 CFR 93.213(c). The notification must be in duplicate and must be received by 5:00 p.m. on February 21, 1989, as additional notification time for new entrants is needed to confirm the certification status of applicants.

All notifications of intent to participate in the lottery must be submitted to the address listed above under **"ADDRESSES."**

*Availability of slots:* Slots available for distribution by lottery are extremely limited. However, there have been requests for some of the available slots, and the FAA is conducting a formal lottery procedure for the purpose of allocating these slots in accordance with agency rules. A preliminary list of slots available is as follows:

| Airport | Air carrier | Commuter |
|---|---|---|
| National | 0 | [2] 14 |
| Kennedy | 0 | 0 |
| LaGuardia | 2 | 4 |
| O'Hare | [1] 2 | [3] 19 |

[1] Both 0645.
[2] 13 STOL slots.
[3] 4 at 0645; 14 at 2045.

A final list of the air carrier and commuter slots to be allocated will be prepared by the FAA and will be available by March 6, 1989.

*Lottery Procedures*

Slots will be allocated in accordance with the lottery procedures set forth in 14 CFR Subpart S, § 93.225. The procedures for the lottery at each airport may be summarized as follows:

1. A random lottery will be held to determine the order of slot selection.

2. During the first selection sequence, 25 percent of the slots available at each airport but no fewer than two slots (or 1 slot if only 1 wil be allocated) shall be reserved for selection by new entrant carriers.

3. Each carrier will make its selection in the order determined in the initial sequence lottery, except that only new entrant carriers will be permitted to make selections until the percentage of slots set aside for new entrants is selected. The normal sequence will resume at that time, beginning with the first incumbent carrier passed over during the new entrant selections.

4. An operator may select any two slots available at the airport during each selection sequence, except that new entrant carriers may select four slots, if available, in the first sequence.

5. Each operator must make its selection within 5 minutes after being called or it shall lose its turn. If capacity remains after each operator has had an

opportunity to select slots, the allocation sequence will be repeated in the same order.

**Public Process**

The meeting is open to the public and all interested persons are invited to attend. All lotteries will be held at FAA Headquarters in the Third Floor Auditorium.

Issued in Washington, DC, on January 25, 1989.

**John M. Walsh,**

*Acting Chief Counsel.*

[FR Doc. 89-2148 Filed 1-30-89; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Date: January 25, 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:* 1545-0057
*Form Numbers:* 1024
*Type of Review:* Extension
*Title:* Application for Recognition of Exemption Under Section 501(a) or for Determination Under Section 120
*Description:* Organizations wanting to be exempt from Federal income tax under section 501(a) as organizations described in most paragraphs of section 501(c), or a legal service plan described in section 120, must apply to IRS for a determination or ruling letter. The information supplied is used to determine whether the organization qualifies for exempt status.
*Respondents:* Non-profit institutions
*Estimated Number of Respondents:* 16,088
*Estimated Burden Hours Per Response/ Recordkeeping:*
Recordkeeping: 46 hours 17 mintues
Learning about the law or the form: 3 hours 3 minutes
Preparing the form: 4 hours 53 minutes
Copying, assembling, and sending the form to IRS: 16 minutes
*Frequency of Response:* On occasion
*Estimated Total Recordkeeping/ Reporting Burden:* 575,778 hours
*OMB Number:* 1545-0220
*Form Numbers:* 6008 and 6009
*Type of Review:* Extension
*Title:* Fee Deposit for Outer Continental Shelf Oil; Quarterly Report of Fees Due on Oil Production
*Description:* Forms 6008 and 6009 are used to compute and deposit fees due on oil that is produced on the Outer Continental Shelf. Information is used to verify that the correct fees have been paid.
*Respondents:* Businesses or other for-profit
*Estimated Number of Respondents:* 100
*Estimated Burden Hours Per Response/ Recordkeeping:*
Form 6008: 1 hour 28 minutes
Form 6009: Recordkeeping—11 hours 14 minutes
Learning about the law or the form: 22 minutes
Preparing the form: 1 hour 30 minutes
Copying, assembling, and sending the form to IRS: 16 minutes
*Frequency of Response:*
On occasion (Form 6008)
Quarterly (Form 6009)
*Estimated Total Recordkeeping/ Reporting Burden:* 7,104 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 Management Officer.*

[FR Doc. 89-2131 Filed 1-30-89; 8:45 am]

BILLING CODE 4810-25-M

### Public Information Collection Requirements Submitted to OMB for Review

Date: January 25, 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*: 1545-0056
*Form Number*: 1023 and 872-C
*Type of Review*: Extension
*Title*: Application for Recognition of Exemption Under section 501(c)(3) of the Internal Revenue Code; Consent Fixing Period of Limitation Upon Assessment of Tax Under section 4940 of the Internal Revenue Code
*Description*: Form 1023 is filed by applicants seeking Federal income tax exemption as organizations described in section 501(c)(3). IRS uses the information to determine if the applicant is exempt and whether applicant is a private foundation. Form 872-C extends the statute of limitations for assessing tax under section 4940.
*Respondents*: Non-profit institutions
*Estimated Number of Respondents*: 40,670
*Estimated Burden Hours Per Response/ Recordkeeping*:

| | 1023 | 872-C |
|---|---|---|
| Recordkeeping | 78 hours 27 minutes | 2 hours 9 minutes. |
| Learning about the law or the form | 11 hours 19 minutes | 24 minutes. |
| Preparing the form | 13 hours 19 minutes | 16 minutes. |
| Copying, assembling, and sending the form to IRS | 16 minutes | 0 |

*Frequency of Response*: On occasion
*Estimated Total Recordkeeping/ Reporting Burden*: 2,213,045 hours
*OMB Number*: 1545-0735
*Form Number*: None
*Type of Review*: Extension
*Title*: Amortization of Reforestation Expenditures

*Description*: Section 194 of the Internal Revenue Code allows taxpayers to elect to amortize certain reforestation expenditures over a 7-year period if the expenditures meet certain requirements. The regulations implement this election provision and allow the Internal Revenue Service to determine if the election is proper and allowable.

*Respondents*: Individuals or households, Farms, Businesses or other for-profit, Small businesses or organizations

*Estimated Number of Respondents*: 12,002

*Estimated Burden Hours Per Response*: 30 minutes

*Frequency of Response*: Annually

*Estimated Total Reporting Burden*: 6,001 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 Management Officer.*

[FR Doc. 89-2132 Filed 1-30-89; 8:45 am]

BILLING CODE 4810-25-M

## VETERANS' ADMINISTRATION

### Advisory Committee on Readjustment Problems of Vietnam Veterans; Notice of Meeting

The Veterans' Administration gives notice under Pub. L. 92-463 that a meeting of the Advisory Committee on Readjustment Problems of Vietnam Veterans will be held February 22 and 23, 1989. This is a regularly scheduled meeting for the purpose of reviewing Agency and other relevant services to Vietnam veterans and to formulate Committee recommendations and objectives. The meeting will be held in the Omar Bradley Conference Room at VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420.

The meeting February 22 will begin at 8 a.m. and conclude at 4 p.m. The day's agenda will consist of a summary of the Disabled American Veterans National Survey of VA Programs, an update on the development of a new National Center for Stress Recovery, current status of the Department of Medicine and Surgery treatment programs for substance abuse and post-traumatic stress disorder, a review of the findings of the final report of the National Vietnam Veterans Readjustment Study, and an update of Readjustment Counseling Service. The meeting on February 23 will begin at 8:30 a.m. and conclude at 4 p.m. The second day's agenda will consist of a report on the findings of the Columbia University—American Legion, Vietnam Veterans Study, an update regarding various pending Committee reports and projects, and a report on the extension of delimiting periods for VA educational programs by reason of alcohol conditions vis-a-vis Pub. L. 100-689, Sec. 109. Both day's meetings will be open to the public to the seating capacity of the room.

Due to the limited seating capacity of the room, those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank Jr., M.D., Director, Readjustment Counseling Service, Veterans' Administration Central Office, (phone number 202 233-3317/3303).

Dated: January 24, 1989.

By direction of the Secretary:

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 89-2207 Filed 1-30-89; 8:45 am]

BILLING CODE 8320-01-M

# Sunshine Act Meetings

Federal Register
Vol. 54, No. 19
Tuesday, January 31, 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).

**FEDERAL ENERGY REGULATORY COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** January 25, 1989, 54 FR 3720.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** January 25, 1989, 10:00 a.m.

**CHANGE IN THE MEETING:** The following Docket Numbers have been added to Item CAG–2 for the agenda January 25, 1989:

*Item No., Docket No., and Company*

CAG–2
RP88–228–000, Tennessee Gas Pipeline Company

**Lois D. Cashell,**

*Secretary.*

[FR Doc. 89–2240 Filed 1–26–89; 4:41 p.m.]

BILLING CODE 6717–02–M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 12:00 Noon, Monday, February 6, 1989.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street Entrance between 20th and 21st Streets NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Proposed purchase of computer equipment within the Federal Reserve System.
2. Proposed purchase of reader/sorter equipment within the Federal Reserve System.
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.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

Date: January 27, 1989.

[FR Doc. 89–2315 Filed 1–27–89; 3:24 p.m.]

BILLING CODE 6210–01–M

**NATIONAL LABOR RELATIONS BOARD**

Notice of Meeting

**TIME AND DATE:** 9:30 a.m., Tuesday, February 7, 1989.

**PLACE:** Board Conference Room, Sixth Floor 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

**STATUS:** Part of this meeting will be open to the public. The remainder of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:**

Portion open to the public
Casehandling procedures
Portion closed to the public
Personnel matters

**CONTACT PERSON FOR MORE INFORMATION:** John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570.

By direction of the Board.

**John C. Truesdale,**

*Executive Secretary.*

[FR Doc. 89–2316 Filed 1–27–89; 3:25 pm]

BILLING CODE 7445–01–M

**NATIONAL SCIENCE BOARD**

**DATE AND TIME:** February 10, 1989:

8:30 a.m. Closed Session
8:45 a.m. Open Session

**PLACE:** National Science Foundation, 1800 G Street, NW. Room 540, Washington, DC 20550.

**STATUS:**

Most of this meeting will be open to the public.
Part of this meeting will be closed to the public.

**MATTERS TO BE CONSIDERED FEBRUARY 10:**

*Closed Session (8:30 a.m. to 8:45 a.m.)*

1. Minutes—December 1988 Meeting
2. NSB and NSF Staff Nominees
3. Vannevar Bush Award
4. Grants and Contracts

*Open Session (8:45 a.m. to 12:00 noon)*

Swearing-in Ceremony of New NSB Members
5. Chairman's Report.
6. Minutes—December 1988 Meeting.
7. Director's Report.
8. Inspector General Act Implementation.
9. Presentation by Dr. Kathryn Levin: "Perspectives on High Temperature Superconductivity Theory".
10. Other Business.

**Thomas Ubois,**

*Executive Officer.*

[FR Doc. 89–2245 Filed 1–27–89; 8:50 am]

BILLING CODE 7555–01–M

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of January 30, February 6, 13, and 20, 1989.

**PLACE:** Commissioners' Conference Room, 11555 Pikeville Pike, Rockville, Maryland.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of January 30**

*Thursday, February 2*

10:00 a.m.
Periodic Briefing on EEO Programs (Public Meeting)
2:00 p.m.
Briefing on Proposed Rulemaking on Substandard Components (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule on Informal Procedures for Materials Licensing Adjudications
b. Final Rule on Immediate Effectiveness Procedures and Related Federal Register Notice on TMI–Related Policy Statements
c. Shoreham—Intervenor Motion to Admit New Contention on Medical Services for Contaminated Injured Individuals

**Week of February 6—Tentative**

*Monday, February 6*

2:00 p.m.
Briefing on Status of Peach Bottom (Public Meeting)

*Tuesday, February 7*

2:00 p.m.
Briefing on Final Rule on Fitness for Duty (Public Meeting)

*Wednesday, February 8*

10:00 a.m.
Briefing on Final Rule on Fitness for Duty (Public Meeting)

*Thursday, February 9*

10:00 a.m.
Briefing on Final Rule on Early Site Permits, Standard Design Certification; and Combined Licenses for Nuclear Power Reactors (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

*Friday, February 10*

2:00 p.m.
Oral Argument on Sanction Issue in Shoreham Proceedings (Public Meeting)

**Week of February 13—Tenative**

*Friday, February 17*

11:30
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of February 20—Tenative**

*Tuesday, February 21*

10:00 a.m.
Briefing on Staff Proposal on Continuity of Government Program (Closed—Ex. 1)
2:00 p.m.
Briefing on Safety Goal Implementation Plan (Public Meeting)

*Wednesday, February 22*

10:00 a.m.
Briefing on Status of West Valley Project (Public Meeting)

*Thursday, February 23*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**ADDITIONAL INFORMATION:** Affirmation of "Final Rule on Emergency Preparedness for Fuel Cycle and Other Radioactive Material Licensees" scheduled for January 26, *postponed.*

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

**TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING):** (301) 492–0292.

**CONTACT PERSON FOR MORE INFORMATION:** William Hill (301) 492–1661.

**William M. Hill, Jr.,**

*Office of the Secretary.*

January 26, 1989.

[FR Doc. 89–2297 Filed 1–27–89; 2:33 pm]

BILLING CODE 7590–01–M

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**SECURITIES AND EXCHANGE COMMISSION**

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 30, 1989.

A closed meeting will be held on Tuesday, January 31, 1989, at 2:30 p.m. An open meeting will be held on Thursday, February 2, 1989, at 2:00 p.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 31, 1989, at 2:30 p.m., will be:

Dismissal of injunctive action.
Settlement of injunctive action.
Institution of administrative proceeding of an enforcement nature.
Formal orders of investigation.
Litigation matter.

The subject matter of the open meeting scheduled for Thursday, February 2, 1989, at 2:00 p.m., will be:

The Commission will meet with representatives of the American Society of Corporate Secretaries to discuss the following issues: The corporate electoral system, shareholder rights plans, the effects of takeovers/leveraged buy-outs on debtholders, the section 16 release, management's responsibilities for financial statements and controls, and Form S–8. For further information, please contact Lina Angelici at (202) 272–3097.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Anthony Ain at (202) 272–2400.

**Jonathan G. Katz,**

*Secretary.*

January 25, 1989.

[FR Doc. 89–2285 Filed 1–27–89; 2:32 am]

BILLING CODE 8010–01–M

# Corrections

Federal Register
Vol. 54, No. 19
Tuesday, January 31, 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 180**

**[OPP-36145D; FRL 3502-6]**

### Interim Policy for Sulfiting Agents on Grapes; Extension of Policy Statement

*Correction*

In rule document 89-191 beginning on page 382 in the issue of Thursday, January 5, 1989, make the following correction:

On page 382, in the third column, in the second complete paragraph, in the fifth line, "January 1, 1989" should read "January 1, 1988".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 61 and 763**

**[AD-FRL-OPTS-3469-4]**

### Asbestos NESHAP Revision, Including Disposal of Asbestos Containing Materials Removed From Schools

*Correction*

In proposed rule document 89-494 beginning on page 912 in the issue of Tuesday, January 10, 1989, make the following corrections:

1. On page 917, in the third column, in the second complete paragraph, in the third line, "lead-tight" should read "leak-tight".

2. On page 918, in the 1st column, in the 1st paragraph, in the 13th line, "training" should read "trained"; and the 15th line should read "site at all times but must be present for a".

3. On the same page, in the 2nd column, in the 2nd complete paragraph, the 21st line should read "job being delayed while notifying EPA are".

4. On page 919, in the second column, in the fourth complete paragraph, in the third line, "million" should read "milling".

5. On page 921, in the table, in the subject heading above the second and third columns, "removable" should read "removal".

**§ 61.141 [Corrected]**

6. On page 925, in the 1st column, the 12th line should read as follows:" 'record,' and 'Working days.' The".

**§ 61.145 [Corrected]**

7. On page 927, in the first column, in § 61.145(a)(2), in the seventh line, "in" should read "on".

8. On the same page, in the second column, in § 61.145(b)(3)(iii), in the third line, "asbestos" was misspelled.

9. On page 928, in the second column, in § 61.145(c)(3)(i)(A), in the first line, "administrator" should read "Administrator".

20. On page 929, in the first column, in § 61.145(c)(7)(i), in the fourth line, "paragraph (c)(e)" should read "paragraph (c)(3)".

**§ 61.149 [Corrected]**

21. On page 930, in the first column, in § 61.149(c)(1)(iii), in the third line, "then" should read "than".

22. On the same page, in the second column, in § 61.149(e)(1)(vi), in the first line, "names" should read "name".

23. On the same page, in the same column, in § 61.149(e)(2), in the second line, "record" should read "records".

**§ 61.151 [Corrected]**

24. On page 931, in the third column, in § 61.151, at the beginning of the fourth line, two section twist symbols should appear, rather than one.

25. On page 932, in the first column, in § 61.151(b)(3), the sixth line should read "adequately deters access by the general public.".

**§ 61.152 [Corrected]**

26. On the same page, in the same column, in § 61.152(a), in the third line, "61.145(c)(3)(i)(B)(*1*)" should read "61.145(c)(3)(i)(B)(*1*)".

27. On the same page, in the same column, in § 61.152(a)(3), in the second line insert "January 10, 1989".

28. On the same page, in the second column, in § 61.152(b)(1), in the first line insert "January 10, 1989".

29. On page 935, under **Figure 3. Notification of Demolition and Renovation**, in the third column, in designated paragraph XI., in the eighth line, "broke" should read "broken".

30. On page 936, in the first column, under **Figure 4. Asbestos Waste Tracking System**, in item 1, remove the last line.

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 180**

**[PP 8E3661/P475; FRL-3501-2]**

### Pesticide Tolerance For Fluazifop-Butyl

*Correction*

In proposed rule document 88-30080 beginning on page 53017 in the issue of Friday, December 30, 1988, make the following correction:

On page 53017, in the second column, in the first complete paragraph, in the sixth line, "(R)-2-[14-[[5-" should read "(R)-2-[4-[[5-".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 798 and 799**

**[OPTS-46017, FRL-3496-7]**

### Mouse Visible Specific Locus Test Requirement; Proposed Amendment in Test Rules

*Correction*

In proposed rule document 88-29496 beginning on page 51847 in the issue of Friday, December 23, 1988, make the following correction:

On page 51848, in the first column, under **DATES**, in the second line, "January 23, 1989" should read "February 21, 1989".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3484-8]

### Proposed Guidelines for Exposure-Related Measurements

*Correction*

In notice document 88-27687 beginning on page 48830 in the issue of Friday, December 2, 1988, make the following corrections:

1. On page 48845, equation (3-3) should read as follows:

$$E=\sum_{i=1}^{N} I_i t_i = I_1t_1+I_2t_2+ \ldots +I_nt_n \qquad (3\text{–}3)$$

2. On the same page, equation (3-4) should read as follows:

$$E=\sum_{i=1}^{N} I_it_i = \copyright_{i=1}^{N} (C_i)(CR_i)t_i \qquad (3\text{–}4)$$

3. On the same page, equation (3-5) should read as follows:

$$T=\sum_{i=1}^{N} t_i \qquad (3\text{–}5)$$

4. On the same page, equation (3-6) should read as follows:

$$ED=\sum_{i=1}^{N} t_i \qquad (3\text{–}6)$$

5. On the same page, equation (3-9) should read as follows:

$$ER_c=\overline{I}\,ED/T \qquad (3\text{–}9)$$

6. On the same page, equation (3-10) should read as follows:

$$ER_c=\overline{(C)}\,(CR)\,(ED)/T \qquad (3\text{–}10)$$

7. On the same page, in equation (3-11), after "(BW" insert ")".

8. On page 48847, in the first column, equation (3-15) should read as follows:

$$E=(CR)\sum_{i=1}^{N} C_it_i \qquad (3\text{–}15)$$

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51723; FRL-3505-3]

### Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

*Correction*

In notice document 89-704 beginning on page 1231 in the issue of Thursday, January 12, 1989, make the following corrections:

1. On page 1231, in the first column, under **DATES**, in the 17th line, "December 29, 1989" should read "December 29, 1988".

2. On page 1232, in the second column, under **P 89-204**, in the third line, "polyester" was misspelled.

3. On the same page, in the third column, under **P 89-210**, in the second line, "Pyradine" should read "Pyridine".

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Human Development Services

### Administration for Children, Youth and Families; Allotment Percentages for Child Welfare Services State Grants

*Correction*

In notice document 88-30108 beginning on page 53071 in the issue of Friday, December 30, 1988, make the following correction:

On page 53071, in the third column, in **FOR FURTHER INFORMATION CONTACT**, in the fifth line, the phone number should read (202) 755-7480.

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-020-07-4321-01; AZA-23330]

### Realty Action; Exchange of Mineral Estate; Arizona

*Correction*

In notice document 88-19864 beginning on page 33879 in the issue of Thursday, September 1, 1988, make the following correction:

On page 33879, in the second column, under "T. 16 N., R. 26 E.,", the second line should read "S½SE¼."

BILLING CODE 1505-01-D

**OFFICE OF MANAGEMENT AND BUDGET**

**Office of Federal Procurement Policy**

**SMALL BUSINESS ADMINISTRATION**

**Interim Policy Directive**

*Correction*

In notice document 88-29989 beginning on page 52889 in the issue of Thurday, December 29, 1988, make the following corrections:

1. On page 52890, in the 3rd column, under **C. Executive Order 12291**, in the 13th line, "not" should read "no".

2. On page 52892, in the third column, in the first complete paragraph, in the eighth line, "any" should read "an".

3. On page 52896, in the table, in the first table-column, under "II. Refuse Sysyems and Related Services:", below the first entry (PSC S205), insert "III. Architectural and Engineering Services (including mapping and surveying)".

BILLING CODE 1505-01-D

federal register

Tuesday
January 31, 1989

# Part II

# Drug-Free Workplace Requirements; Notice and Interim Final Rules

Office of Management and Budget
Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department of State
Department of Transportation
Department of the Treasury

ACTION
African Development Foundation
International Development Cooperation Agency, Agency for International Development
Commission on the Bicentennial of the United States Constitution
Enviromental Protection Agency
Federal Emergency Management Agency
Federal Home Loan Bank Board
Federal Mediation and Conciliation Service
General Services Administration
National Foundation on the Arts and the Humanities, Institute of Museum Services
Inter-American Foundation
National Aeronautics and Space Administration
National Archives and Records Administration
National Foundation on the Arts and the Humanities
  National Endowment for the Arts
  National Endowment for the Humanities
National Science Foundation
Peace Corps
Small Business Administration
United States Information Agency
Veterans Administration

Department of Defense / General Services Administration / National Aeronautics and Space Administration

## OFFICE OF MANAGEMENT AND BUDGET

### Governmentwide Implementation of the Drug-Free Workplace Act of 1988

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice.

**SUMMARY:** This Notice provides information, in the form of nonbinding questions and answers, to assist the public in meeting the requirements of the Drug-Free Workplace Act of 1988. The Office of Management and Budget (OMB) has coordinated regulatory development with over 30 Federal agencies to ensure uniform, governmentwide implementation of this Act. As a consequence, OMB is offering this non-regulatory guidance.

Part of the omnibus drug legislation enacted November 18, 1988 is the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D). This statute requires contractors and grantees of Federal agencies to certify that they will provide drug-free workplaces. Making the required certification is a precondition of receiving a contract or grant from a Federal agency beginning on March 18, 1989.

Regulatory requirements pertaining to contractors are detailed in an interim final rule appearing in today's **Federal Register**. This rule amends the Federal Acquisition Regulation (FAR) at 48 CFR Subparts 9.4, 23.5 and 52.2. Regulatory requirements pertaining to grantees are detailed in an interim final common rule also appearing in today's **Federal Register**. The grantee common rule, unlike the contractor FAR rule, includes an extensive common preamble which addresses in detail the application and requirements for grantees. The common rule amends the governmentwide nonprocurement debarment and suspension common rule. Under the Drug-Free Workplace Act, the ultimate consequence of noncompliance with the Act's requirements is debarment or suspension.

**FOR FURTHER INFORMATION CONTACT:** For grants, contact Barbara F. Kahlow, Financial Management Division, 10225 New Executive Office Building, OMB, Washington, DC 20503 (telephone 202–395–3053). For contracts, contact Donna Fossum, Office of Federal Procurement Policy, 9025 New Executive Office Building, OMB, Washington, DC 20503 (telephone 202–395–3300).

**SUPPLEMENTARY INFORMATION:** See the common preamble and the common rule for detailed information on requirements for grantees.

1. *Question*—What contracts are covered under the Drug-Free Workplace Act?

*Answer*—Under the Act, only procurement contracts, including purchase orders, awarded pursuant to the provisions of the Federal Acquisition Regulation (FAR) that are to be performed, in whole or in part, in the United States are subject to the Act. In addition, under the Act, there is a $25,000 threshold for contracts subject to the Act, except for contracts awarded to individuals for whom all contracts are covered.

2. *Question*—Are contracts performed partly inside the U.S. and partly outside the U.S. covered by the Drug-Free Workplace Act?

*Answer*—Yes. OMB reads the statute to require a contractor to have a Drug-Free Workplace program for those portions of the contract performed inside the United States.

3. *Question*—Are Medicare third-party reimbursements to hospitals covered by the Drug-Free Workplace Act?

*Answer*—No, because such third party reimbursements are not made via a procurement contract or a grant. However, hospitals that receive procurement contracts or grants must meet the requirements of the Act.

4. *Question*—Are banks and other financial institutions selling U.S. Treasury bonds covered by the Drug-Free Workplace Act?

*Answer*—No, because such sales are not made via a procurement contract or a grant. However, such institutions that receive procurement contracts or grants must meet the requirements of the Act.

5. *Question*—Under what circumstances will an existing contract become subject to the requirements of the Drug-Free Workplace Act?

*Answer*—OMB reads the statute to require that if a contract is modified on or after March 18, 1989, in such a manner that it would be considered a new commitment, the requirements of the Drug-Free Workplace Act apply.

6. *Question*—Are contracts awarded with non-appropriated funds subject to the provisions of the Drug-Free Workplace Act?

*Answer*—No. Only those funds explicitly identified as non-appropriated are excluded from the FAR and, therefore, are not subject to the Drug-Free Workplace Act.

7. *Question*—Are contractors or grantees performing work in Federal facilities required to have Drug-Free Workplace programs?

*Answer*—Yes.

8. *Question*—Will additional regulations governing suspension and debarment actions be issued as a result of section 5152(b)(2)(B) of the Drug-Free Workplace Act?

*Answer*—OMB is unaware of any plans to do so.

9. *Question*—How do the provisions of the Drug-Free Workplace Act relate to the provisions contained in section 628 of the Treasury/Postal Service Appropriations Act (Pub. L. 100–440)?

*Answer*—Section 5159 of the Drug-Free Workplace Act repealed section 628(b) of the Treasury/Postal Service Appropriations Act which, like the Drug-Free Workplace Act, also contained drug-free workplace requirements pertaining to Federal contractors and grantees. Section 628(a) of the Treasury/Postal Service Appropriations Act, which contains drug-free workplace requirements for Federal departments, agencies, and instrumentalities, went into effect January 16, 1989. Several authorization acts contain sections similar to section 628(b). OMB reads the legislative history of these collective acts such that the requirements of those sections may be met by complying with the Drug-Free Workplace Act.

10. *Question*—Do either the Drug-Free Workplace Act or its implementing regulations published today require contractors or grantees to conduct drug tests of employees?

*Answer*—No.

11. *Question*—What is the status of the September 28, 1988, Department of Defense interim rule detailing drug-free workforce requirements on a select group of contractors?

*Answer*—The interim rule became effective October 31, 1988, and only pertains to selected Defense contractors and their employees in sensitive positions. Both rules, published in today's **Federal Register**, implementing the Drug-Free Workplace Act apply governmentwide to Defense *and* other Federal agencies, and cover contractors *and* grantees and their employees in nonsensitive *and* sensitive positions. Only the Defense interim rule requires drug testing.

12. *Question*—Are there any other agency-specific (versus governmentwide) rules with drug-free workplace requirements?

*Answer*—Not at this time.

Date: January 19, 1989.

**Joseph R. Wright, Jr.,**

*Director.*

[FR Doc. 89–2064 Filed 1–30–89; 8:45 am]

BILLING CODE 3110–01–M

**Department of Agriculture**

**7 CFR PART 3017**

**Department of Energy**

**10 CFR PART 1036**

**Federal Home Loan Bank Board**

**12 CFR PART 516**

**Small Business Administration**

**13 CFR PART 145**

**National Aeronautics and Space Administration**

**14 CFR PART 1265**

**Department of Commerce**

**15 CFR PART 26**

**Department of State**

**22 CFR PART 137**

**International Development Cooperation Agency**

**Agency for International Development**

**22 CFR PART 208**

**Peace Corps**

**22 CFR PART 310**

**United States Information Agency**

**22 CFR PART 513**

**Inter-American Foundation**

**22 CFR PART 1006**

**African Development Foundation**

**22 CFR PART 1508**

**Department of Housing and Urban Development**

**24 CFR PART 24**

**Department of the Treasury**

**Internal Revenue Service**

**26 CFR PART 601**

**Office of the Secretary**

**31 CFR PART 19**

**Department of Justice**

**28 CFR PART 67**

**Department of Labor**

**29 CFR PART 98**

**Federal Mediation and Conciliation Service**

**29 CFR PART 1471**

**Department of Defense**

**32 CFR PART 280**

**Department of Education**

**34 CFR PART 85**

**National Archives and Records Administration**

**36 CFR PART 1209**

**Veterans Administration**

**38 CFR PART 44**

**Environmental Protection Agency**

**40 CFR PART 32**

**General Services Administration**

**41 CFR PARTS 101–50 AND 105–68**

**Department of the Interior**

**43 CFR PART 12**

**Federal Emergency Management Agency**

**44 CFR PART 17**

**Department of Health and Human Services**

**45 CFR PART 76**

**National Science Foundation**

**45 CFR PART 620**

**National Foundation on the Arts and the Humanities**

**National Endowment for the Arts**

**45 CFR PART 1154**

**National Endowment for the Humanities**

**45 CFR PART 1169**

**Institute of Museum Services**

**45 CFR PART 1185**

**ACTION**

**45 CFR PART 1229**

**Commission on the Bicentennial of the United States Constitution**

**45 CFR PART 2016**

**Department of Transportation**

**49 CFR PART 29**

# Governmentwide Requirements for Drug-Free Workplace (Grants)

**AGENCIES:** Department of Agriculture, Department of Commerce, Department of Defense, Department of Education, Department of Energy, Department of Health and Human Services, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Labor, Department of State, Department of Transportation, Department of the Treasury, ACTION, African Development Foundation, Agency for International Development, Commission on the Bicentennial of the United States Constitution, Environmental Protection Agency, Federal Emergency Management Agency, Federal Home Loan Bank Board, Federal Mediation and Conciliation Service, General Services Administration, Institute of Museum Services, Inter-American Foundation, National Aeronautics and Space Administration, National Archives and Records Administration, National Endowment for the Arts, National Endowment for the Humanities, National Science Foundation, Peace Corps, Small Business Administration, United States Information Agency, Veterans Administration.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** Congress recently enacted the Drug-Free Workplace Act of 1988. This statute requires that all grantees receiving grants from any Federal agency certify to that agency that they will maintain a drug-free workplace, or, in the case of a grantee who is an individual, certify to the agency that his or her conduct of grant activity will be drug-free. This governmentwide rule is for the purpose of implementing the statutory requirements. It directs that grantees take steps to provide a drug-free workplace in accordance with the Act.

**DATES:** This rule is effective March 18, 1989. Comments should be received by April 3, 1989. Late-filed comments will be considered to the extent practicable.

**ADDRESS:** Comments should be sent to Docket Clerk, Docket No. 46084, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590. Commenters are requested to provide an original and four copies of their comments. Commenters wishing to have their comments acknowledged should enclose a stamped, self-addressed postcard with their comment. The docket clerk will time and date stamp the card and return it to the commenter.

**FOR FURTHER INFORMATION CONTACT:** See agency-specific preambles for the contact person for each agency.

**SUPPLEMENTARY INFORMATION:** As part of the omnibus drug legislation enacted

November 18, 1988, Congress passed the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D). This statute requires contractors and grantees of Federal agencies to certify that they will provide drug-free workplaces. Making the required certification is a precondition for receiving a contract or grant from a Federal agency.

Requirements pertaining to contractors will be found in a separate interim final rule amending the Federal Acquisition Regulation (FAR; 48 CFR Subparts 9.4, 23.5, and 52.2). This governmentwide common rulemaking concerns only grants (including cooperative agreements). This common rule will be the sole authority for implementing the Act, i.e., there will be no separate agency guidance issued. Because the statute makes use of existing suspension and debarment remedies for noncompliance with drug-free workplace requirements, the agencies have determined to implement the statute through an amendment to the existing governmentwide nonprocurement suspension and debarment common rule. Using this vehicle will allow the agencies to take advantage of existing administrative procedures and definitions, minimizing regulatory duplication.

In a matter unrelated to the Drug-Free Workplace Act, the May 26, 1988, common rule on nonprocurement suspension and debarment (53 FR 19161) contained interim final language concerning coverage of international transactions. The comment period on this language ended July 25, 1988. There were no comments. As a result, the international transactions language will remain unchanged.

**Section-by-Section Analysis**

The core of the drug-free workplace rule is a new Subpart F, which will be added to the current nonprocurement suspension and debarment common rule. Conforming changes are being made to other affected portions of the nonprocurement suspension and debarment common rule. The title of the part, as well as the authority citations, are being modified to refer to the drug-free workplace requirements being added to the regulation. Section ____.305, which concerns grounds for debarment, is being amended to add violation of drug-free workplace requirements as a ground for debarment.

Section ____.320, concerning the period of debarment, is being amended to conform with the longer period for debarment authorized by the statute for a violation of drug-free workplace requirements. Generally, debarments for other than a violation of the drug-free workplace requirements do not exceed three years. In view of the seriousness with which Congress takes drug abuse, Congress authorized debarments of up to five years for a violation of drug-free workplace requirements.

Subpart F is intended to carry out the Drug-Free Workplace Act of 1988, as it applies to Federal grant programs. Section ____.600, "Purpose," states this intent, indicating the requirement for both individuals and other grantees to make the certification required by the statute.

Section ____.605 includes several definitions. Since Subpart F is part of the suspension and debarment regulation, the definitions of the overall regulation (from § ____.105) apply to Subpart F, except where amended in this section.

The definitions of "controlled substance," "conviction," "criminal drug statute" and "employee" are taken verbatim from the statute. The definition of "drug-free workplace" is also taken directly from the statute, with the word "grantee" used in place of the undefined statutory "entity" in order to ensure terminological consistency throughout the regulation. The term "site for the performance of work" within this definition is not further defined. It is intended that the grantee will determine what the "site for the performance of work" is and specify such in the grantee's certification.

The definition of "grant" is adapted from the definition of this term in the grants management governmentwide common rule ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). Four points should be highlighted. First, for the purpose of the Drug-Free Workplace Act, grants include block grants and entitlement grant programs, whether or not exempted from coverage under the grants management common rule. Second, nonprocurement transactions entered into under Pub. L. 93–638, the "Indian Self-Determination and Education Assistance Act," are included under the subpart's requirements. Third, the term grant includes *only* assistance from an agency *directly* to a grantee. That is, if a Federal agency provides financial assistance to a State agency, which in turn passes through the assistance to several local agencies, only the State agency that receives the assistance directly from the Federal agency, and not the local agency, gets a "grant."

Consequently, it is only the State agency that is required to make a drug-free workplace certification under the regulation.

Fourth, section 5301 of Subtitle G, Title V of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690) specifies that "Federal benefits" may (or shall) be withheld, in certain circumstances, from convicted drug offenders. The term "Federal benefit," however, is defined by section 5301(d) to exclude "any * * * veterans benefits," a term which is defined, in turn, to include "all benefits provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States." Consequently, it is clear that, under Public Law 100–690, Federal agencies may not deny veterans' benefits to individuals on the basis of actual drug convictions.

Consistent with the intent of section 5301, the agencies have determined that veterans' benefits may not be denied to individuals on the basis of drug abuse which does not result in a conviction for violating a criminal drug statute or on the basis of the individual's failure to certify that he or she will refrain from drug abuse. Consequently, the definition of the term grant specifically excludes "any veterans' benefits to individuals—i.e., any benefit provided to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States."

"Grantee" is defined as a person who applies for or receives a grant directly from a Federal agency. This definition clarifies the statutory definition of this term, which refers to "the department, division, or other unit of a person responsible for section. "Individual" is defined in this section, however, to mean "a natural person." This wording emphasizes that an individual differs both from an organization made up of more than one individual and from corporations, which can be regarded as a single "person" for some legal purposes. An individual who receives a grant directly from a Federal agency (e.g., the individual gets a Federal agency award and grant check made out in his or her name) is covered by this rule, and must make the certification provided for grantees who are individuals, even if another party (e.g., a university) has a purely administrative role in distributing the funds. The agencies intend that a "principal investigator" in a research or similar grant be viewed as an individual only if the grant is awarded directly to the investigator (as distinct from being awarded to a university or other organization).

The § ____.105 definition of "person," it should be pointed out, includes

individuals. Since a "grantee" is a "person" who applies for or receives a grant, a grantee may be either an individual or an organization. When context requires, as in distinguishing between the certifications that individuals and organizations must submit, phrases like "grantees, other than individuals" and "grantees who are individuals" are used.

The definition of "Federal agency" or "agency" is taken from 5 U.S.C. 552(f) and is intended to cover a broad range of government entities. In various places in the regulation, "the agency" is used in the context of a particular grantor agency (e.g., § ____.630(a); "each grantee shall make the appropriate performance under the grant." The agencies view the regulatory definition as avoiding confusion among the terms "grantee," "person" and "individual" that might otherwise occur.

At the same time, the use of "grantee" in this regulation is intended to be consistent with the statutory sense of the term. For example, in determining the level of organization at which a sanction should be imposed in case of a violation of the requirements of this subpart, the agencies intend, where appropriate, to focus on the "department, division, or other unit" of the grantee responsible for performance under the grant. For example, if several different organizational units of a State agency receive grants from a Federal agency, and one of the State organizational units violates a requirement of the regulation, sanctions could be imposed on that organizational unit, not on the entire State agency. On the other hand, where it is appropriate, in the context of a particular Federal grant program, to view the entire grantee organization as responsible for the implementation of drug-free workplace requirements under this rule, the entire grantee organization could be subject to sanctions.

As in the definition of "grant," the use of the word "directly" emphasizes that it is only a "prime grantee," and not "subgrantees," who are covered by requirements under this subpart. This is true even when the prime grantee is only an office that passes Federal funds through to subgrantees who actually do the work of the program.

Words like "State" and "person" are already defined in § ____.105, so definitions of these terms are not repeated in this certification to the agency"). In such contexts, the term is not intended to mean Federal agencies in general.

Section § ____.610 applies the provisions of the subpart to any grantee of an agency. The remainder of the suspension and debarment rule applies to suspensions and debarments under subpart F. In the event of any conflict or inconsistency, subpart F provisions are deemed to control with respect to drug-free workplace matters.

Section ____.615 lists the grounds for which sanctions can be imposed. The imposition of sanctions requires a written determination of violation from the "agency head" or designee.

The first ground for which a grantee can be sanctioned is for making a false certification. The second ground is to violate the certification by failing to comply with the requirements of the certification (e.g., an organization that never publishes a drug-free workplace statement).

The third ground for sanctions is that "such a number of employees of the grantee" have been convicted of criminal drug violations occurring in the workplace "as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace." This is a standard that must be applied by agencies on a case-by-case basis. The facts and circumstances of grantees and employee drug problems vary so much that it would be virtually impossible to prescribe an across-the-board standard for how many convictions it would take before an agency would find a grantee in violation. It is clear, however, that criminal drug violations by employees not occurring in the workplace would not trigger this determination. Likewise, evidence of drug abuse by employees in the workplace that does not result in criminal convictions would not trigger this determination.

Section ____.620 provides three kinds of sanctions for grantees who are found in violation under § ____.615. The first is suspension (i.e., withholding) of payments under the grant. The second is suspension or termination of the grant itself. The third is suspension or debarment of the grantee. The decision of which sanction or sanctions to apply in a particular case is left to the discretion of the Federal grantor agency. As with other debarments, the debarred grantee is ineligible for any grant award from any Federal agency during the term of the debarment, which may be up to five years in the case of a debarment for a violation of this subpart.

Section ____.625 allows the agency head—but no other official in the agency—to waive a sanction imposed under § ____.620 if the agency head finds the sanction to be not in the public interest. The determination of the "public interest" ground for the waiver is within the discretion of the agency head. The waiver must be in writing.

Section ____.630 establishes what grantees must do in order to receive grants, in light of drug-free workplace requirements. Each grantee shall make the appropriate certification (as set forth in Appendix C) as a "prior condition" of being awarded a grant. This means that the agencies may not award the grant unless the certification has been made. Normally, the agencies would make the certification part of the grant application or proposal process, so that each grantee would make the certification in the process of seeking to obtain the funds.

The agencies are aware that, in some grant programs, there are no formal applications or proposals for funding in which a certification could be included (e.g., formula grant programs in which grantees are entitled to receive Federal funds). Also, as this regulation goes into effect, applications will already have been submitted for some grant programs, and only the actual award has to take place before the grant becomes effective. In both cases, grantees are required to make their certifications before the actual award of a grant can take place.

A grantee is required to make the required certification for each grant. The one exception to this rule is for a grantee which is a State (as defined in § ____.105), including a State agency. A State may elect to make a single annual certification to each agency from which it obtains grants, rather than making a separate certification for each grant or each workplace. Only one such annual certification need be made to each Federal grantor agency, which would cover all of that State agency's workplaces. Consequently, if a State agency receives grants under a number of different programs from the same Federal agency, only one certification, rather than multiple, annual certifications, has to be made to that Federal agency.

Grantees are not required to make certifications in order to continue receiving payments under existing grants. That is, if a grant has been approved and awarded before the effective date of this regulation, the grantee does not have to take any action under this regulation in order to continue receiving payments under the grant. On the same rationale, grantees would not be required to make a certification before a no-cost time extension of an existing grant. The requirements of this rule operate only prospectively.

The text of the certification required to be submitted by § ____.630 is found in Appendix C. There are two different

versions of the Appendix C certification. One of them is for grantees other than individuals; the other is for individuals. Grantees must choose the appropriate certification and make it as provided in § ____.630.

The Appendix C certification for grantees other than individuals (Alternate I) incorporates the statutory requirements for a drug-free workplace program. These requirements are largely self-explanatory. Grantee's costs incurred specifically to comply with the requirements of subpart F are regarded as allowable costs under the grant. The agencies point out that, under subparagraph (f)(2), employers are not required by the common rule to provide or pay for rehabilitation programs.

The applicable Appendix C certification for grantees who are individuals (Alternate II) provides that the individual will not engage in prohibited practices with respect to drugs in conducting any activity with the grant. Again, this certification simply incorporates the statutory requirement for individual grantees.

### Regulatory Process Matters

This rule is a non-major rule under Executive Order 12291. The agencies have evaluated the rule under Executive Order 12612, pertaining to Federalism. The statute requires drug-free workplace certifications to be made by all grantees, including State agencies. The rule does reduce burdens on State grantees by allowing State agencies to elect an annual certification to each Federal grantor agency in lieu of a certification for every grant. For these reasons, the agencies have determined that the rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

As a statutory matter, this rule must apply to all grantees, regardless of size. (The statute does provide a shorter, less burdensome certification to be made by grantees who are individuals, however.) Costs incurred by grantees for drug-free workplace programs are directly mandated by statute; the agencies have minimal regulatory discretion in designing this regulation.

This rule contains information collection requirements subject to the Paperwork Reduction Act. The information collection requirements concern employees reporting drug offense convictions to grantees, grantees reporting these convictions to the agencies, and grantees listing the location(s) of their workplace(s) as part of the certification. These requirements have been reviewed and approved by the Office of Management and Budget, with OMB Control Number 0991–0002.

The agencies find that publishing a notice of proposed rulemaking on this matter would be impracticable, unnecessary, and contrary to the public interest, since it would prevent compliance with the statutory deadline (90 days from the statute's date of enactment) for issuance of final rules. This finding is also based on the agencies' view that, given the urgency of implementing appropriate means to combat the nation's serious drug problem, the additional time involved with the publication of a notice of proposed rulemaking would adversely affect the achievement of the national objective established by Congress.

In addition, this rulemaking pertains only to agency grants. For this reason, under 5 U.S.C. 553(a)(2), the rulemaking is exempt from the requirement for prior notice and comment (except for those agencies that do not assert this exemption).

Consequently, this rule is published as an interim final rule. As an interim final rule, this regulation is fully in effect and binding after its effective date. No further regulatory action by the agencies is essential to the legal effectiveness of the rule. In order to benefit from comments that interested parties and the public may make, however, the agencies will keep the rulemaking docket open for 60 days. Comments are invited, on all portions of the rulemaking, through April 3, 1989. Following the close of the comment period, the agencies will publish a notice responding to the comments and, if appropriate, amending provisions of this rule.

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### Text of the Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

## PART ____—GOVERNMENTWIDE DEPARTMENT AND SUSPENSION (NON-PROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

**§ ____.305 Causes for debarment.**

* * * * *

(c) * * *

(5) Violation of any requirement of Subpart F of this part, relating to providing a drug-free workplace, as set forth in § ____.615 of this part.

* * * * *

**§ ____.320 Period of debarment.**

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). If a suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(1) Debarment for causes other than those related to a violation of the requirements of Subpart F of this part generally should not exceed three years. Where circumstances warrant, a longer period of debarment may be imposed.

(2) In the case of a debarment for a violation of the requirements of Subpart F of this part (*see* ____.305(c)(5)), the period of debarment shall not exceed five years.

* * * * *

**Subpart F—Drug-Free Workplace Requirements (Grants)**



### Subpart F—Drug-Free Workplace Requirements (Grants)

**§ ____.600 Purpose.**

(a) The purpose of this subpart is to carry out the Drug-Free Workplace Act of 1988 by requiring that—

(1) A grantee, other than an individual, shall certify to the agency that it will provide a drug-free workplace;

(2) A grantee who is an individual shall certify to the agency that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

(b) Requirements implementing the Drug-Free Workplace Act of 1988 for contractors with the agency are found at 48 CFR Subparts 9.4, 23.5, and 52.2.

**§ ____.605 Definitions.**

(a) Except as amended in this section, the definitions of § ____.105 apply to this subpart.

(b) For purposes of this subpart—

(1) "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1300.11 through 1300.15.

(2) "Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine

violations of the Federal or State criminal drug statutes;

(3) "Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance;

(4) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant at which employees of the grantee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance;

(5) "Employee" means the employee of a grantee directly engaged in the performance of work pursuant to the provisions of the grant;

(6) "Federal agency" or "agency" means any United States executive department, military department, government corporation, government controlled corporation, any other establishment in the executive branch (including the Executive Office of the President), or any independent regulatory agency;

(7) "Grant" means an award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a Federal agency directly to a grantee. The term grant includes block grant and entitlement grant programs, whether or not exempted from coverage under the grants management governmentwide regulation ("Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"). The term does not include technical assistance which provides services instead of money, or other assistance in the form of loans, loan guarantees, interest subsidies, insurance, or direct appropriations; or any veterans' benefits to individuals, i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States;

(8) "Grantee" means a person who applies for or receives a grant directly from a Federal agency;

(9) "Individual" means a natural person.

**§ ____.610 Coverage.**

(a) This subpart applies to any grantee of the agency.

(b) This subpart applies to any grant, except where application of this subpart would be inconsistent with the international obligations of the United States or the laws or regulations of a foreign government.

(c) The provisions of Subparts A, B, C, D and E of this part apply to matters covered by this subpart, except where specifically modified by this subpart. In the event of any conflict between provisions of this subpart and other provisions of this part, the provisions of this subpart are deemed to control with respect to the implementation of drug-free workplace requirements concerning grants.

**§ ____.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.**

A grantee shall be deemed in violation of the requirements of this subpart if the agency head or his or her official designee determines, in writing, that—

(a) The grantee has made a false certificaiton under § ____.630;

(b) The grantee has violated the certification by failing to carry out the requirements of subparagraphs (A.)(a)-(g) of the certification for grantees other than individuals (Alternate I to Appendix C) or by failing to carry out the requirements of the certification for grantees who are individuals (Alternate II to Appendix C); or

(c) Such a number of employees of the grantee have been convicted of violations of criminal drug statutes for violations occurring in the workplace as to indicate that the grantee has failed to make a good faith effort to provide a drug-free workplace.

**§ ____.620 Effect of violation.**

(a) In the event of a violation of this subpart as provided in § ____.615, and in accordance with applicable law, the grantee shall be subject to one or more of the following actions:

(1) Suspension of payments under the grant;

(2) Suspension or termination of the grant; and

(3) Suspension or debarment of the grantee under the provisions of this part.

(b) Upon issuance of any final decision under this part requiring debarment of a grantee, the debarred grantee shall be ineligible for award of any grant from any Federal agency for a period specified in the decision, not to exceed five years (*see* § ____.320(a)(2) of this part).

**§ ____.625 Exception provision.**

The agency head may waive with respect to a particular grant, in writing, a suspension of payments under a grant, suspension or termination of a grant, or suspension or debarment of a grantee if the agency head determines that such a waiver would be in the public interest. This exception authority cannot be delegated to any other official.

**§ ____.630 Grantees' responsibilities.**

(a) As a prior condition of being awarded a grant, each grantee shall make the appropriate certification to the agency, as provided in Appendix C to this part.

(b) Except as provided in this paragraph, a grantee shall make the required certification for each grant. A grantee that is a State may elect to submit an annual certification to each Federal agency from which it obtains grants in lieu of certifications for each grant during the year covered by the certification.

(c) Grantees are not required to provide a certification in order to continue receiving funds under a grant awarded before the effective date of this subpart or under a no-cost time extension of any grant.

**Appendix C to Part ____—Certification Regarding Drug-Free Workplace Requirements**

*Instructions for Certification*

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance was placed when the agency determined to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

*Certification Regarding Drug-Free Workplace Requirements*

Alternate I

A. The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance

of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Alternate II

The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance in conducting any activity with the grant.

## Adoption of Common Rule

The text of the common rule, as adopted by the agencies in this document, appears below.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 3017

**FOR FURTHER INFORMATION CONTACT:** Julius Jimeno, Chief, Resources Management and Analysis Division, Office of Finance and Management, (202) 382–8989.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** Any State agency electing to submit an annual drug-free workplace certification to the U.S. Department of Agriculture (USDA), as specified in § 3017.630(b), should forward its certification to: U.S. Department of Agriculture, Office of Finance and Management, Federal Assistance Team, Room 1361, South Building, Washington, DC 20250–9020.

**List of Subjects in 7 CFR Part 3017**

Grant programs (Agriculture), Debarment and suspension (nonprocurement), Drug abuse.

Title 7 of the Code of Federal Regulations is amended as set forth below.

January 19, 1989.

**Peter C. Myers,**

*Deputy Secretary.*

## PART 3017—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 3017 is revised to read as set forth above.

2. The authority citation for Part 3017 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 301.

**§ 3017.305 [Amended]**

3. Section 3017.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 3017.320 [Amended]**

4. Section 3017.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 3017 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**



## DEPARTMENT OF ENERGY

### 10 CFR Part 1036

**FOR FURTHER INFORMATION CONTACT:** Edward F. Sharp, (202) 586–8192.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** In the Department of Energy's (DOE) implementation of the Nonprocurement Debarment and Suspension common rule, a Subpart F was included providing for additional DOE procedures not included in the common rule. Because the common rule for the Drug-Free Workplace Act makes changes to the nonprocurement debarment and suspension common rule by adding a Subpart F, DOE is amending its version of the common rule to designate old Subpart F as Subpart G and to incorporate the new Subpart F.

DOE joins in the determination by the agencies in the preamble to the common rule that publication of a notice of proposed rulemaking would be impracticable and contrary to the public interest. In addition, pursuant to 42 U.S.C. 7191(c), DOE hereby concludes that an opportunity for oral presentation of comments is not necessary because there are neither substantial issues of law or fact nor likely substantial impacts on the nation's economy or on large numbers of individuals or businesses of which DOE independently could take account consistent with the Drug-Free Workplace Act of 1988.

**List of Subjects in 10 CFR Part 1036**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Copyrights.

Title 10 of the Code of Federal Regulations is amended as set forth below.

**Berton J. Roth,**

*Deputy Assistant Secretary for Procurement and Assistance Management.*

## PART 1036—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1036 is revised as set forth above.

2. The authority citation for Part 1036 is revised to read as follow:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 98 Stat. 1003–1005 (31 U.S.C.) 6301–6308.

**§ 1036.305 [Amended]**

3. Section 1036.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read

as set forth at the end of the common preamble.

**§ 1036.320 [Amended]**

4. Section 1036.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F is redesignated as Subpart G. The sections within Subpart F are redesignated as follows:

| Old section No. | New section No. |
|---|---|
| 1036.600 | 1036.700 |
| 1036.605 | 1036.705 |
| 1036.610 | 1036.710 |
| 1036.615 | 1036.715 |

6. A new Subpart F and Appendix C are added to Part 1036 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.
1036.600 Purpose.
1036.605 Definitions.
1036.610 Coverage.
1036.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1036.620 Effect of violation.
1036.625 Exception provisions.
1036.630 Grantees' responsibilities.
* * * * *

Appendix C to Part 1036—Certification Regarding Drug-Free Workplace Requirements.

## FEDERAL HOME LOAN BANK BOARD

**[Res. No.: 89-66]**

**12 CFR Part 516**

Date: January 24, 1989.

**FOR FURTHER INFORMATION CONTACT:** Caroline Morris, Office of General Counsel, Legal Counsel Division, (202) 377-6431.

**List of Subjects in 12 CFR Part 516**

Administrative practice and procedure, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs—FHLBB, Grants administration, Reporting and recordkeeping requirements.

Title 12 of the Code of Federal Regulations is amended as set forth below.

By the Federal Home Loan Bank Board.

**John M. Buckley,**

*Secretary.*

### PART 516—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 516 is revised to read as set forth above.

2. The authority citation for Part 516 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 12 U.S.C. 1437(a).

**§ 516.305 [Amended]**

3. Section 516.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 516.320 [Amended]**

4. Section 516.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 516 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements—Grants**

Sec.
516.600 Purpose.
516.605 Definitions.
516.610 Coverage.
516.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
516.620 Effect of violation.
516.625 Exception provisions.
516.630 Grantees' responsibilities.
* * * * *

Appendix C to Part 516—Certification Regarding Drug-Free Workplace Requirements

## SMALL BUSINESS ADMINISTRATION

**13 CFR Part 145**

**FOR FURTHER INFORMATION CONTACT:** Katherine C. Power, (202) 653-5628.

**List of Subjects in 13 CFR Part 145**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 13 of the Code of Federal Regulations is amended as set forth below.

**James Abdnor,**

*Administrator.*

### PART 145—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 145 is revised to read as set forth above.

2. The authority citation for Part 145 is revised to read as follows:

**Authority:** E.O. 12549; Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 15 U.S.C. 634(b)(6).

**§ 145.305 [Amended]**

3. Section 145.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 145.320 [Amended]**

4. Section 145.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 145 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.
145.600 Purpose.
145.605 Definitions.
145.610 Coverage.
145.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
145.620 Effect of violation.
145.625 Exception provisions.
145.630 Grantees' responsibilities.
* * * * *

Appendix C to Part 145—Certification Regarding Drug-Free Workplace Requirements

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**14 CFR Part 1265**

**FOR FURTHER INFORMATION CONTACT:** David K. Beck, Telephone: (202) 453-8250.

**List of Subjects in 14 CFR Part 1265**

Administrative practice and procedure, Controlled substances, Debarment and suspension

(nonprocurement), Drug abuse, Fraud, Government grant programs.

Title 14 of the Code of Federal Regulations is amended as set forth below.

Date: January 19, 1989.

**Dale D. Myers,**

*Deputy Administrator.*

## PART 1265—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1265 is revised to read as set forth above.

2. The authority citation for Part 1265 is revised to read as follows:

Authority: E.O. 12549; Secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); National Aeronautics and Space Act, Pub. L. 85–568, July 29, 1958, as amended, sec. 203(c)(1).

**§ 1265.305 [Amended]**

3. Section 1265.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 1265.320 [Amended]**

4. Section 1265.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1265 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**



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## DEPARTMENT OF COMMERCE

### 15 CFR Part 26

**[Docket No. 90112-9012]**

**FOR FURTHER INFORMATION CONTACT:** Robert M. McNamara, Telephone: (202) 377–5817.

**List of Subjects in 15 CFR Part 26**

Administrative practice and procedures, Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Part 26 of Title 15 of the Code of Federal Regulations is amended as set forth below.

**Sonya G. Stewart,**

*Director for Finance and Federal Assistance.*

## PART 26—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 26 is revised to read as set forth above.

2. The authority citation for Part 26 is revised to read as follows:

Authority: Executive Order 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 5 U.S.C. 301.

**§ 26.305 [Amended]**

3. Section 26.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or "; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 26.320 [Amended]**

4. Section 26.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 26 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**



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## DEPARTMENT OF STATE

### 22 CFR Part 137

**FOR FURTHER INFORMATION CONTACT:** James Tyckoski, Tel. (703) 875–7046.

**List of Subjects in 22 CFR Part 137**

Administrative practice and procedure, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs—foreign relations, Grants administration, Reporting and recordkeeping requirements.

Title 22 of the Code of Federal Regulations is amended as set forth below.

January 17, 1989.

**John J. Conway,**

*Procurement Executive.*

## PART 137—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 137 is revised to read as set forth above.

2. The authority citation for Part 137 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 2658.

**§ 137.305 [Amended]**

3. Section 137.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 137.320 [Amended]**

4. Section 137.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 137 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

### 22 CFR Part 208

**FOR FURTHER INFORMATION CONTACT:** Kathleen O'Hara at (703) 875–1534.

**List of Subjects in 22 CFR Part 208**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

**John F. Owens,**

*Associate Assistant to the Administrator for Management.*

Date: January 18, 1989.

## PART 208—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 208 is revised to read as set forth above.

2. The authority citation for Part 208 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Sec. 621, Foreign Assistance Act of 1961, 22 U.S.C. 2381.

**§ 208.305 [Amended]**

3. Section 208.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 208.320 [Amended]**

4. Section 208.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 208 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirement (Grants)**



## PEACE CORPS

### 22 CFR Part 310

**FOR FURTHER INFORMATION CONTACT:** John K. Scales, 202–254–3114 (FTS 254–3114).

**List of Subjects in 22 CFR Part 310**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Cooperative agreements.

Title 22 of the Code of Federal Regulations is amended as set forth below.

**Loret Miller Ruppe,**

*Director.*

## PART 310—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 310 is revised to read as set forth above.

2. The authority citation for Part 310 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 2503.

**§ 310.305 [Amended]**

3. Section 310.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 310.320 [Amended]**

4. Section 310.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 310 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**



## UNITED STATES INFORMATION AGENCY

### 22 CFR Part 513

**FOR FURTHER INFORMATION CONTACT:** Darwin Roberts, United States Information Agency, Office of Contracts, Policy and Procedures Staff, Room 1611, 330 C Street, SW., Washington, DC 20547, Telephone: (202) 485–6410.

**List of Subjects in 22 CFR Part 513**

Administrative practice and procedure, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Grant monitoring, Grant programs, Grants administration, Ineligible grantees.

Title 22 of the Code of Federal Regulations is amended as set forth below.

**Henry E. Hockeimer,**

*Associate Director for Management.*

## PART 513—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title for Part 513 is revised to read as set forth above.

2. The authority citation for Part 513 is revised to read as follows:

**Authority:** E.O. 12549; 40 U.S.C. 486(c); Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.).

**§ 513.305 [Amended]**

3. Section 513.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 513.320 [Amended]**

4. Section 513.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 513 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

## INTER-AMERICAN FOUNDATION

### 22 CFR Part 1006

**FOR FURTHER INFORMATION CONTACT:** Charles Berk at 703–841–3812.

**List of Subjects in 22 CFR Part 1006**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

**Charles M. Berk,**
*General Counsel.*

### PART 1006—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1006 is revised to read as set forth above.

2. The authority citation for Part 1006 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 22 U.S.C. 290f.

**§ 1006.305 [Amended]**

3. Section 1006.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or "; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 1006.320 [Amended]**

4. Section 1006.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1006 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**



## AFRICAN DEVELOPMENT FOUNDATION

### 22 CFR Part 1508

**FOR FURTHER INFORMATION CONTACT:** Paul S. Magid, General Counsel at (202) 673–3916.

**List of Subjects in 22 CFR Part 1508**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 22 of the Code of Federal Regulations is amended as set forth below.

**Leonard H. Robinson, Jr.,**
*President.*

### PART 1508—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1508 is revised to read as set forth above.

2. The authority citation for Part 1508 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Sec. 506(a)(4) of Title V of the International Security and Development Cooperation Act of 1980 (Pub. L. 96–533)

**§ 1508.305 [Amended]**

3. Section 1508.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or "; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 1508.320 [Amended]**

4. Section 1508.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1508 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**



## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### 24 CFR Part 24

**FOR FURTHER INFORMATION CONTACT:** Marylea W. Byrd, Office of General Counsel, Department of Housing and Urban Development, Room 10266, 451 Seventh Street, SW., Washington, DC 20410. (202) 755–9886 (This is not a toll-free number.)

**ADDITIONAL SUPPLEMENTARY INFORMATION:** By publication of this separate preamble the Department adopts the interim amendments to the common rule on nonprocurement debarment and suspension.

The Drug-Free Work Place Act of 1988 requires that regulations be issued not later than 90 days after the date of enactment and that the Act will become effective 120 days after enactment. Since enactment occurred after HUD's most recent Agenda submission to the Congressional oversight committees, this rule was not included in that agenda and would normally be subject to legislative review under section 7(o) of the Department of Housing and Urban Development Act. Because of the limited time periods involved, HUD will be unable to comply with the Congressional review requirements and also meet the legislative mandate for early effectiveness. Therefore, the Department is joining in the common rule.

The provisions of this subpart apply to recipients of all HUD grants including CDBG formula grant recipients not otherwise subject to sanctions under Part 24. Certifications required under this subpart should be submitted by formula grant recipients in conjunction with other required certifications.

Additionally, Public Housing Authorities (PHAs) that receive HUD grants through annual contributions contracts are grantees who are subject to the requirements in this subpart. The certification required by this subpart is

in addition to the requirement that PHAs include a provision in tenants' leases making drug-related criminal activity grounds for terminating the lease.

On December 28, 1988, the Department published a **Federal Register** Notice implementing amendments to the Comprehensive Homeless Assistance Plan (CHAP) (53 FR 52600) contained in the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (Pub. L. 100-628), approved November 7, 1988). One of these provisions required all applicants for assistance under the McKinney Act (including the Emergency Shelter Grants, Supportive Housing, Single Room Occupancy, and Supplemental Assistance for Facilities to Assist the Homeless programs) to include in their CHAPS an assurance that the homeless facility would be drug- and alcohol-free. The Notice further advised applicants that additional drug-related requirements might apply to the McKinney homeless assistance programs under the Anti-Drug Abuse Act of 1988. Applicants should note that they must comply with the requirements of this common rule and with the certification provisions under the 1988 CHAP Notice.

The existing Subpart F Limited Denial of Participation, has been redesignated as Subpart G.

**List of Subjects in 24 CFR Part 24**

Administrative practice and procedure, Debarment and suspension (nonprocurement), Drug abuse, Government contracts, Organization and functions (Government Agencies), Government procurement, Grant programs: housing and community development, Loan programs: housing and community development.

Title 24 of the Code of Federal Regulations is amended as set forth below.

**Samuel Pierce,**

*Secretary, United States Department of Housing and Urban Development.*

## PART 24—GOVERNMENT DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of part 24 is revised to read as set forth above.

2. The authority citation for Part 24 is revised to read as follows:

**Authority:** E.O. 12549; Secs. 5151-5160, Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

**§ 24.305 [Amended]**

3. Section 24.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 24.320 [Amended]**

4. Section 24.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F is redesignated as Subpart G. The sections within Subpart F are redesignated as follows:

| Old Section Number | New Section Number |
|---|---|
| 24.600 | 24.700 |
| 24.605 | 24.705 |
| 24.610 | 24.710 |
| 24.611 | 24.711 |
| 24.612 | 24.712 |
| 24.613 | 24.713 |

6. A new Subpart F and Appendix C are added to Part 24 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 601

### Office of the Secretary

### 31 CFR Part 19

**FOR FURTHER INFORMATION CONTACT:** John Blair, (202) 343-0249.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** On May 26, 1988, the Internal Revenue Service, Department of the Treasury, published regulations governing Governmentwide nonprocurement debarment and suspension (53 FR 19187-19188), codified at 26 CFR Part 601, Subpart I. The Department of the Treasury has determined that these regulations should be published in Title 31 of the Code of Federal Regulations as a Departmentwide regulation. Therefore, in addition to adopting Departmentwide the common regulation implementing the Drug-Free Workplace Act of 1988, this final rule transfers the suspension and debarment regulations originally published by the Internal Revenue Service in Title 26, and redesignates them as Departmentwide regulations to be codified at 31 CFR Part 19. The sections are redesignated as follows.

For the convenience of the user, the following table shows the relationship of the old CFR section numbers under 26 CFR Part 601 to the new section numbers in 31 CFR Part 19.

REDESIGNATION TABLE

| Old section (26 CFR) | New section (31 CFR) |
|---|---|
| General | Subpart A—General |
| 601.901 | 19.100 |
| 601.902 | 19.105 |
| 601.903 | 19.110 |
| 601.904 | 19.115 |
| Effect of action | Subpart B—Effect of action |
| 601.910 | 19.200 |
| 601.911 | 19.205 |
| 601.912 | 19.210 |
| 601.913 | 19.215 |
| 601.914 | 19.220 |
| 601.915 | 19.225 |

REDESIGNATION TABLE—Continued

| Old section (26 CFR) | New section (31 CFR) |
|---|---|
| Debarment | Subpart C—Debarment |
| 601.920 | 19.300 |
| 601.921 | 19.305 |
| 601.922 | 19.310 |
| 601.923 | 19.311 |
| 601.924 | 19.312 |
| 601.925 | 19.313 |
| 601.926 | 19.314 |
| 601.927 | 19.315 |
| 601.928 | 19.320 |
| 601.929 | 19.325 |
| Suspensions | Subpart D—Suspensions |
| 601.930 | 19.400 |
| 601.931 | 19.405 |
| 601.932 | 19.410 |
| 601.933 | 19.411 |
| 601.934 | 19.412 |
| 601.935 | 19.413 |
| 601.936 | 19.415 |
| 601.937 | 19.420 |
| Responsibilities of GSA, agency and participants | Subpart E—Responsibilities of GSA, agency and participants |
| 601.940 | 19.500 |
| 601.941 | 19.505 |
| 601.942 | 19.510 |
| Appendix A | Appendix A to Part 19 |
| Appendix B | Appendix B to Part 19 |

**List of Subjects**

*26 CFR Part 601*

Debarment and suspension (nonprocurement).

*31 CFR Part 19*

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Titles 26 and 31 of the Code of Federal Regulations are amended as set forth below.

**Jill E. Kent,**

*Assistant Secretary (Management).*

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

**TITLE 31—[AMENDED]**

## PART 19—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. Part 19 is added to Title 31 of the Code of Federal Regulations, its title to read as set forth above.

2. The authority citation for Part 19 is added to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 31 U.S.C. 321.

3. The regulations found in Subpart I of 26 CFR Part 601 are redesignated as new 31 CFR Part 19 as set forth below. The Subpart I heading and undesignated center headings of Subpart I are removed.

a. 26 CFR 601.901 through 601.904 are redesignated in 31 CFR 19 as Subpart A—General, §§ 19.100, 19.105, 19.110, 19.115, respectively.

b. 26 CFR 601.910 through 601.915 are redesignated in 31 CFR Part 19 as Subpart B—Effect of Action, §§ 19.200, 19.205, 19.210, 19.215, 19.220, 19.225, respectively.

c. 26 CFR 601.920 through 929 are redesignated in 31 CFR Part 19 as Subpart C—Debarment, §§ 19.300, 19.305, 19.310, 19.311, 19.312, 19.313, 19.314, 19.315, 19.320, 19.325, respectively.

d. 26 CFR 601.930 through 601.937 are redesignated in 31 CFR Part 19 as Subpart D—Suspension, §§ 19.400, 19.405, 19.410, 19.411, 19.412, 19.413, 19.415, 19.420, respectively.

e. 26 CFR 601.940 through 601.942 are redesignated in 31 CFR Part 19 as Subpart E—Responsibilities of GSA, Agency and Participants, §§ 19.500, 19.505, 19.510, respectively.

f. Appendices A and B to Subpart I of Title 26, Part 601, are redesignated as Appendix A to Part 19 and Appendix B to Part 19 of Title 31, respectively.

**§ 19.305 [Amended]**

4. In Subpart C, § 19.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 19.320 [Amended]**

5. Section 19.320(a) is revised to read as set forth at the end of the common preamble.

6. Part 19 is amended by adding a new Subpart F immediately following § 19.510 and a new Appendix C to Part 19 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

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19.600 Purpose.
19.605 Definitions.
19.610 Coverage.
19.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
19.620 Effect of violation.
19.625 Exception provisions.
19.630 Grantees' responsibilities.

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**Appendix C to Part 19—Certification Regarding Drug-Free Workplace Requirements**

**TITLE 26—[AMENDED]**

7. The authority citation for 26 CFR Part 601 is revised to read as follows:

**Authority:** 5 U.S.C. 301 and 552, unless otherwise noted.

## DEPARTMENT OF JUSTICE

### 28 CFR Part 67

**FOR FURTHER INFORMATION CONTACT:** Cynthia J. Schwimer, (202) 724–3186.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** The Department of Justice has adopted a uniform system of implementing the Drug-Free Workplace common rule that will be applicable to the nonprocurement assistance activities of the offices, bureaus, and divisions of the Department of Justice which have grantmaking authority. These include: The Office of Justice Programs (including the Office for Victims of Crime, the National Institute of Justice, the Bureau of Justice Assistance, the Office of Juvenile Justice and Delinquency Prevention, and the Bureau of Justice Statistics), the Bureau of Prisons, the U.S. Marshals Service, the Immigration and Naturalization Service, the Federal Bureau of Investigation, the Drug Enforcement Administration and the Community Relations Service.

**List of Subjects in 28 CFR Part 67**

Administrative practice and procedures, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs—Law, Grants administrations, Reporting and recordkeeping requirements.

Title 28 of the Code of Federal Regulations is amended as set forth below.

**Dick Thornburgh,**

*Attorney General.*

### PART 67—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 67 is revised to read as set forth above.

2. The authority citation for Part 67 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*), Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3711, *et seq.* (as amended), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.* (as amended), Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq* (as amended); 18 U.S.C. 4042; and 18 U.S.C. 4351–4353.

**§ 67.305 [Amended]**

3. Section 67.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 67.320 [Amended]**

4. Section 67.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 67 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

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**Appendix C to Part 67—Certification Regarding Drug-Free Workplace Requirements**

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## DEPARTMENT OF LABOR

### 29 CFR Part 98

**FOR FURTHER INFORMATION CONTACT:** Theodore Goldberg on (202) 523–9174 (FTS 523–9174).

**List of Subjects in 29 CFR Part 98**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 29 of the Code of Federal Regulations is amended as set forth below.

**Ann McLaughlin,**

*Secretary of Labor.*

### PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 98 is revised to read as set forth above.

2. The authority citation for Part 98 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 5 U.S.C. 552–556.

**§ 98.305 [Amended]**

3. Section 98.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 98.320 [Amended]**

4. Section 98.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 98 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

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**Appendix C to Part 98—Certification Regarding Drug-Free Workplace Requirements**

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## FEDERAL MEDIATION AND CONCILIATION SERVICE

### 29 CFR Part 1471

**FOR FURTHER INFORMATION CONTACT:** Lee Buddendeck, 202/653–5320.

**List of Subjects in 29 CFR Part 1471**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 29 of the Code of Federal Regulations is amended as set forth below.

**Kay McMurray,**

*Director.*

### PART 1471—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1471 is revised to read as set forth above.

2. The authority citation for Part 1471 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.) Pub. L. 95–524, Oct. 27, 1978, 29 U.S.C. 175a.

**§ 1471.305 [Amended]**

3. Section 1471.305 is amended by

removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 1471.320 [Amended]**

4. Section 1471.320 (a) revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1471 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.



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## DEPARTMENT OF DEFENSE

### 32 CFR Part 280

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Carney, Office of the Deputy Director, Defense Research and Engineering (Research and Advanced Technology) (ODDDRE/R&AT), Room 3E114, the Pentagon, telephone 202–694–0205.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** The Department of Defense (DoD) is adopting the following interim final rule establishing government requirements for a drug-free workplace for DoD grantees, and will proceed with internal agency coordination, the results of which will be reflected in the final common rule. It is DoD's objective to establish uniform practices within the Office of the Secretary of Defense, the Military Departments and the Defense Agencies that would be consistent with those being established by other Executive Departments and Agencies in adopting this government-wide common rule.

**List of Subjects in 32 CFR Part 280**

Administrative practice and procedures, Controlled substance, Debarment and suspension (nonprocurement), Drug abuse, Fraud, Grant programs, Reporting and recordkeeping requirements.

Title 32 of the Code of Federal Regulations is amended as set forth below.

**Linda M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### PART 280—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 280 is revised to read as set forth above.

2. The authority citation for Part 280 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.)

**§ 280.305 [Amended]**

3. Section 280.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 280.320 [Amended]**

4. Section 280.320 (a) revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 280 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.



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## DEPARTMENT OF EDUCATION

### 34 CFR Part 85

**FOR FURTHER INFORMATION CONTACT:** Mary Jane Kane at 202–732–7400 (FTS 732–7400).

**List of Subjects in 34 CFR Part 85**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 34 of the Code of Federal Regulations is amended as set forth below.

**Lauro F. Cavazos,**

*Secretary of Education.*

### PART 85—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 85 is revised to read as set forth above.

2. The authority citation for Part 85 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D 41 U.S.C. 701 et seq); 20 U.S.C. 3474, 1221e–3(a)(1).

**§ 85.305 [Amended]**

3. Section 85.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 85.320 [Amended]**

4. Section 85.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 85 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.



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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1209

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

**List of Subjects in 36 CFR Part 1209**

Administrative practice and procedure, Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Fraud,

Grant programs—Archives and records, Grants administration, Reporting and recordkeeping requirements.

Title 36 of the Code of Federal Regulations is amended as set forth below.

**Don W. Wilson,**

*Archivist of the United States.*

## PART 1209—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1209 is revised to read as set forth above.

2. The authority citation for Part 1209 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 44 U.S.C. 2104(a).

**§ 1209.305 [Amended]**

3. Section 1209.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 1209.320 [Amended]**

4. Section 1209.320(a) is revised as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to part 1209 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.



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## VETERANS ADMINISTRATION

### 38 CFR Part 44

**FOR FURTHER INFORMATION CONTACT:** Linda M. Combs, Acting Associate Deputy Administrator for Management (004), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420 (202) 233–2227.

**ADDITIONAL SUPPLEMENTARY INFORMATION:** The Drug-Free Workplace Act of 1988, requires, among other things, that all Federal grantees certify to the granting agency that they will maintain a drug-free workplace, or, in the case of individual grantees, certify that the activities conducted with grant assistance will be drug free. Consistent with the statutory provisions of the Anti-Drug Abuse Act of 1988, the definition of "grant" set forth in the common rule, however, makes it clear that, for purposes of the provisions applicable to individuals, the term "grant" shall not be construed to include "any veterans benefit—i.e., any benefit provided to veterans, their families, or survivors by virtue of the service of veteran in the Armed Forces of the United States." Accordingly, individual beneficiaries of "veterans benefits" will not be required to comply with the Drug Free Workplace Act of 1988 as a condition to the receipt of such benefits.

Otherwise, the common rule shall apply to grant programs administered by the VA, such as the State Veterans Home Program and the State Cemetery Grants Program, which provide for the granting of assistance other than "veterans benefits" to recipients such as State governments. In such cases, the VA will require from such grantees compliance with the Drug-Free Workplace Act of 1988, including its certification requirements, as a condition for the future receipt of such assistance.

**List of Subjects in 38 CFR Part 44**

Accounting, Administrative practice and procedures, Agreements, Debarment and suspension (nonprocurement), Drug abuse, Drug-free workplace, Grant programs—State cemetery and State veterans homes, Insurance, Loan guaranty, Reporting and recordkeeping requirements, Scholarships, Veterans, Vocational rehabilitation and education.

Title 38 of the Code of Federal Regulations is amended as set forth below.

Approved: January 18, 1989.

**Thomas K. Turnage,**

*Administrator.*

## PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 44 is revised to read as set forth above.

2. The authority citation for Part 44 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 38 U.S.C. 210(c).

**§ 44.305 [Amended]**

3. Section 44.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 44.320 [Amended]**

4. Section 44.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 44 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.



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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 32

**FOR FURTHER INFORMATION CONTACT:** Robert Meunier, at 202–475–8025 (FTS–475–8025).

**List of Subjects in 40 CFR Part 32**

Debarment and suspension (nonprocurement), Drug abuse, Government grant programs.

Title 40 of the Code of Federal Regulations is amended as set forth below.

Date: January 18, 1989.

**Lee M. Thomas,**

*Administrator.*

## PART 32—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 32 is revised to read as set forth above.

2. The authority citation for Part 32 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 7 U.S.C. 136 et seq.; 15 U.S.C. 2601 et seq.; 20 U.S.C. 4011 et seq.; 33 U.S.C. 1251 et seq.; 42 U.S.C. 300f, 4901, 6901, 7401, 9601 et seq.

**§ 32.305 [Amended]**

3. Section 32.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of this common preamble.

**§ 32.320 [Amended]**

4. Section 32.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 32 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.



## GENERAL SERVICES ADMINISTRATION

### 41 CFR Parts 101–50 and 105–68

**FOR FURTHER INFORMATION CONTACT:** Ida M. Ustad at 202–566–1224 (FTS 566–1224).

**ADDITIONAL SUPPLEMENTARY INFORMATION:**

REDESIGNATION TABLE

[For the convenience of the user, the following table shows the relationship of the old CFR Section numbers in 41 CFR Part 101–50 to the new CFR Section numbers in 41 CFR Part 105–68.]

| Old section | New section |
|---|---|
| Subpart 101–50.1—General | Subpart 105–68.1—General |
| 101–50.100 | 105–68.100 |
| 101–50.105 | 105–68.105 |
| 101–50.110 | 105–68.110 |
| 101–50.115 | 105–68.115 |

REDESIGNATION TABLE—Continued

[For the convenience of the user, the following table shows the relationship of the old CFR Section numbers in 41 CFR Part 101–50 to the new CFR Section numbers in 41 CFR Part 105–68.]

| Old section | New section |
|---|---|
| Subpart 101–50.2—Effect of Action | Subpart 105–68.2—Effect of Action |
| 101–50.200 | 105–68.200 |
| 101–50.205 | 105–68.205 |
| 101–50.210 | 105–68.210 |
| 101–50.215 | 105–68.215 |
| 101–50.220 | 105–68.220 |
| 101–50.225 | 105–68.225 |
| Subpart 101–50.3—Debarment | Subpart 101–50.3—Debarment |
| 101–50.300 | 105–68.300 |
| 101–50.305 | 105–68.305 |
| 101–50.310 | 105–68.310 |
| 101–50.315 | 105–68.315 |
| 101–50.320 | 105–68.320 |
| 101–50.325 | 105–68.325 |
| Subpart 101–50.4—Suspension | Subpart 101–50.4—Suspension |
| 101–50.400 | 105–68.400 |
| 101–50.405 | 105–68.405 |
| 101–50.410 | 105–68.410 |
| 101–50.415 | 105–68.415 |
| 101–50.420 | 105–68.420 |
| 101–50.425 | 105–68.425 |
| Subpart 101–50.5—Responsibilities of GSA, Agency and Participants | Subpart 101–50.5—Responsibilities of GSA, Agency and Participants |
| 101–50.500 | 105–68.500 |
| 101–50.505 | 105–68.505 |
| 101–50.510 | 105–68.510 |
| 101–50.515 | 105–68.515 |
| 101–50.520 | 105–68.520 |
| 101–50.525 | 105–68.525 |

**List of Subjects 41 CFR Part 105–68**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 41 of the Code of Federal Regulations is amended as set forth below.

January 18, 1989.

**Richard G. Austin,**

*Acting Administrator of General Services.*

## PART 105–68 GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. Part 101–50 is redesignated as Part 105–68. The part heading is revised to read as set forth above.

2. The authority citation for Part 105–68 is revised to read as follows:

Authority: E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 40 U.S.C. 486(c).

**§ 105–68.305 [Amended]**

3. Section 105–68.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 105–68.110 [Amended]**

4. Section 105–68.110(b) is amended by removing "Subpart B" and adding "Subpart 105–68.2".

**§ 105–68.135 [Amended]**

5. Section 105–68.135(b) is amended by removing "Subpart E" and adding "Subpart 105–68.5".

**§ 105–68.320 [Amended]**

6. Section 105–68.320(a) is revised to read as set forth at the end of the common preamble.

7. Subpart 105–68.6 and Appendix C are added to read as set forth at the end of the common preamble.

**Subpart 105–68.6—Drug-Free Workplace Requirements (Grants)**

Sec.



## DEPARTMENT OF THE INTERIOR

### 43 CFR Part 12

**FOR FURTHER INFORMATION CONTACT:** Ceceil Coleman, Phone (202) 343–6431.

**List of Subjects in 43 CFR Part 12**

Cooperative agreements, Debarment and suspension (nonprocurement), Drug abuse, Grant programs, Grants administration.

Title 43 of the Code of Federal Regulations is amended as set forth below.

Date: January 19, 1989.

**Rick Ventura,**

*Assistant Secretary—Policy, Budget and Administration.*

## PART 12—ADMINISTRATIVE REQUIREMENTS AND COST PRINCIPLES FOR ASSISTANCE PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 5 U.S.C. 301; Pub. L. 98–502; OMB Circulars A–102 and A–110; and OMB Circular A–128.

### Subpart D—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)

2. The title of Subpart D is revised to read as set forth above.

**§ 12.305 [Amended]**

3a. In Subpart D, §12.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

b. Newly added § 12.305(c)(5) is further amended by removing "Subpart F of this part" and adding "the drug-free workplace requirements for grants."

**§ 12.320 [Amended]**

4a. In Subpart D, § 12.320(a) is revised to read as set forth at the end of the common preamble.

b. Newly revised § 12.320(a) (1) and (2) are amended by removing "Subpart F of this part" and adding "the drug-free workplace requirements for grants of this subpart."

5. Subpart D is amended by adding a new heading and seven new sections immediately following § 12.510 and a new Appendix C to Subpart D to read as set forth at the end of the common preamble.

### Drug-Free Workplace Requirements (Grants)

Sec.



### Appendix C to Subpart D—Certification Regarding Drug-Free Workplace Requirements

**§§ 12.600, 12.605, 12.610, 12.615, 12.620, 12.625 and 12.630 [Amended]**

6. Sections 12.600, 12.605, 12.610, 12.615, 12.620, 12.625, and 12.630 are further amended by removing "this subpart" and adding "the drug-free workplace requirements for grants" wherever "this subpart" appears, by removing "this part" and adding "Subpart D" wherever "this part" appears.

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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 17

**FOR FURTHER INFORMATION CONTACT:** Arthur E. Curry at 202–646–3719.

**List of Subjects in 44 CFR Part 17**

Governmentwide Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 44 of the Code of Federal Regulations is amended as set forth below.

**Arthur E. Curry,**

*Chief, Policy Division, Office of the Comptroller.*

## PART 17—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 17 is revised to read as set forth above.

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

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.).

**§ 17.305 [Amended]**

3. Section 17.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 17.320 [Amended]**

4. Section 17.320 is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 17 to read as set forth at the end of the common preamble.

### Subpart F—Drug Free Workplace Requirements (Grants)

Sec.



### Appendix C to Part 17—Certification Regarding Drug-Free Workplace Requirements

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 76

**FOR FURTHER INFORMATION CONTACT:** Neil Steyskal at 202–245–0729.

**List of Subjects in 45 CFR Part 76**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Approved: January 18, 1989.

**Otis R. Bowen,**

*Secretary, Department of Health and Human Services.*

## PART 76—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 76 is revised to read as set forth above.

2. The authority citation for Part 76 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 5 U.S.C. 301.

**§ 76.305 [Amended]**

3. Section 76.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 76.320 [Amended]**

4. Section 76.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 76 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.
76.600 Purpose.
76.605 Definitions.
76.610 Coverage.
76.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
76.620 Effect of violation.
76.625 Exception provisions.
76.630 Grantees' responsibilities.
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Appendix C to Part 76—Certification Regarding Drug-Free Workplace Requirements

## NATIONAL SCIENCE FOUNDATION

### 45 CFR Part 620

**FOR FURTHER INFORMATION CONTACT:** J. Rom, 357–7880.

**List of Subjects in 45 CFR Part 620**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

**Jeff Fenstermacher,**

*Assistant Director for Administration.*

## PART 620—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 620 is revised to read as set forth above.

2. The authority citation for Part 620 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); Sec. 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

**§ 620.305 [Amended]**

3. Section 620.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 620.320 [Amended]**

4. Section 620.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 620 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.
620.600 Purpose.
620.605 Definitions.
620.610 Coverage.
620.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
620.620 Effect of violation.
620.625 Exception provisions.
620.630 Grantees' responsibilities.
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Appendix C to Part 620—Certification Regarding Drug-Free Workplace Requirements

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### 45 CFR Part 1154

**FOR FURTHER INFORMATION CONTACT:** Arthur Warren, Deputy General Counsel, 202–682–5418.

**List of Subjects in 45 CFR Part 1154**

Controlled substances, Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

**Peter J. Basso,**

*Deputy Chairman for Management.*

## PART 1154—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1154 is revised to read as set forth above.

2. The authority citation for Part 1154 is revised to read as follows:

**Authority:** E.O. 12549; Secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 20 U.S.C. 959(a)(1).

**§ 1154.305 [Amended]**

3. Section 1154.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 1154.320 [Amended]**

4. Section 1154.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1154 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.
1154.600 Purpose.
1154.605 Definitions.
1154.610 Coverage.
1154.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1154.620 Effect of violation.
1154.625 Exception provisions.
1154.630 Grantees' responsibilities.
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Appendix C to Part 1154—Certification Regarding Drug-Free Workplace Requirements

### National Endowment for the Humanities

### 45 CFR Part 1169

**FOR FURTHER INFORMATION CONTACT:** David J. Wallance, (202) 786–0494.

**List of Subjects in 45 CFR Part 1169**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

**Lynne V. Cheney,**

*Chairman, National Endowment for the Humanities.*

## PART 1169—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1169 is revised to read as set forth above.

2. The authority citation for Part 1169 is revised to read as follows:

**Authority:** E.O. 12549; Secs. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq.); 20 U.S.C. 959(a)(1).

**§ 1169.305 [Amended]**

3. Section 1169.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 1169.320 [Amended]**

4. Section 1169.320(a) is revised to read as set forth at the end of the common preamble

5. Subpart F and Appendix C are added to Part 1169 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.
1169.600 Purpose.
1169.605 Definitions.
1169.610 Coverage.
1169.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1169.620 Effect of violation.
1169.625 Exception provisions.
1169.630 Grantees' responsibilities.
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Appendix C to Part 1169—Certification Regarding Drug-Free Workplace Requirements

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**Institute of Museum Services**

**45 CFR Part 1185**

**FOR FURTHER INFORMATION CONTACT:** Rebecca Danvers, Institute of Museum Services, Room 609, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 786–0539.

**List of Subjects in 45 CFR Part 1185**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 45 of the Code of Federal Regulations is amended as set forth below.

**Lois Burke Shepard,**
*Director.*

## PART 1185—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENT WIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1185 is revised to read as set forth above.

2. The authority citation for Part 1185 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq.*); 20 U.S.C. 961–68 as amended.

**§ 1185.305 [Amended]**

3. Section 1185.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 1185.320 [Amended]**

4. Section 1185.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1185 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.
1185.600 Purpose.
1185.605 Definitions.
1185.610 Coverage.
1185.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1185.620 Effect of violation.
1185.625 Exception provisions.
1185.630 Grantees' responsibilities.
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Appendix C to Part 1185—Certification Regarding Drug-Free Workplace Requirements

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**ACTION**

**45 CFR Part 1229**

**FOR FURTHER INFORMATION CONTACT:** Margaret M. McHale, Acting Chief, Grants Branch, at 202–634–9150.

**List of Subjects in 45 CFR Part 1229**

Accounting, Administrative practice and procedures, Debarment and suspension (nonprocurement), Drug abuse, Grant programs—Volunteer Services, Grants administration, Insurance, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended as set forth below.

**Donna M. Alvarado,**
*Director.*

## PART 1229—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 1229 is revised to read as set forth above.

2. The authority citation for Part 1229 is revised to read as follows:

**Authority:** E.O. 12549: Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 *et seq*); Pub. L. 93–113; 42 U.S.C. 4951, *et seq*; 42 U.S.C. 5060.

**§ 1229.305 [Amended]**

3. Section 1229.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 1229.320 [Amended]**

4. Section 1229.320(a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 1229 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.
1229.600 Purpose.
1229.605 Definitions.
1229.610 Coverage.
1229.615 Grounds for suspension of payments, suspension or termination of grants, or suspension or debarment.
1229.620 Effect of violation.
1229.625 Exception provisions.
1229.630 Grantees' responsibilities.
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Appendix C to Part 1229—Certification Regarding Drug-Free Workplace Requirements

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**COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION**

**45 CFR Part 2016**

**FOR FURTHER INFORMATION, CONTACT:** Patrick O'Meara, Director of Administration, (202) 653–5326.

**List of Subjects in 45 CFR Part 2016**

Debarment and suspension (nonprocurement), Drug Abuse, Grant programs, Grants administration, Reporting and recordkeeping requirements.

Title 45 of the Code of Federal Regulations is amended as set forth below.

**Ronald Trowbridge,**
*Acting Staff Director.*

## Part 2016—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 2016 is revised to read as set forth above.

2. The authority citation for Part 2016 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151–5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701 et seq); Pub. L. 98–101, as amended; and Title V of Pub. L. 99–194.

**§ 2016.305 [Amended]**

3. Section 2016.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or ";

and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 2016.320 [Amended]**

4. Section 2016.320 (a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 2016 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.



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## DEPARTMENT OF TRANSPORTATION

### 49 CFR Part 29

**FOR FURTHER INFORMATION CONTACT:** Robert C. Ashby, (202) 366-9306.

**List of Subjects in 49 CFR Part 29**

Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

Title 49 of the Code of Federal Regulations is amended as set forth below.

Jim Burnley,
*Secretary.*

## Part 29—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

1. The title of Part 29 is revised to read as set forth above.

2. The authority citation for Part 29 is revised to read as follows:

**Authority:** E.O. 12549; Sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq); 49 CFR Part 322.

**§ 29.305 [Amended]**

3. Section 29.305 is amended by removing "or" at the end of paragraph (c)(3); by removing the period at the end of paragraph (c)(4) and adding "; or"; and by adding paragraph (c)(5) to read as set forth at the end of the common preamble.

**§ 29.320 [Amended]**

4. Section 29.320 (a) is revised to read as set forth at the end of the common preamble.

5. Subpart F and Appendix C are added to Part 29 to read as set forth at the end of the common preamble.

**Subpart F—Drug-Free Workplace Requirements (Grants)**

Sec.



[FR Doc. 89-2065 Filed 1-30-89; 8:45 am]

BILLING CODES 3410-90-M; 6450-01-M; 8720-01-M; 8025-01-M; 7510-01-M; 3510-FE-M; 4710-24-M; 6116-01-M; 6051-01-M; 6230-01-M; 7025-01-M; 6117-01-M; 4210-32-M; 4310-25-M; 4410-18-M; 4510-23-M; 6372-01-M; 3801-01-M; 4000-01-M; 7515-01-M; 8320-01-M; 6560-50-M; 6820-61-M; 4310-RF-M; 6718-01-M; 4150-04-M; 7555-01-M; 7537-01-M; 7536-01-M; 7536-01-M; 6050-28-M; 6340-01-M; 4910-62-M.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 9, 23, and 52

[Federal Acquisition Circular 84-43]

## Federal Acquisition Regulation (FAR); Drug-Free Workplace Act of 1988

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** Federal Acquisition Circular (FAC) 84-43 implements the requirements of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690). The Act requires that certain contractors certify that they will maintain a drug-free workplace.

**DATES:** *Effective date*: March 18, 1989, for contracts awarded on or after that date.

*Comment date:* Comments on this interim rule should be submitted to the FAR Secretariat, at the address below, on or before April 3, 1989, to be considered in the formulation of a final rule. Please cite FAC 84-43 in all correspondence on this subject.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4041, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-43 in all correspondence on this subject.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The FAR revisions included in this interim rule implement the Drug-Free Workplace Act of 1988 (Pub. L. 100-690) and are applicable to all Federal agencies. Under the regulation, all offerors on contracts expected to equal or exceed $25,000 will be required to certify that they will maintain a drug-free workplace by compliance with the following:

(1) Publishing a statement notifying employees that drug abuse in the workplace is prohibited.

(2) Establishing a drug-free awareness program to inform its employees of the dangers of drug abuse, the contractor's drug-free workplace policy, the availability of drug counseling programs, and the possible penalties for convictions for drug abuse violations occurring in the workplace.

(3) Requiring each employee directly involved in the performance of a Government contract to notify the employer of any criminal drug statute conviction occurring in the workplace, and requiring the contractor to so notify the Government.

(4) Requiring the imposition of sanctions or remedial measures for an employee convicted of drug abuse violations in the workplace.

(5) Require the contractor to continue, in good faith, ongoing compliance with the above requirements.

With respect to contractors consisting of only one individual, regardless of dollar value, the regulation requires the individual to certify that he/she will not engage in unlawful conduct related to controlled substances in the workplace. Development or promulgation of a drug-free awareness program is not required for contractors consisting of only one individual. The agencies intend that a "principal investigator" in a research or similar contract, be viewed as an individual, only if the contract is awarded directly to the investigator.

The regulation also provides various remedies to the Government for a contractor's false certification, violation of the certification, or failure to make a good faith effort to provide a drug-free workplace program. The remedies provided are suspension of payments, termination of the contract for default, and suspension or debarment of the contractor.

### B. Determination to Issue an Interim Rule

A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulation in FAC 84-43 as an interim rule. This action is necessary because the Drug-Free Workplace Act requires issuance of implementing coverage in the FAR within 90 days of enactment. The Act became law on November 18, 1988.

DoD, GSA, and NASA have determined that compelling reasons exist to promulgate an interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

### C. Paperwork Reduction Act

This interim rule, FAC 84-43, is deemed to contain information collection requirements. Accordingly, a Paperwork Reduction Act clearance was requested from OMB pursuant to 5 CFR Part 1320 and was granted under OMB Control No. 9000-0101. Public comments concerning this request were invited in the **Federal Register** on January 23, 1989 (54 FR 3102).

### D. Regulatory Flexibility Act

This interim rule, FAC 84-43, may have a significant economic impact on a substantial number of small entities. The actual impact is not known. Publication of this rule will afford the public the opportunity to comment on its economic impact on small entities and such comments will be considered in the formulation of the final regulatory flexibility analysis and the final rule. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat.

### List of Subjects in 48 CFR Parts 1, 9, 23, and 52

Government procurement.

Dated: January 24, 1989.

**Harry S. Rosinski,**

*Acting Director, Office of Federal Acquisition and Regulatory Policy.*

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-43 is effective March 18, 1989 for contracts awarded on or after that date.

**Eleanor Spector,**

*Deputy Assistant Secretary for Procurement, DoD.*

**Richard G. Austin,**

*Acting Administrator, GSA.*

**S.J. Evans,**

*Assistant Administrator for Procurement, NASA.*

Federal Acquisition Circular (FAC) 84-43 amends the Federal Acquisition Regulation (FAR) as specified below:

*Item—Drug-Free Workplace*

FAR 1.105, 9.405, 9.406-1, 9.406-2, 9.406-4, 9.407-1, 9.407-2, and Part 23 are revised, and Subpart 23.5, a provision at 52.223-5, and a clause at 52.223-6 are added to implement the Drug-Free Workplace Act of 1988 (Pub. L. 100-690). The Act was passed to ensure that Government contractors establish and maintain a drug-free workplace. The Act requires Government contractors to certify, in order to be eligible for award,

that they will provide a drug-free workplace by certain enumerated acts. The Act provides specified remedies to the Government for failure of the contractor to comply. Special rules apply to contracts with individuals.

This requirement is effective for all contracts awarded on or after March 18, 1989.

Therefore, 48 CFR Parts 1, 9, 23, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 9, 23, and 52 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.105 is amended by adding in numerical order, a FAR segment and corresponding OMB Control Number to read as follows:

**§ 1.105 OMB approval under the Paperwork Reduction Act.**

* * * * *

| Far Segment | OMB Control No. |
|---|---|
| * * * * * | |
| 52.223-6(b)(5) | 9000-0101 |
| * * * * * | |

## PART 9—CONTRACTOR QUALIFICATIONS

**9.405 [Amended]**

3. Section 9.405 is amended by removing at the end of the first sentence in paragraph (a) the parenthetical phrase "(see 9.405-2, 9.406-1(c), and 9.407-1(d))" and inserting in its place the parenthetical phrase "(see 9.405-2, 9.406-1(c), 9.407-1(d), and 23.506(e)".

4. Section 9.406-1 is amended by revising paragraph (c) to read as follows:

**9.406-1 General.**

* * * * *

(c) A contractor's debarment shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

5. Section 9.406-2 is amended by redesignating existing paragraph (c) as (d) and by adding a new paragraph (c) to read as follows:

**9.406-2 Causes for debarment.**

* * * * *

(c) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by—

(1) The offeror's submission of a false certification;

(2) The contractor's failure to comply with its certification; or

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.

* * * * *

6. Section 9.406-4 is amended by revising paragraph (a) to read as follows:

**9.406-4 Period of debarment.**

(a) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed 3 years, except that debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (see 23.506) may be for a period not to exceed 5 years. If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

* * * * *

7. Section 9.407-1 is amended by revising paragraph (d) to read as follows:

**9.407-1 General.**

* * * * *

(d) A contractor's suspension shall be effective throughout the executive branch of the Government, unless an acquiring agency's head or a designee (except see 23.506(e)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

8. Section 9.407-2 is amended by redesignating existing paragraph (a)(4) as (a)(5) and by adding a new paragraph (a)(4) to read as follows:

**9.407-2 Causes for suspension.**

(a) * * *

(4) Violations of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690), as indicated by—

(i) The offeror's submission of a false certification;

(ii) The contractor's failure to comply with its certification; or

(iii) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.

* * * * *

## PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

9. Part 23 is amended by revising the title to read as set forth above.

10. Section 23.000 is revised to read as follows:

**23.000 Scope of part.**

This part prescribes acquisition policies and procedures supporting the Government's program for ensuring a drug-free workplace and for protecting and improving the quality of the environment through pollution control, energy conservation, identification of hazardous material, and use of recovered materials.

11. Subpart 23.5, consisting of sections 23.500 through 23.506 is added to read as follows:

**Subpart 23.5—Drug-Free Workplace**

Sec.



### Subpart 23.5—Drug-Free Workplace

**23.500 Scope of subpart.**

This subpart implements the Drug Free Workplace Act of 1988 (Pub. L. 100-690).

**23.501 Applicability.**

This subpart applies to all contracts except—

(a) Contracts valued below $25,000; however, the requirements of this subpart shall apply to contracts of any value if the contract is awarded to an individual;

(b) Contracts or those parts of contracts that are to be performed outside of the United States, its territories, and its possessions;

(c) Contracts by law enforcement agencies, if the head of the agency or designee determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(d) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

**§ 23.502 Authority.**

Drug-Free Workplace Act of 1988 (Pub. L. 100–690).

**§ 23.503 Definitions.**

"Controlled substance," as used in this subpart, means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812), and as further defined in regulation at 21 CFR 1308.11–1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Drug-free workplace" means a site for the performance of work done in connection with a specific contract at which employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

**§ 23.504 Policy.**

(a) No offeror other than an individual shall be considered a responsible source (see 9.104–1(g)) for a contract that equals or exceeds $25,000, unless it has certified, pursuant to 52.223–5, Certification Regarding A Drug-Free Workplace, that it will provide a drug-free workplace by—

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establishing a drug-free awareness program to inform its employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Providing all employees engaged in performance of this contract with a copy of the statement required by subparagraph (a)(1) of this section;

(4) Notifying all employees in the statement required by subparagraph (a)(1) of this section, that as a condition of employment on a covered contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

(5) Notifying the contracting officer within ten (10) days after receiving notice under subdivision (a)(4)(ii) of this section, from an employee or otherwise receiving actual notice of such conviction;

(6) Within 30 days after receiving notice under subparagraph (a)(4) of this section of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (a)(1) through (a)(6) of this section.

(b) No individual shall be awarded a contract of any dollar values unless that individual certifies, pursuant to the provision at 52.233–5, Certification Regarding A Drug-Free Workplace, that the individual will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of a covered contract.

(c) Failure of the offeror to provide the certification required by paragraph (a) or (b) of this section renders an offeror unqualified and ineligible for award. (See 9.104–1(g) and 19.602–1(a)(2)(i).)

**§ 23.505 Solicitation provision and contract clause.**

(a) Unless one or more of the conditions in paragraph (b) of this section applies, contracting officers shall insert the provision at 52.223–5, Certification Regarding A Drug-Free Workplace, in solicitations—

(1) Of any dollar value if the contract is expected to be awarded to an individual; or

(2) Expected to equal or exceed $25,000, if the contract is expected to be awarded to other than an individual.

(b) Contracting officers shall not insert the provision at 52.223–5, Certification Regarding A Drug-Free Workplace, in solicitations if—

(1) The resultant contract is to be performed entirely outside of the United States, its territories, and its possessions;

(2) The resultant contract is for law enforcement agencies, and the head of the agency or designee determines that application of the requirements of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or

(3) Inclusion of these requirements would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

(c) Contracting officers shall insert the clause at 52.223–6, Drug-Free Workplace, in all contracts described in paragraph (a) of this section and in purchase orders with individuals, unless; the conditions of paragraph (b) of this section apply.

(d) In any instance where a contract meeting the requirements of paragraphs (a) and (b) of this section, or a purchase order with an individual results from procedures that do not involve a solicitation containing the certification at 52.223–5, Certification Regarding a Drug-Free Workplace, the contracting officer shall obtain that certification prior to award.

**§ 23.506 Suspension of payments, termination of contract, and debarment and suspension actions.**

(a) After determining in writing that adequate evidence to suspect any of the causes at paragraph (d) of this section exists, the contracting officer may suspend contract payments in accordance with the procedures at 32.503–6(a)(1).

(b) After determining in writing that any of the causes at paragraph (d) of this section exists, the contracting officer may terminate the contract for default.

(c) Upon initiating action under paragraph (a) or (b) of this section, the contracting officer shall refer the case to the agency suspension and debarment official, in accordance with agency procedures, pursuant to Subpart 9.4.

(d) The specific causes for suspension of contract payments, termination of a contract for default, or suspension and debarment are—

(1) The offeror has submitted a false certification in response to the provision at 52.223–5, Certification Regarding A Drug-Free Workplace;

(2) The contractor has failed to comply with its certification; or

(3) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace.

(e) A determination under this subpart to suspend contract payments, terminate a contract for default, or debar or suspend a contractor may be waived by the agency head for a particular contract, in accordance with agency procedures, only if such waiver is necessary to prevent a severe disruption of the agency operation to the detriment of the Federal Government or the general public (see Subpart 9.4). The waiver authority of the agency head cannot be delegated.

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

12. Section 52.223–5 is added to read as follows:

### § 52.223–5 Certification Regarding A Drug-Free Workplace.

As prescribed in 23.505, insert the following provision:

**Certification Regarding a Drug-Free Workplace (March 1989)**

(a) Definitions. As used in this provision,

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11–1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means a site for the performance of work done in connection with a specific contract at which employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a Contractor directly engaged in the performance of work under a Government contract.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds $25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—

(1) Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish a drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this provision;

(4) Notify such employees in the statement required by subparagraph (b)(1) of this provision, that as a condition of continued employment on the contract resulting from this solicitation, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

(5) Notify the contracting officer within ten (10) days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction; and

(6) Within 30 days after receiving notice under subparagraph (a)(4) of this provision of a conviction, impose the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace:

(i) Take appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this provision.

(c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

(d) Failure of the offeror to provide the certification required by paragraph (b) or (c) of this provision, renders the offeror unqualified and ineligible for award. (See FAR 9.104–1(g) and 19.602–1(a)(2)(i).)

(e) In addition to other remedies available to the Government, the certification in paragraphs (b) and (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(End of provision)

13. Section 52.223–6 is added as follows:

### 52.223–6 Drug-Free Workplace.

As prescribed in 23.505(c), insert the following clause:

**Drug-Free Workplace (Mar. 1989)**

(a) Definitions. As used in this clause,

"Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11–1308.15.

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace" means a site for the performance of work done in connection with a specific contract at which employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee" means an employee of a contractor directly engaged in the performance of work under a Government contract.

"Individual" means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish a drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in the statement required by subparagraph (b)(1) of this clause, that as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

(5) Notify the contracting officer within ten (10) days after receiving notice under subdivision (a)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction;

(6) Within 30 days after receiving notice under subparagraph (a)(4) of this clause of a conviction, impose the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (b) and (c) of this clause may, pursuant to FAR 23.506, render the contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

[FR Doc. 89-2086 Filed 1-30-89; 8:45 am]

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Tuesday
January 31, 1989

Part III

# Department of Labor

**Occupational Safety and Health Administration**

**29 CFR Part 1910**

**Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment; Proposed Rule**

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1910**

**[Docket No. S-015]**

## Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Proposed rule.

**SUMMARY:** OSHA is proposing in this document a new standard addressing the work practices to be used during the operation and maintenance of electric power generation, transmission, and distribution facilities. The proposal includes requirements relating to confined spaces, hazardous energy control, working near energized parts, grounding for employee protection, work on underground and overhead installations, work in substations and generating plants, and other special conditions and equipment unique to the generation, transmission, and distribution of electric energy. OSHA is proposing to apply these new requirements only to electric utilities; however, the Agency is considering extending the scope of the standard to all electric power generation, transmission, and distribution installations. Compliance with these requirements will prevent injuries to employees working on electric power systems.

OSHA is also proposing to revise the electrical protective equipment requirements contained in the General Industry Standards. The current standards for the design of electrical protective equipment adopt several national consensus standards by reference. The proposed revision would replace the incorporation of these out-of-date consensus standards with a set of performance-oriented requirements, which are consistent with the latest revisions of these consensus standards. Additionally, OSHA is proposing new requirements for the safe use and care of electrical protective equipment to complement the equipment design provisions. These revisions will update the existing OSHA standards and will prevent accidents caused by inadequate electrical protective equipment.

**DATE:** Written comments and requests for a hearing on these proposed rules must be postmarked by May 1, 1989.

**ADDRESS:** All comments, objections, and hearing requests must be sent in quadruplicate to the Docket Officer; Docket No. S015, Rm. N3670; U.S. Department of Labor, Occupational Safety and Health Administration; 200 Constitution Ave., NW.; Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mr. James F. Foster; U.S. Department of Labor; Occupational Safety and Health Administration; Rm. N3637; 200 Constitution Ave. NW., Washington, DC 20210 (202-523-8151).

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. Need for Proposed Regulation*

Employees performing operation or maintenance work on electric power generation, transmission, or distribution installations are not adequately protected by current OSHA standards, though these employees face far greater electrical hazards than those faced by other workers. The voltages involved are generally much higher, and a large part of their work involves exposure to energized parts of the power system.

The existing electrical regulations contained in Subpart S of the General Industry Standards address electric utilization systems—installations of electric conductors and equipment which use electric energy for mechanical, chemical, heating, lighting, or similar purposes. Subpart S protects most employees from the hazards associated with electric utilization equipment and with the premises wiring that supplies this equipment. However, Subpart S does not contain requirements protecting employees from the hazards arising out of the operation or maintenance of electric power generation, transmission, or distribution installations.

In contrast, telecommunications workers, who face similar hazards, are covered under a specific telecommunications standard in § 1910.268. This regulation protects employees performing communications work (no matter what industry is involved) from the two major hazards of falling and electric shock. These are the same two hazards accounting for most of the accidental deaths in electric power transmission and distribution work.

Employees engaged in the construction of electric power transmission or distribution systems are protected by the provisions of Subpart V of the Construction Standards (Part 1926). However, this standard does not address operation or maintenance work, nor does it cover work in electric power generating plants.

The electric utility industry has requested several times in recent years that OSHA adopt a set of rules on the operation and maintenance of power generation, transmission, and distribution systems. Toward this end, representatives of Edison Electric Institute (EEI) and of the International Brotherhood of Electrical Workers (IBEW) developed a draft standard, submitted it to OSHA, and suggested that it be used as a proposed rule. The Agency accepted the draft standard and used it to begin the development of this proposal.

*B. Accident Patterns*

Related accident data must be collected and analyzed to establish a basis for the development of safety standards. OSHA can look to several sources for information on accidents in the electrical utility industry. Besides OSHA's own accident investigation files, statistics on injuries are compiled by the Edison Electric Institute and by the International Brotherhood of Electrical Workers (an association of investor-owned electric utilities and a union representing electric utility workers, respectively). Additionally, the Bureau of Labor Statistics (BLS) publishes such accident data as incidence rates for total cases, and lost workday cases, and lost workdays. (An analysis of accident data for electric utility workers can be found in section 4 of Eastern Research Group's (ERG) "Preparation of an Economic Impact Study for the Proposed OSHA Regulation Covering Electric Power Generation, Transmission, and Distribution," June 1986, which is available for inspection and copying in the Docket Office.)

Accident incidence rates for the electric services industry (SIC 491) are slightly lower than corresponding rates for the private sector as a whole. Furthermore, these rates are much lower than the traditionally more hazardous manufacturing, construction, and mining industries. However, although accident incidence rates can be used to compare relative risk between industries, they are not specific enough to be used to determine the types of hazards that need to be addressed by an occupational safety standard.

OSHA realized during the development of this proposal that, except for electrical hazards, the electric utility industry is no more hazardous than most other industries. At the same time, OSHA recognized that the risk faced by some employees during certain electric-utility-type operations is greater than the risk faced by other general

industry employees. For example, the risk of electric shock to an electric power line worker or cable repairer performing his or her routine duties is far greater than that faced by any other occupational group.[1] It is the particularly hazardous operations that are being addressed by OSHA's standard.

BLS's Supplementary Data System (SDS) provides some detail on the characteristics of accidents in the electric service (i.e., electric utility) industry. SDS files indicate that the three major sources of injury within SIC 491 are falls, overexertion, and being struck by or against an object. Information on the nature of injuries also can be obtained from SDS. For example, from these data, sprains/strains, cuts/lacerations, and contusions/bruises are the most frequent injuries encountered in the electric services industry. It is noteworthy that electric shock cases do not constitute a major injury category and are grouped under "all other classifiable." Although these data do indicate hazards that must be addressed by a standard, they do not provide enough information to provide specific guidance for writing the standard's requirements.

More specific information on fatal and other serious accidents was gathered from IBEW, EEI, and OSHA files. Contrasting with the SDS data, these files indicate that electrical accidents are the most frequent type of fatal and other serious injuries, accounting for approximately one half of these. According to EEI and IBEW data, other accident types that occur frequently include motor vehicle accidents, falls, and "struck by/crushed." Of the accident information in the OSHA, IBEW, and EEI files used during the development of the proposal, only EEI and IBEW accident descriptions were used to judge the adequacy of the standard's provisions. The OSHA records were not used in the development of the proposal because they were being compiled and analyzed during the development process. However, these records will be submitted into the record of this rulemaking and will be considered in the formulation of the final rule.

[1] JACA Corp., "Regulatory Assessment of the Impact of the Proposed Electrical Safety-Related Work Practices Standard, Final Report," October 1983, pp. 4–8 to 4–10. (This report did not distinguish between electric power line workers and cable repairers employed by electric utilities and these types of workers employed by other industries.) This document is available for inspection and copying in Docket S–015 in the Docket Office.

*C. Significant Risk*

OSHA must show that the hazards the Agency proposes to address in a safety regulation present significant risks to employees. As part of the regulatory analyses for this proposal, OSHA has determined the population at risk, the occupations presenting major risks, and the incidence and severity of injuries attributable to the failure to follow established standards. In keeping with the purpose of safety standards to prevent accidental injury and death, OSHA has estimated the number of accidents that would be prevented by the proposed regulation.

Although nearly all workers in the electric utility industry are exposed to various hazards common to the industry, some are at much greater risk than others. Eastern Research Group, Inc. (ERG), in their "Preparation of an Economic Impact Study for the Proposed OSHA Regulation Covering Electric Power Generation, Transmission, and Distribution," June 1986, characterized the frequency with which accidents occur in the industry and tabulated the relative risk among electric utility occupations. According to the ERG report, "there were more accidents associated with transmission and distribution [lines] than with substations or power generation [installations]." Within the first category, more fatal and serious lost-time accidents occurred among line workers, apprentice line workers, and working line foremen. Within the latter two categories, substation electricians and general utility mechanics experienced the most accidents. (See p. 4–23 of the ERG report.)

The hazards that are directly covered by the proposed standard are those of an electrical nature, causing electrocution and injuries due to electric shock. In addition, the proposed standard would directly affect fatalities and injuries associated with four other types of accidents: (1) Struck by or struck against; (2) fall; (3) caught in or between; and (4) contact with temperature extremes. The proposal addresses the wide range of injuries common to general industry work.

OSHA has estimated that an average of 21,175 lost-workday injuries to and between 68 and 75 fatalities of electric utility and utility contractor operation and maintenance employees occur annually. (See Section IV of this preamble.) OSHA has also estimated the number of injuries which could be prevented by the proposed regulations. Taking into account such factors as existing regulation and the differences in training levels among utilities, OSHA estimated that 860 lost-workday injuries and between 24 and 28 deaths could be prevented each year through compliance with the provisions contained in the proposal. (A detailed analysis of the benefits of the proposed standard and a description of the methodology used can be found in the Preliminary Regulatory Analysis (PRIA) for the proposal, which is available for inspection and copying in the Docket Office.) Based on this analysis, OSHA has made a preliminary determination that hazards in the electric utility workplace pose a significant risk to employees covered by the proposal.

## II. Development of Proposed Standard

*A. Present Standards*

OSHA adopted regulations applying to the construction of power transmission and distribution lines and equipment in 1972 (Subpart V of Part 1926). The term "construction" is broadly defined in § 1926.950(a)(1) to include alteration, conversion, and improvement, as well as the original installation of the lines and equipment. However, Subpart V does not apply to the operation or maintenance of transmission or distribution installations.

OSHA has found, in reviewing the construction regulations, that the provisions of Subpart V of Part 1926 are suitable for use as a base in the development of rules for operation and maintenance work. Important safety considerations for electric utility employees have been addressed in Subpart V including tools and protective equipment, mechanical equipment, grounding for employee protection, and overhead and underground installations. These are topics that would have to be addressed in a comprehensive standard for the operation and maintenance of electric utility facilities. However, the construction rules do have some disadvantages. During the 15 years Subpart V has been in effect, areas of ambiguity have developed, making parts of the standard difficult for employees and employers to understand and for OSHA compliance officers to enforce. Additionally, some of the requirements are specifically related to the initial construction of lines and equipment and are not readily adaptable to maintenance operations.

The National Electrical Safety Code (American National Standards Institute Standard ANSI C2; also known as the NESC) must also be taken into consideration in the development of rules for the operation and maintenance of electric power generation,

transmission, and distribution systems. This national consensus standard contains requirements specifically addressing this type of work. The 1987 version of ANSI C2 is much more up-to-date than Subpart V of the Construction Standards. However, ANSI C2 is primarily directed to prevention of electric shock, although it does contain a few requirements for the prevention of falls. Other hazards common to the electric utility industry are not discussed.

Another related OSHA standard is § 1910.268, pertaining to telecommunications work. Much of the field work covered in this regulation is similar in nature to the type of field work performed by electric utility employees, and the hazards faced in the performance of this type of work are frequently the same in both industries. In any situation in which the hazards are the same and in which there is no clear coverage in the other existing standards, the provisions in the telecommunications standard have been used as a basis for developing requirements to protect employees performing electric-utility-type work.

*B. Industry-Union Draft Standard*

As previously noted, representatives of EEI and IBEW developed a draft standard, submitted it to OSHA, and represented it as being a negotiated standard that could be used in a rulemaking activity. This draft standard was essentially a continuation of the existing requirements of Subpart V of Part 1926 in which the hazards addressed are those found in transmission and distribution installations after the construction phase is completed and the electrical system becomes operational. Additionally, based on existing industry practice, EEI and IBEW added provisions addressing generating plants, substations, confined spaces, and hazardous energy control to supplement the rules on transmission and distribution work.

In the development of this proposal, OSHA evaluated the draft submitted by EEI and IBEW to determine its suitability as a base document. In areas which overlapped existing OSHA standards, the draft was reviewed to see if equivalent safety was provided. For example, provisions in the draft standard dealing with ladders were compared to the regulations in Subpart D of Part 1910. OSHA also reviewed the draft to determine if its requirements were as effective as the requirements of national consensus standards addressing the same hazards and to determine if definitions of terms common to several other OSHA standards were identical. For example, the draft provisions on hazardous energy control were checked against the equivalent ANSI standard, ANSI Z244.1–1982, to be sure that OSHA's proposal would better effectuate safety.

After thoroughly analyzing the EEI–IBEW draft, OSHA determined that, together with ANSI C2 and Subpart V of Part 1926, it could provide a basis from which a proposal could be developed. OSHA met with representatives of EEI and IBEW several times to obtain their advice. OSHA then clarified some of the language involved, revised unenforceable wording, and resolved most of the conflicts with other OSHA regulations and with national consensus standards. The remaining conflicts are discussed in detail, and OSHA's preliminary position is justified in the Summary and Explanation of the Proposed Standard section of this preamble (Section III).

**III. Summary and Explanation of Proposed Standard**

This section discusses the important elements of the proposal, explains the purpose of the individual requirements, and explains any differences between the proposal and existing standards.

*Section 1910.137*

Electrical protective equipment is in constant use during electric utility work; and, appropriately, the EEI/IBEW draft standard contained provisions related to this equipment. Because the existing OSHA standards for electrical protective equipment are contained in § 1910.137, the Agency has determined that relevant requirements in the EEI/IBEW draft relating to such equipment should be addressed within the format of the current standards rather than in the newly proposed § 1910.269. Further, OSHA believes that these updated provisions should apply throughout industry, wherever such equipment is necessary for employee safety, and that these provisions should not be limited to electric utility work. Therefore, OSHA is proposing the revision of §1910.137, which currently incorporates by reference the following six American National Standards Institute (ANSI) standards:

| Item | Standard |
|---|---|
| Rubber insulating gloves | J6.6–1967 |
| Rubber matting for use around electric apparatus. | J6.7–1935 (R1962) |
| Rubber insulating blankets | J6.4–1970 |
| Rubber insulating hoods | J6.2–1950 (R1962) |
| Rubber insulating line hose | J6.1–1950 (R1962) |
| Rubber insulating sleeves | J6.5–1962 |

These ANSI standards were originally developed and adopted as American Society for Testing and Materials (ASTM) standards. (In fact, the latest revisions of these standards use the ASTM designations, rather than using separate designations for both standards-writing organizations.) As is typical of national consensus standards, the ASTM standards are filled with detailed specifications for the manufacture, testing, and design of electrical protective equipment. Additionally, these standards are revised frequently, making existing § 1910.137 up to a quarter century out of date. For example, the most recent ANSI standard listed in the existing OSHA requirement is dated 1970. The most recent ASTM version available is a 1984 edition of specifications on rubber insulating gloves. The complete list of current ASTM standards corresponding to the ANSI standards is as follows:

ASTM D 120–87, Specification for Rubber Insulating Gloves.
ASTM D 178–81, Specification for Rubber Insulating Matting.
ASTM D 1048–87, Specification for Rubber Insulating Blankets.
ASTM D 1049–83, Specification for Rubber Insulating Covers.
ASTM D 1050–85, Specification for Rubber Insulating Line Hose.
ASTM D 1051–87, Specification for Rubber Insulating Sleeves.

Additionally, ASTM has adopted standards on the in-service care of insulating line hose and covers (ASTM F 478–87), insulating blankets (ASTM F 479–83), and insulating gloves and sleeves (ASTM F 496–85).

In an attempt to retain the quality of protection afforded by the ASTM standards, OSHA has developed a proposed revision of § 1910.137 which has been derived from the ASTM documents but which has been written in performance terms. OSHA recognizes the importance of the ASTM standards in defining basic requirements for the safe design and manufacture of electrical protective equipment for employees. The proposed revision of § 1910.137 would maintain the protection presently afforded to employees by the referenced ASTM standards. While carrying forward ASTM provisions which are considered necessary for employee safety, OSHA is providing greater flexibility for compliance with

these provisions to the extent that worker safety warrants. OSHA has determined, therefore, that the requirements contained in this proposed revision of §1910.137 are reasonably necessary to protect employees from electrical hazards posing significant risks in the workplace.

There are several reasons why adopting the ASTM standards in toto would be inappropriate. First, it should be noted that ASTM has revised each of the currently referenced standards several times since they were adopted in the existing OSHA regulation. Because of the continual process by which ASTM periodically revises its standards, any specific editions that OSHA might adopt would likely be outdated within a few years. Additionally, since the rulemaking process is lengthy, a complete revision of OSHA's electrical protective equipment requirements every three years or so to keep pace with the changes in the consensus standards is not practical. To remedy this problem, OSHA has proposed a revision of § 1910.137 to make the standards flexible enough to accommodate changes in technology, obviating the need for constant revision. Additionally, where possible, the proposal is written in performance terms in order to allow alternative methods of compliance if they provide comparable safety to the employee.

Another difficulty with incorporation of the ASTM standards by reference is that they contain many details which are not directly related to employee safety. In this proposed revision of § 1910.137, OSHA has tried to carry forward only provisions which are relevant to employee safety in the workplace. Futhermore, OSHA has attempted to simplify those provisions to make the standards easier for employers and employees to use and understand. Because the proposed revision places all relevant requirements in the text of the regulations, employers would no longer have to refer to the ASTM documents to determine their obligations under OSHA.

In striving for this degree of simplification, the Agency has tried to use an approach which will accept new methods of protection which may appear in future editions of the ASTM standards. OSHA recognizes that such future editions of these standards might contain technological advances providing significant improvement in employee safety which might not be permitted under the revised § 1910.137. However, due to the performance-oriented nature of the OSHA standard as compared to the ASTM standards, conflicts between the two standards in areas affecting employee safety are expected to be infrequent.

An employer who followed the updated ASTM standards would be covered by OSHA's *de minimis* policy as set forth in OSHA Instruction CPL 2.45A (Field Operations Manual). Under that policy, a *de minimis* condition exists where an employer's workplace has been updated in accordance with new technology or equipment as a result of revisions to the latest consensus publications from which OSHA standards were derived, where the updated versions result in a "state of the art" workplace, technically advanced beyond the requirements of the applicable OSHA standard, and where equal or greater safety and health protection is provided.

In view of the limitations imposed by the continued incorporation by reference of the outdated ASTM standards, OSHA has determined that relevant requirements for electrical protective equipment for workers should be placed within the body of § 1910.137 and that these provisions should be updated and clarified to facilitate their application to workplaces.

There currently exists several relatively new ASTM standards on other types of electrical protective equipment. For example, ASTM has adopted specifications for fiberglass-reinforced plastic rod and tube used in live-line tools. However, the standards writing organization has not developed corresponding requirements on the use and care of this equipment. Similarly, ASTM Standard F712 sets forth test methods for electrically insulating plastic guard equipment for the protection of workers, but this standard does not contain provisions on the design, use, or care of the guards. ASTM is currently working on standards for the use and care of some of this equipment and on additional specifications for still other types of equipment.

Most electrical protective equipment presently being manufactured meets existing ASTM standards. Because of this, OSHA's adoption of these newer ASTM design and test specifications would have little impact on employee safety without the adoption of corresponding requirements on the use and care of the equipment. Therefore, to maximize efficient use of the Agency's available resources, this proposed revision does not include provisions covering these other types of electrical protective equipment, but such provisions are being considered for future rulemaking. In this way, all of the newer types of equipment can be dealt with at one time, and provisions on care and use can be included.

Paragraph (a)

Paragraph (a) of the proposed revision to § 1910.137 addresses the design and manufacture of insulating blankets, matting, covers, line hose, gloves, and sleeves made of rubber (either natural or synthetic). For the reasons noted earlier, other types of equipment are not covered. However, the proposal does not preclude their use.

Under paragraph (a)(1)(i), blankets, gloves, and sleeves would have to be made without seams. This method of making the protective equipment minimizes the chances of separation of the material. Because they are used to permit workers to handle energized lines, blankets, gloves, and sleeves are the only defense an employee has against electric shock. The other three types of electrical protective equipment (covers, line hose, and matting) generally provide a more indirect form of protection—they protect against accidental contact.

Paragraph (a)(1)(ii) would require electrical protective equipment to be marked to indicate its class and type. The class marking gives an indication of the voltage with which the equipment can be used; the type marking indicates whether or not the equipment is ozone resistant. This will enable employees to know the uses and voltages for which the equipment is suited.

Paragraph (a)(1)(iii) proposes that the marking be nonconductive and be applied so that the properties of the equipment are not impaired. This will ensure that the required markings do not interfere with the protection to be provided by the equipment.

Paragraph (a)(l)(iv) proposes that the marking on gloves be provided only in the cuff area. Markings in other areas could possibly be worn off. Moreover, having the markings in one place will allow the employee to determine the class and type of glove quickly.

Under the national consensus standards (both the currently referenced and the newer versions), electrical protective equipment must be capable of passing certain electrical tests. In § 1910.137(a)(2), OSHA is proposing to continue these requirements. The tests specified in the ASTM standards are very detailed. Through the use of performance language, the proposal establishes the same level of protection without a lengthy discussion of test procedures. In the development of this performance language, OSHA has

attempted to avoid conflicts between the proposal and the ASTM standards. Comments are requested on whether the OSHA proposal has accomplished the goal of protecting workers with test criteria that eliminate unnecessary detail and that are written in performance-oriented language.

Paragraph (a)(2)(i) proposes that electrical protective equipment be capable of withstanding the a-c proof-test voltages in Table I–2 or the d-c proof-test voltages in Table I–3 (depending, of course, on whether an a-c proof test or an equivalent d-c proof test is performed). The proof-test voltages listed in these tables have been taken from the current ASTM standards, which also contain details of the test procedures used to determine whether electrical protective equipment is capable of withstanding these voltages. These details have not been included in the proposal. Paragraph (a)(2)(i) replaces them with a performance-oriented requirement that whatever test is used must reliably indicate that the equipment can withstand the proof-test voltage involved. To meet the requirements of the OSHA performance standard, employers would have to get the assurance of the manufacturer that the equipment is capable of withstanding the appropriate proof-test voltage. The manufacturer, in turn, would likely look to the ASTM standards for guidance in determining the testing procedure.

Paragraph (a)(2)(i) also would require that the proof-test voltage be applied for 1 minute for insulating matting and for 3 minutes for other insulating equipment. Tests using shorter times would not give a reliable indication of the voltage-withstanding capabilities of the protective equipment.

When an a-c proof test is used on gloves, the current through the gloves gives an indication of the insulating value of the material used. Paragraph (a)(2)(ii) would require that gloves subjected to an a-c proof-test not pass current greater than allowed in Table I–2. Again, the currents listed in the table have been taken from the current ASTM standard (namely, ASTM D 120–87). For a-c voltages at frequencies other than 60 hertz, the current would be computed from the direct ratio of the frequencies.

Since the relatively high voltages used in testing electrical protective equipment for minimum breakdown voltage can actually damage the insulating material under test (even if it passes), paragraph (a)(2)(iii) would prohibit protective equipment that has been subjected to such a test from being used to protect employees from electrical hazards.

Around high voltage lines and equipment, a luminous discharge, called electric corona, can occur due to ionization of the surrounding air caused by a voltage gradient which exceeds a certain critical value. The blue corona discharge is accompanied by a hissing noise and by ozone, which can cause damage to certain types of rubber insulating materials. Therefore, when there is a chance that ozone may be produced at a work location, electrical protective equipment made of ozone-resistant material is frequently used. To ensure that ozone-resistant material will, in fact, be resistant to the damaging effects of the gas, paragraph (a)(2)(iv) would require this type of material to be capable of withstanding an ozone test. Standardized ozone tests are given in the ASTM specifications. The proposal also lists signs of failure of the test, such as checking, cracking, breaks, and pitting.

Paragraph (a)(3) applies to the workmanship and finish of electrical protective equipment. Because physical irregularities can interfere with the insulating properties of the equipment, paragraph (a)(3)(i) would prohibit the presence of harmful defects which can be detected by test or inspection. However, some minor irregularities are nearly unavoidable in the manufacture of rubber goods, and these imperfections may be present in the insulating materials without significantly affecting the insulation. Proposed paragraph (a)(3)(ii) lists the types of imperfections that would be permitted. Even with these imperfections, electrical protective equipment would still be required to be capable of passing the electrical tests specified in paragraph (a)(2).

Since paragraph (a) of proposed § 1910.137 is written in performance-oriented language, OSHA believes that it is important for employers and manufacturers to have some guidance in terms of what is acceptable under the proposed standard. OSHA also realizes that the current ASTM specifications on electrical protective equipment are currently accepted by industry as providing safety to employees and that existing electrical protective equipment is normally made to these specifications. Furthermore, the proposal is based on the provisions of the national consensus standards, although the requirements are stated in performance terms. OSHA has therefore proposed a footnote at the end of paragraph (a) which states that rubber insulating equipment meeting the requirements of the present ASTM standards for this equipment would be considered as conforming to the requirements contained in proposed § 1910.137.

Paragraph (b)

Although the existing § 1910.137 does not contain provisions for the care and use of insulating equipment, OSHA believes provisions of this type can contribute greatly to employee safety. Electrical protective equipment is, in large part, manufactured in accordance with the latest ASTM standards. This would probably be the case even in the absence of OSHA regulations. However, improper use and care of this equipment can easily reduce, or even eliminate, the protection afforded by this equipment. Therefore, OSHA is proposing to add to § 1910.137 requirements on the in-service care and use of electrical protective equipment. These new provisions will help ensure that these safety products retain their insulating properties.

Paragraph (b)(1) proposes that electrical protective equipment be maintained in a safe and reliable condition. This general, performance-oriented requirement, which applies to all equipment addressed by proposed § 1910.137, would help ensure that employees are fully protected from electric shock.

Detailed criteria for the use and care of specific types of electrical protective equipment are contained in the following ASTM standards:

ASTM F 478–87, Specification for In-Service Care of Insulating Line Hose and Covers.

ASTM F 479–83, Specification for In-Service Care of Insulating Blankets.

ASTM F 496–85, Specification for In-Service Care of Insulating Gloves and Sleeves.

Paragraph (b)(2), which has been derived from the ASTM standards, would apply only to rubber insulating blankets, covers, line hose, gloves, and sleeves. These are the only types of electrical protective equipment addressed by consensus standards on the care and use of the equipment.

Although the rubber insulating equipment addressed in proposed § 1910.137(a) is currently designed to be capable of withstanding voltages of up to 40 kilovolts, such equipment is actually intended to be used at lower voltages. The use of insulating equipment at voltages less than its actual breakdown voltage provides a margin of safety for the employee to protect against voltage surges and against gradual deterioration of the equipment between tests. In paragraph (b)(2)(i) and Table I–4, the OSHA

proposal has adopted the margins of safety recognized in the ASTM standards, restricting the use of insulating equipment to voltages lower than the proof-test voltages given in Table I–2 and I–3.

Paragraph (b)(2)(ii) would require insulating equipment to be visually inspected before use each day and immediately after any incident which might be suspected of causing damage. In this way, obvious defects can be detected before an accident occurs. Possible damage-causing incidents would include exposure to corona and exposure to possible direct physical damage. Additionally, rubber gloves would be required to be subjected to an air test. In the field, this test usually consists of rolling the cuff toward the palm so that air is entrapped within the glove. In a testing facility, a mechanical inflater may be used. In either case, punctures and cuts can easily be detected.

During use, electrical protective equipment may become damaged and lose some of its insulating value. Proposed paragraph (b)(2)(iii) lists types of damage which would cause the insulating value to drop. The equipment would not be permitted to be used if any of these defects are present.

Defects other than those listed in paragraph (b)(2)(iii) may develop during use of the equipment and could also affect the insulating and mechanical properties of the equipment. If such defects are found, the equipment would be required to be removed from service and tested in accordance with other requirements in paragraph (b)(2). The results of the tests would determine if it is safe to return the items to service.

Foreign substances on the surface of rubber insulating equipment can degrade the material and lead to damage to the insulation. Paragraph (b)(2)(v) would require the equipment to be cleaned as needed to remove any foreign substances.

Over time, certain environmental conditions can also cause deterioration of rubber insulating equipment. Paragraph (b)(2)(vi) proposes that insulating equipment be stored so that it is protected from injurious conditions and substances, such as light, temperature extremes, excessive humidity, and ozone. This requirement would help the equipment retain its insulating properties as it ages.

Rubber insulating gloves are particularly sensitive to physical damage during use. Through handling conductors and other electrical equipment, an employee can damage the gloves and lose the protection they provide. For example, a sharp point on the end of a conductor could puncture the rubber. To protect against damage, protector gloves (usually made of leather) are worn over the rubber gloves. Paragraph (b)(2)(vii) recognizes the extra protection afforded by leather gloves and would require their use over rubber gloves, except under limited conditions. Protector gloves would not be required with Class 0 gloves if high finger dexterity is needed for small parts manipulation. The maximum voltage on which Class 0 gloves can be used is 1000 volts. An employee is protected against electric shock at this voltage as long as a live part does not puncture the rubber and contact the employee's hand. Small parts are not likely to do this. Even if there is a tiny crack or puncture in the glove, current will not arc through the glove at 1000 volts or less.

The other exception to the requirement for protector gloves is granted if the possibility for damage is low and if gloves at least one class higher than required for the voltage are used. For example, if a Class 2 glove is used at 7500 volts or less (the maximum use voltage for Class 1 equipment), if high dexterity is needed, and if the possibility of damage is low, then protector gloves need not be used. In this case, the additional thickness of insulation provides a measure of additional physical protection. However, to ensure that no loss of insulation occurred, the proposal would require any gloves used under this exception to be tested before being used at a voltage higher than that permitted for the lower class of insulating equipment.

To ensure that electrical protective equipment retains its insulating properties over time, paragraph (b)(2)(viii) and Tables I–4 and I–5 would require insulating equipment to be tested periodically. Table I-4 lists the retest voltages that would be required for the various classes of protective equipment, and Table I–5 presents the testing intervals for the different types of equipment. These test voltages and intervals were taken from the relevant ASTM standards. OSHA requests comments on whether the proposed tables are reasonable and whether they would adequately protect workers.

Paragraph (b)(2)(ix) proposes the performance-oriented requirement that the method used for the periodic tests give a reliable indication of whether or not the electrical protective equipment can withstand the voltages involved. In a performance-oriented standard, it would not be appropriate to spell out detailed procedures for the required tests, which vary depending on the type of equipment being tested. On the other hand, OSHA believes that it is important for employers to have some guidance in terms of what is acceptable under the proposed standard. Therefore, under proposed paragraph (b)(2)(ix), OSHA has included a note stating that electrical test methods given in the various ASTM standards on rubber insulating equipment meet the performance requirement. OSHA requests comments on whether the listed ASTM standards are appropriate and on whether there are other acceptable test methods that should also be listed.

Once the equipment has been tested, it is important to ensure that any failed equipment is not returned to service. Paragraph (b)(2)(x) would prohibit electrical protective equipment that failed the required tests from being used by employees, unless the defects can be safely eliminated.

For electrical protective equipment that failed the test, proposed paragraph (b)(2)(x) also lists acceptable means of rendering the equipment fit for use. Sometimes defective portions of rubber line hose and blankets can be removed. The result would be a smaller blanket or a shorter length of line hose. Obviously, gloves and sleeves cannot be repaired in this manner; however, there are methods of patching them if the defects are minor. Rubber blankets can also be patched. The patched area must have electrical and physical properties equal to those of the material being repaired. To minimize the possibility that a patch will loosen or fail, the proposal would not permit repairs to gloves outside the gauntlet area.

Once the insulating equipment has been repaired, it must be retested to ensure that any patches are effective and that there are no other defects present. Such retests would be required under proposed paragraph (b)(2)(xi).

Employers, employees, and OSHA compliance staff must have a method of determining whether or not the tests required under paragraphs (b)(2)(viii) and (b)(2)(xi) have been performed. Paragraph (b)(2)(xii) proposes that this be accomplished by means of certification by the employer that equipment has been tested in accordance with the standard. The certification would be required to identify the equipment that passed the test and the date it was tested. Typical means of meeting this requirement include logs and stamping test dates on the equipment.

*Section 1910.269*

OSHA is proposing a new section to be added to the General Industry

Standards. This new section would be added to Subpart R, Special Industries, and would be designated § 1910.269. Proposed § 1910.269 contains requirements for the prevention of injuries to employees performing operation or maintenance work on electric power generation, transmission, or distribution installations. Individual provisions contained in the proposed section are discussed below.

Paragraph (a)

Paragraph (a)(1) of proposed § 1910.269 sets forth the scope of the proposal. Under the terms of proposed paragraph (a)(1)(i), the provisions of § 1910.269 would apply to the operation and maintenance of electric power generation, transmission, and distribution systems and to electrical testing of such systems. Although the proposal does not define "operation" or "maintenance," OSHA intends that the standard cover all activity, other than construction work covered by Part 1926, associated with electric power generation, transmission, and distribution installations owned by electric utilities. The proposal would primarily cover the following types of work operations:

(1) Inspection,

(2) Switching (connection and disconnection of facilities),

(3) Routine maintenance of lines and equipment,

(4) Line-clearance tree trimming,

(5) Testing and fault locating,

(6) Streetlight relamping,

(7) Chemical cleaning of boilers, and

(8) Other routine operation and maintenance activities.

Proposed § 1910.269 would apply to the parts of an electric utility operation that are directly involved with the generation, transmission, or distribution of electric power. Installations in buildings not used for one of these purposes would not be covered by the standard. For example, office buildings, warehouses, machine shops, and other installations which are not an integral part of generating plant, substation, or control center would not be covered by proposed § 1910.269. Work performed in these installations would not be of a type addressed by the proposal. However, paragraph (a)(1)(i)(B) lists installations that are not integral to the generation of electric power, but that would be covered nonetheless. Such installations include the fuel handling operations, water and steam spaces, and walking and working sufaces within the generating station.

Paragraph (a)(1)(i)(D) of proposed § 1910.269 explains the application of the standard to tree-trimming operations. The entire section, except paragraph (r)(1), would apply to tree-trimming operations performed by qualified employees, i.e., employees who are knowledgeable in the operation of electric power generation, transmission, or distribution equipment and the hazards involved. These employees typically perform tree-trimming duties as an incidental part of their normal work activities. However, only paragraphs (a), (b), (c), (g), (k), (p), and (r) would apply to line-clearance tree-trimming work performed by other employees (line-clearance tree trimmers).

Most tree-trimming operations, which are often performed by employees of outside contractors, do not involve routine line-maintenance activities. Although these employees work near the power lines, they do not work directly on them. For activities other than the actual tree-trimming work, these employees would not be qualified employees for the purposes of this standard. Therefore, many of the requirements proposed in § 1910.269 are not relevant to their work. Since these employees would not be trained as qualified linemen, OSHA feels that the application of rules written expressly for electric utility-type work could expose these other types of workers to hazards which they are not adequately trained to face. For example, proposed paragraph (1) would allow qualified employees to come closer than 2 feet to a 7600-volt overhead distribution line if the employee is wearing rubber insulating gloves. Because line-clearance tree trimmers are not usually trained in the proper use of this equipment, it would not be appropriate to allow them to wear rubber gloves in order to get closer than 2 feet to the same line.

On the other hand, if employees performing line-clearance tree-trimming work are also "qualified employees," with the necessary training and experience in dealing with power lines, all of proposed § 1910.269 could be applied to their work.

Paragraphs (a), (b), (c), (k), and (p) are general requirements addressing training, medical services and first aid, job briefing, material handling, and mechanical equipment. OSHA has determined that the requirements in these areas are necessary and appropriate for line-clearance tree-trimming work performed by other than qualified employees. The remaining provisions of proposed § 1910.269 are not necessary for the safety of these employees and are not related to the type of work they would be performing. If information is submitted demonstrating that some of the listed provisions are inappropriate or that additional rules are necessary, OSHA will consider possible revisions to the final standard.

So as not to overlap the regulations in the Construction Standards, the proposal would not apply to operations involving construction work. This "exemption" is set forth in proposed § 1910.269(a)(1)(ii)(A). "Construction work" is defined in § 1910.12(b) as "work for construction, alteration, and/or repair, including painting and decorating." In § 1910.12(d), the term is further defined as including "the erection of new electric transmission and distribution lines and equipment, and the alteration, conversion, and improvement of existing transmission and distribution lines and equipment." None of the types of work covered by these two definitions is covered by proposed § 1910.269.

In § 1910.269(a)(1)(ii)(B), OSHA is proposing not to apply the regulation to installations for the generation, transmission, or distribution of electric energy not owned or operated by electric utilities nor to work performed on such installations not owned by a utility. The scope of the draft proposal submitted by EEI and IBEW was limited to utilities only, and OSHA has decided to propose that the standard be applied in the same manner. However, industrial generation, transmission, and distribution systems are essentially the same as those of a utility, and the work performed on industrial systems is nearly identical to that performed on electric utility installations. One might assume that electric utility systems are of larger capacity than those operated by industrial plants. In general this is true, but not always. For example, one generating facility for a large steel plant in Sparrows Point, Maryland, has a generating capacity of 140 megawatts with a generating voltage of 13 kilovolts and with distribution voltages of 34.5 and 69 kilovolts. This system is larger than those of many rural electric cooperatives that would be covered by the proposal. Additionally, the existing OSHA and national consensus standards, Subpart V of Part 1926 and ANSI C2, respectively, do extend their coverage to anyone doing electric-utility-type work. Consideration is being given to expanding the scope of the standard within this rulemaking procedure. Therefore, OSHA is soliciting comments on the appropriateness of extending coverage of the standard to all power generation, transmission, and distribution systems. OSHA also requests data on the costs and benefits of expanding the scope in this manner.

Existing regulations contained in Subpart S of Part 1910 apply to the installation and design of electric utilization systems. Although § 1910.302(a)(2)(v) states that electric utility "installations * * * for the purpose of communication or metering; or for the generation, control, transformation, transmission, and distribution of electric energy" are not covered by Subpart S, electric utility installations used for other purposes (i.e., those for the electric utilization systems) are covered by Subpart S. (See *Edison Electric Institute v. Occupational Safety and Health Administration*, No. 86-1486 (DC Cir., June 7, 1988.) This current differentiation in coverage between electric utilization installations, which are covered by Subpart S, and generation, transmission, and distribution installations, which are not covered by Subpart S, is carried forward in paragraph (a)(1)(ii) (C), which states that § 1910.269 would not apply to electrical installations, safety-related work practices, or maintenance considerations covered by Subpart S.

OSHA published a Proposed Rule in the Federal Register on November 30, 1987, proposing a new standard on electrical safety-related work practices for general industry. The electrical safety-related work practice requirements would be added to the existing installation requirements in Subpart S of the General Industry Standards (Part 1910). A major issue in that rulemaking concerns the scope of the standard, i.e., whether or not OSHA should separate coverage within an electric power generating station based on whether or not electric equipment is directly involved with the generation of electric power as opposed to the utilization of electric power.

For example, under the two current proposals (§ 1910.331 of Subpart S, Part II and § 1910.269), work on a motor in the heating and air conditioning system would be covered by the work practices in Subpart S, but work on a similar motor used in the generating system would be covered by §1910.269. While these motors may seem identical, the hazards each presents may be quite different, necessitating different work practices. The utilization-system motor must meet the requirements of existing Subpart S for grounding, guarding of live parts, and overcurrent protection, among other provisions. The work practices in the Subpart S proposal are based on the assumption that the utilization system is in compliance with the existing installation requirements of Subpart S, which have been in effect for the last 17 years. On the other hand, the generating-system motor is not required to meet any OSHA electrical standards. For example, the motor is not required to be grounded; live parts may be exposed; and protection against overcurrent is not required. An employee working on or near a generating-system motor cannot assume that its frame is grounded and therefore safe to touch. Accordingly, the work practices in the Subpart S proposal are not necessarily appropriate for work on this motor.

At the public hearing on the Subpart S proposal (August 9 and 10, 1988, in Washington, DC), the issue was raised as to whether or not it is appropriate to have two electrical work practice standards (i.e., § 1910.269 and Subpart S work practices) in effect at electric power generating stations. Therefore, OSHA is considering the incorporation of all of the requirements contained in the electrical safety-related work practices proposal that are appropriate for electric power generating stations into the final standard for electric power generation, transmission, and distribution. This would eliminate the need for employers to use two separate standards for electrical safety-related work practices in generating stations. OSHA requests comments on whether or not this approach should be taken and, if it is, whether or not there are any requirements in the Subpart S proposal that are not appropriate for work in electric power generating stations.

Paragraph (a)(1)(iii) of proposal § 1910.269 explains the application of the section with respect to the rest of Part 1910. All other General Industry Standards would continue to apply to installations covered by this proposal unless an exception is given in § 1910.269. For example, proposed § 1910.269(p)(1)(i) would require the critical components of mechanical elevating and rotating equipment to be inspected before each shift. This proposed provision would not supersede existing § 1910.180(d), which details specific requirements for the inspection of cranes. Reference in § 1910.269 to other sections of Part 1910 are provided only for emphasis.

Paragraph (a)(2) of proposed § 1910.269 addresses training for employees. Since it is widely recognized that electric-utility-type work requires special knowledge and skills, OSHA is proposing, in paragraph (a)(2)(i), to require training of employees in the safety-related work practices, safety procedures, and other personnel safety requirements in the standard that pertain to their respective job assignments. Employees would also be required to be trained in and familiar with any other safety practices necessary for their safety, including applicable emergency procedures. OSHA has not proposed to require periodic follow-up training; however, public comment is requested on the need for and effectiveness of this type of training.

Paragraph (a)(2)(ii) of proposed § 1910.269 contains additional requirements for the training of qualified employees. Because qualified employees are allowed to work very close to electric power lines and equipment and because they face a high risk of electrocution, it is important that they be specially trained. Towards this end, the proposal would require that these employees be trained in distinguishing live parts from other parts of electric equipment, in determining nominal voltages of lines and equipment, in the clearance distances set forth in the proposal, and in the techniques involved in working on or near live parts.

Under paragraph (a)(2)(iii), the proposal would permit classroom or on-the-job training or a combination of both. This would allow employers to continue the types of training programs that are currently in existence. Additionally, if an employee has already been trained (through previous job assignments, for example), the employer would not have to duplicate previous instruction. However, the employer would be required, by paragraph (a)(2)(iv), to certify that each employee has been trained. This certification should not necessitate the employer's completing forms or creating new records; existing personnel records would normally suffice, or the employer could simply make out a certification for each employee upon completion of training.

The proposal would not require follow-up training for employees. However, OSHA is requesting information on the need for such training. If the rulemaking record supports the need for follow-up training, the final rule will require it.

Paragraph (a)(3) of proposed § 1910.269 would require that conditions existing in the work area be determined before work is started. Frequently, the conditions present at a jobsite can expose employees to unexpected hazards. For example, the grounding system available at an outdoor site could have been damaged by the weather or by vehicular traffic, or communications cables in the vicinity could reduce clearances to an unacceptable level. To protect employees from such adverse situations,

the conditions present in the work area should be known so that appropriate action can be taken. The proposed language has been taken from § 1926.950(b)(1). A similar requirement can be found in ANSI C2–1987, Section 420D.

Paragraph (b)

Paragraph (b) of § 1910.269 proposes requirements for medical services and first aid. In accordance with proposed § 1910.269(a)(1)(iii), paragraph (b) emphasizes that the requirements of § 1910.151 apply. That existing section includes provisions for available medical personnel, first aid training and supplies, and facilities for drenching or flushing of the eyes and body in the event of exposure to corrosive materials.

Paragraph (b)(1)(i) of proposed § 910.269 would require that persons trained in cardiopulmonary resuscitation (CPR) and first aid be available when two or more employees are working with energized lines or energized equipment. For field work, two trained persons would be required. For plant work, there would have to be enough trained persons to provide a 4-minute response time in case of accident. Because of the hazard of electric shock when work is performed with energized lines and equipment, cardiopulmonary resuscitation often becomes necessary so that employees who may be injured by electrical shock can be revived. CPR must be started within 4 minutes to be effective in reviving an employee whose heart has gone into fibrillation. OSHA requests comments on whether the requirement as proposed is reasonable and, if changes are suggested, on what the costs and benefits of the suggested changes would be.

Paragraph (b)(1)(ii) or proposed § 1910.269 would require that first aid training be equivalent to the training provided by the American Red Cross. This provision is proposed so that the quality of first aid training is defined. The Red Cross is recognized as having effective training programs. OSHA requests comments on whether there are additional training programs that provide equivalent training and that should also be listed in the regulation.

In § 1910.269(b)(2), OSHA is proposing that first aid supplies which have been recommended by a physician be placed in weatherproof containers, unless stored indoors, and that these containers be readily accessible. This is to ensure that proper first aid supplies are available and are in good condition when needed.

Paragraph (b) (3) of proposed § 1910.269 would require that first aid kits be maintained ready for use and be inspected at least annually in accordance with an established schedule. This is to ensure that first aid kits are maintained with all of the proper equipment.

Paragraph (c)

Paragraph (c) of proposed § 1910.269 would require a job briefing to be conducted before each job. Most of the work performed under the proposal requires planning in order to ensure employee safety (as well as to protect equipment and the general public). Typically, jobs involve working near exposed electric conductors energized at thousands of volts. If the work is not thoroughly planned ahead of time, the possibility of human error is increased greatly. To avoid problems, the task sequence is prescribed before work is started. For example, before climbing a pole, the employee must determine if the pole is capable of remaining in place and if clearances are sufficient, and he or she must determine what tools will be needed and what procedure should be used for performing the job. Without job planning, the worker may ignore the clearance requirements or may have to reclimb the pole to retrieve a forgotten tool, resulting in increased exposure to the hazards of falling and contact with energized lines.

When more than one employee is involved, the job plan must be communicated to all the affected employees. If the job is planned but the plan is not discussed with the workers, one employee may perform his or her duties out of order, endangering the entire crew. Therefore, OSHA is proposing to require a job briefing before work is started. The briefing would cover: Hazards and work procedures involved, special precautions, energy source controls, and requirements for personal protective equipment.

As proposed by paragraph (c)(1), at least one briefing would be required to be conducted before the start of each shift. However, only one briefing in a shift would be needed if all the jobs are similar in nature. Additional planning discussions must take place for work involving significant changes in routine. For example, if the first two jobs of the day involve working on energized lines with live-line tools and the third job involves working on a deenergized line, separate briefings should be conducted for each type of job.

Under paragraph (c)(2), the required briefing would normally consist of a concise discussion outlining the tasks to be performed. However, if the work is particularly hazardous or if the employees may not be able to recognize the hazards involved, then a more thorough discussion must take place. With this provision, OSHA recognizes that employees are familiar with the tasks and hazards involved with routine work. However, it is important to take the time to carefully discuss unusual work situations that may pose additional or different hazards to workers.

Proposed paragraph (c)(3) exempts employees working alone from the requirements for job briefings. It would still be important for the employee to plan the work; however, work procedure discussions would not have relevance for a single worker inasmuch as there would be no one else available for discussion. (If more than one employee are present, then an employee is not considered to be "working alone," regardless of how many employees are actually working.) Although it may not be practical to enforce a requirement for job planning, OSHA requests comments on the need for and desirability of such a requirement.

Paragraph (d)

Paragraph (d) of § 1910.269 proposes hazardous energy control (lockout/tagout) requirements. The provisions of this proposed paragraph essentially are patterned after the national consensus standard of the American National Standards Institute, ANSI Z244.1–1982, "American National Standard for Personal Protection—Lockout/Tagout of Energy Sources—Minimum Safety Requirements." In addition, the provisions of this proposed paragraph are consistent and compatible with the generic procedures to be established by OSHA's general industry standard for control of hazardous energy sources (lockout/tagout), which was published on April 29, 1983 (53 FR 15496). Because the provisions of proposed § 1910.269(d) address aspects of utility work that are not necessarily unique to the electric utility industry, it may be desirable to cover lockout and tagging of hazardous energy sources (other than electric power transmission and distribution lines and equipment) under OSHA's generic lockout standard. In fact, installations that are not within the scope of this standard would be covered by the generic standard. OSHA requests public comment on whether the hazards addressed in proposed § 1910.269(d) would be more appropriately covered by proposed § 1910.147, the generic lockout and tagging standard.

OSHA will take all comments, data, and testimony received in response to both the generic lockout/tagout proposal

and this proposal into consideration in the development of a final rule for electric power generation, transmission, and distribution. If it is determined that this final standard will contain lockout and tagging provisions, these requirements will be the same as those in the final generic lockout/tagout standard, except as necessary to provide for unique situations in electric power generation work.

Paragraph (d)(1) would limit the application of the provisions of paragraph (d) to the control of energy sources in installations for the purpose of electric power generation, including related equipment for communication or metering. Procedures for the control of electric energy used for purposes of transmission and distribution would be addressed by proposed § 1910.269(m).

Paragraph (d)(2) lists general requirements. Paragraph (d)(2)(i) would require that the employer ensure that all potentially hazardous energy is isolated and locked out, or tagged out, or otherwise disabled in accordance with the provisions of this standard, before an employee performs any activity during which energization, start-up, or release of stored energy could occur and cause injury.

Paragraph (d)(2)(ii) would require that a procedure be developed, documented, and implemented for the control of potentially hazardous energy.

Paragraph (d)(2)(iii) proposes requirements for the procedure, including coverage of the scope, purpose, responsibility, authorization, rules, and techniques to apply. This paragraph also lists specific minimum elements of coverage.

Paragraph (d)(2)(iv) would require periodic inspections to ensure that the provisions of the standard are followed. OSHA requests comments on whether a minimum frequency for such inspections should be specified in the standard.

Paragraph (d)(2)(v) would require that the inspections be performed by authorized employees and be designed to correct observed deviations or inadequacies.

Paragraph (d)(2)(vi) would require that the employer certify that the inspections have been performed. However, if records of normal work schedule and operation demonstrate adequate inspection activity, no additional certification would be required. OSHA invites public comment on the feasibility and adequacy of the proposed provision.

Paragraph (d)(2)(vii) would require employees to be trained to ensure their understanding of the procedures. Separate training provisions are listed for authorized employees, affected employees, and other employees who may have access to covered energy sources or their controls.

(The terms "authorized employee" and "affected employee" are defined in proposed § 1910.269(x). An authorized employee is an employee who has the authority and responsibility to perform a specific assignment and who is knowledgeable in the construction and operation of the equipment and the hazards involved. An affected employee is one who erects, installs, constructs, repairs, adjusts, inspects, operates, or maintains a process or equipment.)

Paragraph (d)(2)(viii) would require annual retraining for all authorized and affected employees, either by regular on-the-job work assignments or by specific training.

Paragraph (d)(2)(ix) would require the employer to certify that the employee training has been accomplished and has been kept up to date.

Paragraph (d)(3) lists requirements for locks and tags. Paragraph (d)(3)(i) would require that locks or tags or both be provided by the employer and be the only authorized devices used for lockout/tagout of energy sources.

Other provisions in paragraph (d)(3) would require that locks and tags be capable of withstanding the environment to which they are exposed; be standardized in color, shape, size, format, or any combination of these elements; and include provisions for the identification of the employees authorizing the application of devices or applying them. Locks would be required to be of such key code complexity that removal by any means other than the regular key would require excessive force or unusual techniques. Tags and their attachment mechanisms would be required to be of such design that the possibility of accidental removal is minimized. Specific requirements for information to be placed on tags are contained in § 1910.145, OSHA's general tag requirements.

Paragraph (d)(4) lists requirements for energy isolating devices. Paragraph (d)(4)(i) would require each device to be labeled or marked to indicate its purpose, unless it is located and arranged so its purpose is evident, and paragraph (d)(4)(ii) would require that the devices be operated only by authorized persons or under their direct supervision.

Paragraph (d)(5) lists requirements regarding notification to affected employees of the application and removal of lockout/tagout controls when the controls directly affect the employees' work activities. Paragraphs (d)(5) (i), (ii), and (iii), respectively, would require that notification be made by the employer or an authorized employee, before the application of lockout/tagout controls, and before the removal of lockout/tagout controls.

Paragraph (d)(6) lists requirements for lockout/tagout application. Paragraphs (d)(6) (i), (ii), and (iii), respectively, would require that the pertinent operating controls be turned off or to neutral position by designated employees, that the energy isolating devices be operated so as to isolate the equipment or process from energy sources, and that a lock or tag or both be applied to each energy isolating device by an authorized employee.

Paragraph (d)(6)(iv) would require that locks be attached in such a manner as to hold the energy isolating devices in a safe position or that tags be attached in such a manner as to inhibit operation of the energy isolating devices. Tags would be required to be attached to the energy isolating device unless the installation precludes such attachment, in which case the tags would be required to be located so as to be immediately obvious to anyone attempting to operate the energy isolating devices.

Paragraph (d)(6)(v) would require that, following the application of locks or tags or both to energy isolating devices, all potentially hazardous stored or residual energy be detected and be relieved, disconnected, or restrained so as to be rendered safe.

Paragraph (d)(6)(vi) would require, if there is a possibility of reaccumulation of stored energy to a hazardous level, that verification of isolation be continued until the work is completed or until there is no longer a possibility of such accumulation.

Paragraph (d)(6)(vii) would require that an authorized employee take steps to verify that isolation and deenergizing of locked out or tagged out equipment or processes has been accomplished before work is started on the equipment or processes. If direct contact is to be made with a normally energized part during the work, a test would be required to be performed to ensure that the parts are deenergized.

Paragraph (d)(6)(viii) would require the verification action to ensure that affixing locks or tags or both to the energy isolating devices has positioned or located the devices so that the equipment or process has been isolated and deenergized effectively and so that any stored energy has been rendered safe.

The steps of the procedure proposed under paragraphs (d)(6) (vii) and (viii) may involve a deliberate attempt to

start up equipment which should not be capable of activation because of the application of control procedures. These provisions are intended to assure the employee that energy from the main power source has been effectively isolated and blocked and that injury could not result from inadvertent activation of the operating controls. Another means of testing the equipment or process is by the use of appropriate test instrumentation. This method would be appropriate for use in cases involving electric circuits and equipment, for example, where verification of isolation could be accomplished by determining the relative energy level readings involved by using a voltmeter. Similar test equipment could be applied to other energy types and sources.

OSHA also considers the use of inspection procedures to be of critical importance throughout the lockout/tagout control process. Visual inspection can confirm that switches, valves, and breakers have been properly moved to and secured in the "off" or "safe" position. Observing the position of the main electric power disconnect switch can, for example, confirm that the switch is either in the "off" (open) or "on" (closed) position. Visual inspection can also verify whether or not locks and other protective devices have been applied to the control points in a manner that would impede the unsafe movement of the switches or valves. Finally, an inspection can be used to verify that isolation has taken place by a determination that all motion has stopped and that all coasting parts such as flywheels, grinding wheels, and saw blades have come to rest.

Paragraph (d)(7) lists the requirements for release from lockout/tagout. Paragraphs (d)(7) (i) and (ii), respectively, would require that an authorized employee first make a visual inspection of the work area to determine that all nonessential items have been removed, that all components are operationally intact, and that no inadvertent equipment start-up will result; and then verify that employees are in the clear, before energy is restored to the equipment or process.

It cannot be overemphasized that employees performing tasks on deenergized equipment may be exposed to hazards involving serious injury or death if the status of lockout/tagout control conditions can be changed without their knowledge. For this reason, OSHA is proposing in paragraph (d)(7)(iii) that, as a general rule, locks and tags be removed by the employees who applied them. An exception is provided for two types of situations in which the device may be removed under the direction of an authorized employee using specific procedures. Paragraph (d)(7)(iii)(A), as proposed, permits the use of the exception when the employee who applied the lock or tag is not available to remove it. This provision is intended to cover situations such as those that might arise from the sudden sickness or injury of an employee or other emergency conditions. Proposed paragraph (d)(7)(iii)(B) would permit use of the exception for unique operating activities involving complex systems, if the employer could demonstrate that it is not feasible to have the device removed by the employee who applied it.

Paragraph (d)(8) lists requirements for special lockout/tagout situations. Paragraph (d)(8)(i) would require that if there is a need for testing or positioning of the equipment or process after the energy isolating devices are locked or tagged, the following actions be taken in sequence: Clear the equipment or process of tools and materials; clear the employees from the equipment or process area; clear the controls of locks and tags according to the established procedure; energize and proceed with the testing or positioning; deenergize all systems; and reapply energy control measures to continue the work.

Paragraph (d)(8)(ii) would require that, when group locks or tags are used, the procedures must afford affected employees protection equivalent to that provided by personal locks or tags.

Paragraph (d)(8)(iii) would require that specific procedures be implemented to provide for continuity of lockout/tagout protection during shift or employee changes.

Paragraph (d)(8)((iv) would require the employer to ensure that contractors and their employees follow the lockout/tagout procedures in place at the work site. If the contractor does not provide qualified persons who have been trained properly in the procedures in use, the employer would be required to provide a qualified employee to operate or direct the operation of the energy isolating devices and installation of the locks and tags.

Paragraph (e)

Paragraph (e) proposes requirements for entry into and work in enclosed spaces. An "enclosed space" is defined to be a space that has a limited means of entry or egress, that is designed for periodic entry by employees under normal operating conditions, and that is not expected to contain a hazardous atmosphere, but may contain one under unusual conditions. In this paragraph, OSHA intends to cover only the types of enclosed spaces that are routinely entered by employees engaged in electric power generation, transmission, and distribution work and are unique to underground utility work. Such locations include manholes and vaults that provide employees access to electric generation, transmission, and distribution equipment. This paragraph does not address other types of confined spaces, such as boilers, tanks and coal bunkers, that are common to other industries as well. These locations will be addressed in OSHA's generic confined spaces standard, which is currently being developed for general industry.

Electric utility companies have an estimated 14,350 employees engaged in underground transmission and distribution work (where most of the work covered by paragraph (e) occurs).[2] Underground repair crews, in which these employees work, can typically expect to enter a manhole once or twice a day.[3] The enclosed space entry procedure addressed by the proposal is a day-to-day part of the routine of these workers. This type of work is unique to underground utilities (such as electric, telephone, and gas utilities), and the hazards presented by these spaces are widely recognized by these industries and their workers. Practices in use in these industries include testing for the presence of flammable gases and vapors, testing for oxygen deficiency, ventilation of the enclosed space, controls on the use of open flames, and the use of an attendant outside the space. Existing § 1910.268(o) sets forth regulations addressing these areas in the telecommunications industry, which exposes its employees to the same non-electrical hazards as the electric utility industry. Consistent with these industry-specific regulations, OSHA has decided to propose separate requirements in this standard for employee entry into enclosed spaces that are unique to the performance of electric power generation, transmission, and distribution work. However, other types of enclosed and confined spaces (such as boilers and tanks) are not addressed in this proposal, but will be addressed in the forthcoming generic confined spaces standard.

As the non-electrical hazards found in manholes, underground vaults, and similar enclosed spaces are the same in both telecommunications work and

[2] ERG, "Preparation of an Economic Impact Study for the Proposed OSHA Regulation Covering Electric Power Generation, Transmission, and Distribution," p. 8–8.

[3] *Ibid.* p. 8–21.

electric power generation, transmission, and distribution work, requirements relating to these hazards should be similar. (In joint-use manholes, where both telecommunications and electric distribution equipment are present, telecommunications employees and electric utility employees have to work in the same manholes—though not necessarily at the same time.) Therefore, the provisions in proposed § 1910.269(e) are based, in large part, on the requirements of existing § 1910.268(o) relating to telecommunications work on underground installations. In carrying them over to this proposal, OSHA has modified and added to the existing telecommunications regulations. The Agency has also drawn from provisions in ANSI C2 and the EEI/IBEW draft that relate to enclosed space hazards.

The introduction to paragraph (e) sets forth the scope of the enclosed space provisions. As previously noted, enclosed spaces are defined as spaces that have limited means of entry or egress, that are designed for periodic entry by employees under normal operating conditions, and that are not expected to contain hazardous atmospheres but may contain them under unusual conditions. These spaces include manholes and unvented vaults. (The ventilation in vented vaults prevents a hazardous atmosphere from accumulating, so vented vaults are not covered.) OSHA requests information on other types of enclosed spaces that would or should be addressed by paragraph (e) of the standard.

Paragraph (e)(1) proposes the general requirement that employers ensure the use of safe work practices by their employees. (Training in these practices would be required by proposed § 1910.269(a) (2).) The safe work practices include procedures for complying with the specific regulations contained in paragraphs (e)(2) through (e)(12).

Some conditions within an enclosed space, such as high temperature and high pressure, make it hazardous to remove any cover from the space. For example, if high pressure is present within the space, the cover could be blown off in the process of removing it. To protect employees from such hazards, paragraph (e)(2) would require a determination of whether or not it is safe to remove the cover. This determination should take the form of a quick check of the conditions expected to be in the enclosed space. The cover should be checked to see if it is hot and, if it is fastened in place, should be loosened gradually to release any residual pressure. An evaluation should also be made of whether conditions at the site could cause a hazardous atmosphere to accumulate in the space. Any conditions making it unsafe for employees to remove the cover would be required to be eliminated (i.e., reduced to the extent that it is no longer unsafe).

Paragraph (e)(3) would require that openings to enclosed spaces be guarded to protect employees from falling into the space and to protect employees in the enclosed space from being injured by objects entering the space. The guard could be in the form of a railing, a temporary cover, or any other temporary barrier that provides the required protection. This provision was taken from existing § 1910.268(o)(1)(i), which sets forth the equivalent requirement for underground telecommunications work.

Paragraph (e)(4) proposes to prohibit employees from entering enclosed spaces that contain a hazardous atmosphere. Once the hazardous atmosphere is removed (e.g., by ventilating the enclosed space) or if protection is provided (e.g., through the use of a respirator for a toxic atmosphere), employees would be allowed to enter.

Paragraph (e)(5) addresses the use of an attendant outside the enclosed space to provide assistance in an emergency. An attendant would be required any time there is reason to believe that a hazard exists because of traffic patterns near the opening or if a hazard exists within the space. For example, a manhole that is subject to uncontrolled flooding would require an attendant. The purpose of the attendant would be to provide assistance in an emergency; however, he or she would not be precluded from performing other duties outside the enclosed space, as long as those duties do not interfere with the person's function as an attendant. The provisions of paragraph (e)(5) are based on existing § 1910.268(o)(1)(ii). (See also proposed paragraph (t)(3) for requirements addressing the need for attendants outside underground installations containing energized electric equipment.)

Paragraph (e)(6) would require test instruments used to monitor atmospheres in enclosed spaces to be kept in calibration. This would ensure that test measurements are accurate so that hazardous conditions will not be overlooked. OSHA requests public comment on whether a specific level of accuracy (e.g., plus or minus 10 percent) should be required in this provision.

Because of the lack of adequate ventilation, enclosed spaces can accumulate hazardous concentrations of flammable gases and vapors, or an oxygen deficient atmosphere could develop. It is important to keep concentrations of oxygen and flammable gases and vapors at safe levels; otherwise, an explosion could occur while the employees are in the space, or an oxygen deficiency could lead to the suffocation of an employee. Toward these ends, paragraphs (e)(7), (e)(8), (e)(9), (e)(10), and (e)(11) address the testing of the atmosphere in the space and ventilation of the space.

Paragraph (e)(7) would require the internal atmosphere of the enclosed space to be tested for flammable gases and vapors. The results of the test would have to indicate that the atmosphere is safe before employees could enter. So that the results are accurate and relevant to the atmosphere in the space at the time of employee entry, testing would be required to be performed with a direct reading meter or similar instrument. Test equipment that samples the atmosphere so that the samples can be forwarded to a laboratory for analysis would not meet the requirements proposed in paragraph (e)(7).

Paragraph (e)(8) proposes an equivalent requirement for testing the concentration of oxygen in the atmosphere in an enclosed space. However, continuous forced air ventilation is permitted as an alternative to testing. Such ventilation would ensure that there would be sufficient oxygen in the manhole. (See also proposed paragraph (e)(10) for requirements relating to the length of time ventilation must be provided before employees are allowed to enter the manhole.)

If flammable gases or vapors are detected or if an oxygen deficiency is found, paragraph (e)(9) would require the employer to provide forced air ventilation to assure safe levels of oxygen and to prevent a hazardous concentration of flammable gases or vapors (one which exceeds 10 percent of the lower explosive limit) from accumulating. As an alternative, the employer could use a continuous monitoring program that ensures that no hazardous atmosphere develops and no increase in flammable gas or vapor concentration occurs.

The provisions of paragraphs (e)(7), (e)(8), and (e)(9) are based on the requirements contained in existing § 1910.268(o)(2) and on ANSI C2–1987, Section 426B.

Paragraph (e)(10) proposes specific requirements for the ventilation of enclosed spaces. When forced air ventilation is used, it would be required to be maintained for a period of time

long enough to purge the atmosphere within the space of hazardous amounts of flammable gases and vapors and long enough to supply an adequate concentration of oxygen. After the ventilation has been maintained for this amount of time, employees can then safely enter the space. OSHA requests public comment on whether the Agency should specify what number of air changes of the atmosphere within the enclosed space should be required before employees are allowed to enter.

Paragraph (e)(10) would also require the air provided by the ventilating equipment to be directed at the area within the enclosed space where employees are at work. The forced air ventilation would be required to be maintained the entire time the employees are present within the space. These provisions ensure that a hazardous atmosphere does not reoccur where employees are working.

In order to ensure that the air supplied by the ventilating equipment will provide a safe atmosphere, paragraph (e)(11) would require the air supply to be from a clean source and would prohibit it from increasing the hazards in the enclosed space. For example, positioning the air intake for the ventilating equipment near the exhaust from a gasoline or diesel engine would contaminate the atmosphere in the enclosed space. This practice would not be allowed under the proposal.

The use of open flames in enclosed spaces is safe only when flammable gases or vapors are not present in hazardous quantities. For this reason, paragraph (e)(12) would require additional testing for flammable gases and vapors if open flames are to be used in enclosed spaces. The tests must be performed immediately before the open flame device is used and at least once per hour while the device is in use. OSHA requests comments on whether the frequency of testing is appropriate or whether the frequency should be increased or decreased. This requirement is based on existing § 1910.268(o)(5)(i).

Paragraph (f)

Paragraph (f) of proposed § 1910.269 addresses trenching and excavating operations. This paragraph simply references the appropriate existing regulations in the Construction Standards (Part 1926) pertaining to trenching and shoring, which are contained in 29 CFR Part 1926, Subpart P. Since trenching work and excavating work are typically considered construction operations and since construction regulations dealing with the hazards involved already exist, OSHA considered it appropriate to refer to the construction requirements directly. This would ensure that the regulations are the same whether or not the work is "construction work" as defined in § 1910.12, as the hazards involved are common to all types of trenching and excavating operations. Employers covered by this proposal should already be familiar with these requirements because they frequently perform the type of work covered under Subpart V of Part 1926 (which contains a similar reference in § 1926.956(c)(2)).

OSHA has proposed, in a separate rulemaking project, to revise the regulations contained in Subpart P of Part 1926. This proposal was published on April 15, 1987 (52 FR 12288). Operations covered by proposed § 1910.269 would be required to follow whatever is promulgated as a final standard under the Construction Standards rulemaking.

Paragraph (g)

Paragraph (g) of proposed § 1910.269 proposes requirements for personal protective equipment (PPE), which includes eye and face protection, respiratory protection, head protection, foot protection, protective clothing, electrical protective equipment, and personal fall protection equipment. In accordance with proposed § 1910.269(a)(1)(iii), proposed paragraph (g)(1) emphasizes that the requirements of Subpart I of Part 1910 apply. It should be realized that OSHA considers PPE which meets the requirements of later editions of the American National Standards referenced in Subpart I to be in compliance with the current requirements of this subpart. For example, Subpart I of Part 1910 references American National Standard (Z89.1–1969) for Industrial Head Protection, although other later editions have been published for head protection (i.e., ANSI Z89.2–1971 and Z89.1–1981). OSHA considers equipment meeting these newer standards to be acceptable. Subpart I of Part 1910 is scheduled for revision, and the updating of the PPE requirements with the latest American National Standards will be accomplished at that time.

Paragraph (g)(2) of proposed § 1910.269 proposes requirements for personal fall protection systems including fall arrest equipment (body belts and life lines) and work positioning equipment (body belts and safety straps).

In paragraphs (g)(2)(i) and (g)(2)(ii), OSHA is proposing that body belts, lifelines, and lanyards for fall arrest, and body belts and safety straps for work positioning, meet the requirements of § 1926.104 and § 1926.959 of this chapter. Although these regulations are contained in the Construction Standards, OSHA believes that they apply equally as well to personal fall protection systems and to work positioning equipment used in overhead electric line work. Additionally, body belts, lifelines, lanyards, and safety straps used in overhead line work are currently required to comply with pertinent regulations of Part 1926, including §§ 1926.104 and 1926.959, during the construction of transmission and distribution lines and equipment. Since the same personal fall protection systems and work positioning equipment are used during all phases of overhead electric line work (maintenance work and construction work alike), the proposal's reference to existing construction standards is appropriate.

OSHA has proposed, in a separate rulemaking project, Safety Standards for Fall Protection in the Construction Industry (November 25, 1986, 51 FR 42718), to revise and simplify most of the existing fall protection regulations for construction, which are currently scattered throughout 29 CFR Part 1926, and to consolidate them in Subpart M of that Part. Requirements corresponding to § 1926.104 were proposed to be placed in § 1926.502(d).

OSHA is also developing a general industry standard for fall protection. When this proposal is published, the Agency may wish to consolidate the existing general industry requirements dealing with this subject.

Paragraph (g)(2)(iii) of proposed § 1910.269 would require that body belts, safety straps, lanyards, lifelines, and body harnesses be inspected before use each day to determine if the equipment is in safe working condition. This provision would also prohibit the use of defective equipment. Derived from section 4.2 of American National Standard Requirements for Safety Belts, Harnesses, Lanyards, Lifelines, and Drop Lines for Construction and Industrial Use (ANSI A10.14–1975), this requirement helps ensure that the protective equipment in use will, in fact, be able to protect employees when called upon to do so.

Paragraph (g)(2)(iv) of proposed § 1910.269 would require lifelines to be protected against being cut or abraded since either of these conditions will reduce the strength of the lifelines and could cause them to fail during use.

In § 1910.269(g)(2)(v), OSHA is proposing requirements covering the use of fall arrest, work positioning, and travel restricting equipment. Unless

another type of fall protection is provided, one of these systems must be used by employees when they are working at heights more than 4 feet (1.2 m) above the ground on poles, towers, trees, or structures or when they are working from vehicle-mounted elevating and rotating work platforms. The provision further clarifies that the use of fall protection equipment would not be required when a qualified employee (who meets the requirements of proposed § 1910.269(h)(5)) is climbing or changing location on poles, towers, or similar structures which have steps or step bolts. Such step bolts or ladders must meet the design requirements proposed in § 1910.269, as well as the applicable requirements in Subpart O for fixed ladders. However, OSHA is proposing that fall protection equipment (safety straps) be used by employees climbing word poles not containing step bolts except when climbing around obstructions, such as crossarms, pins, or braces. This paragraph is proposed to clarify when the use of personal fall protection is required and when exceptions to its use are permitted.

The current OSHA telecommunications standard, in § 1910.268(g)(1), requires the use of personal fall protection equipment when work is performed at heights more than 4 feet (1.2 m) above the ground. The existing standards in Subpart D of Part 1910 also require fall protection (usually in the form of guard rails) for situations where employees are exposed to falls of more than 4 feet (1.2 m), but EEI and IBEW have asserted that there are problems with the use of personal fall protection equipment at heights of less than 10 feet (3.1 m). For example, it was claimed that it is not always possible, under some conditions, for the worker to tie off in a manner whereby he or she will not contact the ground (or a lower level) during the arrest of a fall. However, because the infeasibility of using fall protection at the lower level was not proven, OSHA is proposing to retain the 4-foot (1.2 m) requirement, but is requesting comments on unique situations in personal fall protection for electric utilities.

Paragraph (g)(2)(vi) of proposed § 1910.269 would require that, when stopping or preventing a fall, fall arrest systems not produce an arresting force on an employee of more than ten times the employee's weight or 1800 pounds (8 kN), whichever is lower. Based on section 3.3.5 of ANSI A10.14–1975, and a National Bureau of Standards report, *A Study of Personal Fall-Safety Equipment*, (NBS IR 76–1146), as well as other literature on fall arrest forces, this requirement is intended to minimize injury to an employee in the event of a fall. (This requirement, as well as others in paragraph (g)(2) of proposed § 1910.269, was contained in Appendix D of OSHA's proposed rulemaking for powered platforms, § 1910.66, published on January 22, 1985 (50 FR 2890).)

Paragraph (g)(2)(vii) of proposed § 1910.269 would require that, when vertical lifelines or droplines are used, not more than one employee be attached to any one lifeline. This limitation (based on section 3.2.6 of ANSI A10.14–1975) recognizes that it is inherently unsafe to use a single vertical lifeline to tie off two or more employees performing separate tasks. Movement by one employee could cause the lifeline to be pulled to one side. This could, in turn, cause the other employee to lose balance. Therefore, if one employee did fall, movement of the lifeline during the arrest of the fall would very likely cause other employees connected to the lifeline to fall.

In paragraphs (g)(2)(viii) and (g)(2)(ix), OSHA is proposing that snaphooks not be connected to loops in webbing lanyards or to each other. This provision would prohibit two methods of attachment which are considered unsafe because snaphooks could accidentally disengage during use. These provisions are based on sections 3.2.5 and 3.2.3.2 of ANSI A10.14–1975, respectively.

Paragraph (h)

Paragraph (h) of proposed § 1910.269 addresses ladders, platforms, stepbolts, and manhole steps. Paragraph (h)(1) emphasizes that the requirements for ladders in Subpart D of Part 1910 would continue to apply.

Paragraph (h)(2) proposes requirements for special ladders and platforms used for electrical work. Because of the nature of overhead line work and the limitations of structures available for ladder support, OSHA proposes that §§ 1910.25(d)(2)(i), 1910.25(d)(2)(iii), and 1910.26(c)(3)(iii), which deal with ladder support and placement, not apply to portable hook ladders and other special ladders used on structures or on overhead lines. To provide employees with protection which approximates that afforded by the "exempted" Subpart D provisions, proposed paragraphs (h)(2)(i) through (h)(2)(iv) would apply to these special types of ladders. These same paragraphs would also apply to platforms designed for and used in this type of work. The proposed requirements set forth the need to secure the special ladders and special platforms, specify the acceptable loads and proper strength of this equipment, and provide that it be designed for the particular types of application for which it is used. OSHA believes that the proposed alternative criteria provide for the safe use of this special equipment; however, comments are requested on whether the proposal provides adequate safety to employees.

In § 1910.269(h)(3), OSHA is proposing that portable metal and other portable conductive ladders not be used near exposed energized lines or equipment. This proposed paragraph addresses the hazard to employees of contacting energized lines and equipment with conductive ladders. However, in specialized high-voltage work, the use of nonconductive ladders could present a greater hazard to employees than the use of conductive ladders. The clearances between live parts operating at differing voltages and between the live parts and grounded surfaces are large enough that the possibility of accidentally contacting a live part with a conductive ladder is small. In such circumstances, using a conductive ladder can minimize the voltage differences between objects within an employee's reach, reducing the hazard to the employee. Therefore, the proposal would allow using a conductive ladder if the use of a nonconductive ladder would present a greater hazard.

Paragraph (h)(4) of proposed § 1910.269 addresses step bolts and manhole steps. The existing OSHA standards do not specifically address step bolts or manhole steps; rather, they address fixed ladders which are not normally used in manholes or on poles. OSHA proposes that step bolts and manhole steps for general use meet paragraphs (h)(4)(i) through (h)(4)(xiv) and the requirements of § 1910.27 for ladder safety devices. However, the step bolts or manhole steps would not need to be provided with ladder safety devices or equivalent fall protection, if only qualified employees (see discussion of proposed § 1910.269(h)(5)) climb them. The requirements of proposed paragraph (h)(4) address the design, installation, maintenance, and strength of step bolts and manhole steps. Current industry practices, existing § 1910.268(h), and ASTM C478–82a formed the basis for these requirements. Recognizing the potential hazards to employees associated with step bolts and manhole steps used in wet, damp, or corrosive atmospheres, OSHA solicits public comment on the following: (1) The need for separate design and installation criteria for these devices under such unique conditions; (2) the problems associated with using the existing ladder standards or the requirements proposed in § 1910.269(h)(4) to regulate these

devices; (3) injury or fatality data related to employee falls from these devices due to inadequate design or installation; and (4) whether or not existing step bolts and manhole steps and their related standards would comply with OSHA's proposed regulations.

Paragraph (h)(5) of proposed § 1910.269 sets forth the requirements for qualified employees. OSHA proposes that ladders or step bolts on triangulation, telecommunication, electrical power, and similar towers, and ladders on poles and other structures (including stacks and chimneys) be exempt from the requirements in Subpart D of this part for ladder safety devices and cages if only qualified employees use these ladders. The requirements that address cages and ladder safety devices are presently contained in § 1910.27(d)(1) and (d)(5) of the General Industry Standards. OSHA is developing a proposed revision of all of Subpart D of Part 1910. Because this revision will likely result in a renumbering of the relevant sections and paragraphs, OSHA is proposing in § 1910.269 to reference Subpart D generally rathe than reference the specific regulations in question.

To be recognized as qualified under paragraph (h)(5) of proposed § 1910.269, an employee would be required to have successfully completed a hands-on training program in the safe climbing of this type of equipment and would be required to have climbing as one of his or her routine job duties. OSHA recognizes that these ladders, as well as most step bolts and manhole steps, are used only a few times a year (or even less frequently) and then normally by trained employees who climb such devices on a routine basis. If OSHA were to require compliance with the existing fixed ladder standard in Subpart D, it would impose significant costs on employers for the installation, maintenance, and inspection of fall protection systems that would seldom be used. The exposure of employees installing and maintaining this equipment would likely exceed the exposure of the employees climbing the ladders without personal fall protection. As an alternative, OSHA believes it appropriate to allow qualified employees to climb these ladders, step bolts, or manhole steps without fall protection under certain conditions, as set forth in proposed paragraph (h)(5). First, the employer would have to require the employee to complete a training program in the safe climbing of ladders, step bolts, or manhole steps; and, second, the exemption would apply only to employees who climb on a routine basis. Additionally, such an employee would not be permitted to carry objects in his or her hands while climbing. Once the employee reaches a work station, the employer would be required to provide appropriate fall protection equipment, and the employee would be required to use such protection. OSHA requests comments on this aspect of the proposal and invites commenters to submit suggested alternatives or additional safeguards which may be necessary.

Paragraph (i)

Proposed § 1910.269(i) addresses hand and portable power tools. Also, portable and vehicle-mounted generators supplying cord-and plug-connected equipment would be covered by proposed § 1910.269(i).

Electric tools connected by cord and plug would be required to meet proposed paragraph (i)(2). If the equipment is supplied by the wiring of a building or other premises, existing Subpart S of Part 1910 would continue to apply as it does currently. If premises wiring is not involved (in which case Subpart S does not currently apply), proposed paragraph (i)(2)(ii) would require that the tool frame be grounded or that the tool be double insulated or that the tool be supplied by an isolating transformer with ungrounded secondary. Any of these three methods can protect employees from electric shock, which could directly injure the employee or which could cause an involuntary reaction leading to a secondary injury.

In the preproposal stage of this document, OSHA received several comments suggesting that ground-fault circuit interrupter (GFCI) protection be allowed as an additional option. However, although a GFCI can prevent electrocution, the device cannot by itself prevent an initial electric shock to an employee before it interrupts the circuit. This initial shock could lead to injury from involuntary reaction. Therefore, OSHA has not proposed allowing the use of a GFCI alone to protect employees using cord- and plug-connected equipment.

Paragraph (i)(3) of proposed § 1910.269 would essentially extend the requirements of existing § 1926.404(f)(3) to electric transmission and distribution field operations. The proposal would basically require that portable and vehicle-mounted generators provide a means for grounding cord- and plug-connected equipment and would allow the frame of the generator to serve as the grounding electrode (reference ground).

Proposed § 1910.269(i)(4) applies to pneumatic and hydraulic tools. Safe operating pressures would be required by paragraph (i)(4)(i).

If a pneumatic or hydraulic tool is used where it may contact exposed energized parts, the tool would be required to have a nonconductive hose (paragraph (i)(4)(ii)). A pneumatic tool would also have to have an accumulator to collect moisture (paragraph (i)(4)(iii)). These two requirements would protect employees from electric shock by restricting current flow through hoses.

Paragraphs (i)(4)(iv) and (i)(4)(v) propose work-practice requirements to protect employees from the accidental release of pressure and from injection of hydraulic oil into the body. The first of these two provisions would require the release of pressure before connections in the lines are broken, unless the quick-acting, self-closing connectors commonly found on tools are used. The other would prohibit employees from attempting to use their bodies in order to locate or stop a hydraulic leak.

Paragraph (j)

Paragraph (j) of proposed § 1910.269 contains requirements for live-line tools, some of which are commonly called "hot sticks." This type of tool is used by qualified employees to handle energized conductors. The tool insulates the employee from the energized line, allowing the employee to safely perform the task at hand. For example, a wire tong, a slender insulated pole with a clamp on one end, is used to hold a conductor at a distance while work is being performed. Common types of live-line tools include wire tongs, wire tong supports, tension links, and tie sticks.

Paragraph (j)(1) proposes that live-line tools be designed and constructed to be able to withstand 100,000 V/ft if made of fiberglass, 75,000 V/ft is made of wood, or other equivalent tests. Since the proposed withstand voltages are consistent with those in existing § 1926.951(d) and with ASTM F 711–81, *Standard Specification for Fiberglass-Reinforced Plastic (FRP) Rod and Tube Used in Live-Line Tools*, tools complying with standards currently in use in the industry would continue to be acceptable. Together with the clearance distances in proposed § 1910.269(1), paragraph (j)(1) protects employees from electric shock during use of these tools.

The performance criteria given in proposed paragraph (j)(1) are intended to be "design standards" and are to be met at the time of manufacture. The test voltages and length of time that they are applied are not appropriate for periodic retesting of the hot sticks because the

live-line tools could sustain damage during the test. OSHA requests information on whether retesting should be required, what values of voltage and time should be used for retests, and what period of time should be allowed between retests.

Paragraph (j)(2) proposes the daily visual inspection of live-line tools. If any contamination or defect that could lower the insulating value of the live-line tool exists, it could be discovered during this inspection, and the tool would have to be removed from service. This paragraph would protect employees from the failure of live-line tools during use.

Paragraph (k)

Paragraph (k) proposes requirements for material handling and storage, with the general provision that Subpart N of Part 1910 would continue to apply except as modified in the paragraph.

Paragraphs (k)(1) and (k)(2) address the handling and storage of materials in the vicinity of energized lines and exposed parts of energized equipment. In general, as is the case through most of the General Industry Standards, material is not allowed to be taken or stored within 10 feet of the lines or exposed parts of equipment. This distance must be increased by 4 inches for every 10 kilovolts over 50 kilovolts. For materials storage, the clearance distance must also be increased to account for the maximum sag and side swing of any conductor and to account for the use of material handling equipment. Maintaining these clearances protects unqualified employees, who are not trained in the recognition and avoidance of the hazards involved, from contacting the energized lines or equipment with materials being handled.

In recognition of the need for certain employees to approach energized parts more closely than 10 feet in order to perform their work, paragraphs (k)(1)(i), which addresses materials storage, and (k)(2), which addresses materials handling, regulate only the exposure of unqualified employees to the hazards involved. The storage requirement proposed in paragraph (k)(1)(i) would not apply in areas which are restricted to qualified employees. Paragraph (k)(2) would not apply to qualified workers at all because clearance requirements for qualified workers are contained in proposed § 1910.269(1), which covers work on or near energized parts.

Paragraph (k)(1)(ii) proposes that material not be stored in the working space around energized lines or equipment. (See the discussion of paragraphs (u)(1) and (v)(3) of proposed § 1910.269 for an explanation of the requirements for access and working space.) Storing materials in this space would tempt employees to work on energized equipment in cramped quarters if access were necessary in an emergency. Alternatively, if materials stored in the working space had to be moved so that adequate room could be provided, accidents could result from the movement of the material.

Paragraph (l)

Paragraph (l) of proposed § 1910.269 covers the hazards of working on or near exposed parts of energized lines or equipment. Paragraph (l)(1) proposes to prohibit unqualified employees from working on exposed live parts of electric lines or equipment. Lacking any training in the construction and operation of the lines and equipment and in the electrical hazards involved, these workers would likely be electrocuted attempting to perform this type of work and would also expose others to injury as well. Similarly, in areas containing unguarded live parts energized at more than 50 volts, such untrained employees would not be familiar with the practices that are necessary to avoid contact with these parts.

However, employees in training, under the direct supervision of a qualified employee, would be permitted to perform work on live parts and in areas containing unguarded live parts. OSHA believes that the close supervision of trainees will reveal errors "in the act," before they cause accidents. Allowing these workers the experience of performing tasks under actual conditions may also better prepare the employees to work safely.

Paragraph (l)(2) of proposed § 1910.269, along with Tables R–6 and R–7, sets forth the clearance requirements for work near exposed energized parts. The language of this paragraph has been taken from existing § 1926.950(c)(1). Basically, the proposal would require employees to maintain the clearances listed in the tables, unless the employee is insulated from the live part or the part is insulated from the employee or the employee is insulated from all other conductive objects.

The first exception to maintaining the listed clearance is that the employee be insulated from the energized part. This insulation could take the form of rubber insulating gloves or rubber insulating gloves with sleeves. This equipment protects the employees from electric shock as he or she works on the line or equipment. Even though uninsulated parts of the employee's body may come closer to the live part than would otherwise be permitted by proposed Tables R–6 or R–7, the employee's hand would be insulated from the live part, and the working distances involved would be sufficient protection against arc-over. (The proposed tables include a significant safety factor for inadvertent movement, which is unnecessary for employees using rubber insulating equipment.) OSHA does, however, request public comment on whether rubber insulating sleeves should be required when gloves are used on lines or equipment energized at more than a given voltage.

Of course, the insulation used would have to be designed for the voltage. (The proposed revision of § 1910.137 gives use voltages for electrical protective equipment.) As a clarification, paragraph (l)(2)(i) notes that the insulation is considered as protection only against parts upon which work is being performed; the required clearances would have to be maintained from other exposed energized parts.

Existing § 1926.950(c)(1)(i), from which proposed § 1910.269(l)(2)(i) was taken, also specifically permits the employee to be guarded from the live parts. However, the introductory language in proposed paragraph (l)(2) requires clearances to be maintained from "exposed" energized parts. Guarded live parts would not be addressed by the rule. Similarly, redundancies in paragraphs (c)(1)(ii) and (iii) of § 1926.950 have not been carried forward into paragraphs (l)(2)(ii) and (iii) of proposed § 1910.269.

As a second opinion to maintaining the clearances, paragraph (l)(2)(ii) of proposed § 1910.269 allows the energized part to be insulated from the employee. Such insulation could be in the form of insulating blankets or line hose or other suitable insulating equipment. Again, the insulation would have to be adequate for the voltage.

Paragraphs (l)(2)(i) and (ii) recognize the protection afforded to the employee by an insulating barrier between the employee and the energized part. As long as the insulation is appropriate and is in good condition, current will not flow through the worker, and he or she is protected.

The third option (proposed paragraph (l)(2)(iii)) to the maintenance of clearance distances is to insulate the employee from conductive objects other than the live part upon which work is to be performed. Much of the work performed under this option is called "live-line bare-hand" work. (For specific practices for this type of work, see the discussion of proposed § 1910.269(q)(3).) In this type of work, the employee is in

contact with the energized line, like a bird on a wire, but is not contacting another conductive object at a different potential. Because there is no complete circuit, current cannot flow through the worker, and he or she is protected.

The clearance distances in Table R–6 are for AC voltages up to 765 kilovolts, nominal. Taken in large part from existing Table V–1 in Part 1926, each of these distances provide a sufficient gap between the worker and the line so that current cannot arc to the employee under the most adverse transient conditions, plus an extra amount for inadvertent movement on the part of the employee. To make it clear that direct contact with live parts is not permitted, OSHA is proposing to add to the distances given in the existing standard an "avoid contact" entry under the lowest voltage. Additionally, to make the proposal more consistent with ANSI C2, OSHA is proposing to adopt a clearance distance of 2 feet for voltages between 1.1 and 15 kilovolts. Table V–1 gives no clearance distances below 2100 volts.

Table R–7 applies to DC voltages between 250 and 750 kilovolts, nominal. These distances have been taken directly from Tabel 422–3 of ANSI C2–1984. Since systems of DC voltages other than those listed are rare, no distances are presented for them in the table. If further information is supplied during the course of this rulemaking supporting clearances for other voltages, OSHA will consider adding them to the table.

For the highest voltages, the two proposed tables contain notes permitting clearance distances smaller than those listed. The smaller clearance must be at least the length of the line insulator, and the smaller clearance must be necessary to perform the work. In the existing Construction Standards, Subpart V uses a similar note. In contrast, ANSI C2–1984 has separate tables for AC voltages of 345 to 765 kilovolts, nominal, and for all DC voltages of systems with a known transient overvoltage factor. (For further information, see ANSI C2–1984, Tables 422–2 and 422–4.) The ANSI C–2 tables use clearances which increase with increasing surge factors and provide for greater clearances, in many cases, than the footnotes in OSHA's proposed tables. OSHA requests comments on whether it would be more appropriate to use the ANSI clearances for the affected voltages and whether the ANSI tables provide better protection for employees than the OSHA proposal.

Paragraph (1)(3) of proposed § 1910.269 would require employees to position themselves so that a shock or slip will not cause the worker's body to move towards exposed parts at a potential different from that of the employee. Since slips, and even electric shocks, are not entirely preventable, it is important for the employee to take a working position so that such an event will not increase the severity of any incurred injury. This proposed requirement does not come from existing Subpart V; it has been taken from ANSI C2–1984, Section 422F.

Paragraph (1)(4) addresses the practices of connecting and disconnecting lines and equipment. Common industry practice, as reflected in ANSI C2–1984; Section 422G, is to make a connection so that the source is connected as the last item in sequence and to break a connection so that the source is removed as the first item in sequence. In this way, conducting wires and devices used to make and break the connection are deenergized during almost the entire procedure. Since these wires and devices must be handled during the procedure, the proposed requirement would reduce the chance for an electrical accident.

Taken from ANSI C2–1984, Section 42012, proposed § 1910.269(1)(5) would prohibit the wearing of conductive articles by employees working near exposed live parts of equipment if these articles would increase the hazards associated with accidental contact with the live parts. This requirement is not intended to preclude workers from wearing metal rings or watch bands if the work being performed already exposes them to electric shock hazards, and the wearing of metal would not increase the hazards. (For example, for work performed on an overhead line, the wearing of a ring does not increase the likelihood that an employee would contact the line, nor would it increase the severity of the injury should contact occur.) However, this requirement would protect employees working on energized circuits with small clearances and high current capacities (such as some battery-supplied circuits) from severe burn hazards to which they would not otherwise be exposed. The proposal would also protect workers who are only minimally exposed to shock hazards from being injured as a result of a dangling chain's making contact with a energized part.

In a matter related to the clothing worn by electric utility workers, it has come to OSHA's attention that certain clothing fabrics are easily ignited and can pose severe burn hazards. Since qualified employees are commonly exposed to electric arcs, it has been suggested that clothing made of these materials be prohibited for exposed employees. Additionally, American Society for Testing and Materials Committee F–18 on Electrical Protective Equipment for Workers is exploring possible standards for application to clothing. However, since no standards currently exist, OSHA is requesting public comment on the desirability of adopting requirements in this area and on the costs and benefits of any suggested provisions.

To protect employees from contacting energized parts, paragraph (1)(6) of proposed § 1910.269 would require fuses for circuits over 300 volts to be installed and removed using insulated tools or gloves. Additionally, employees installing expulsion-type fuses would be required to wear eye protection and would have to stand clear of the fuse's exhaust path. This requirement has been taken from ANSI C2–1984, Section 4200.

Paragraph (1)(7) explains that covered conductors are treated under the proposal as uninsulated. (See the definition of "covered conductor" in proposed § 1910.269(x).) The covering on this type of wire protects the conductor from the weather but does not provide adequate insulating value.

Since ungrounded metal frames of equipment can become energized, paragraph (1)(8) of proposed § 1910.269 would require the testing of these metal parts for voltage before they can be treated as deenergized.

Paragraph (m)

Paragraph (m) of proposed § 1910.269 addresses the deenergizing of electric transmission and distribution lines and equipment for the protection of employees. Because paragraph (m) would cover this area, the general requirements for hazardous energy control in paragraph (d) of proposed § 1910.269 would not apply to the disconnection of transmission and distribution lines and equipment from sources of electrical energy. In addition to setting forth the application of proposed § 1910.269(m), paragraph (m)(1) explains that conductors and equipment that have not been deenergized under the procedures of either paragraph (d) or (m) of proposed § 1910.269 would have to be treated as energized. Therefore, there are no gaps in the coverage of these two paragraphs.

Proposed § 1910.269(m)(2) outlines how the individual provisions in paragraph (m)(3) would apply under various conditions. The entire paragraph (m)(3) would apply to situations in which the employee must depend on others for deenergizing the circuits or in which the employee must obtain authorization to perform the task himself of herself. All of paragraph

(m)(3) would also apply if a single employee, other than the system operator, is in complete control of the lines or equipment and of their means of disconnection. In this case, the employee in charge would be required to take the place of the system operator, as necessary. (The system operator is a qualified person, commonly located in a control room, who operates the system or its parts.)

If an employee is working alone and if the means of disconnection are visible to the employee, the only requirements of paragraph (m)(3) which would apply would be those directly pertaining to the deenergizing and reenergizing of lines and equipment. Unnecessary provisions for tagging and for communication with others would not apply.

Under any of the preceding scenarios, disconnecting means that are accessible to people not under the employer's control would be required to be rendered inoperable. For example, a switch handle mounted at the bottom of a utility pole that is not on the employer's premises would have to be locked in the open position while the overhead line was deenergized. This requirement would prevent a member of the general public from closing the switch.

Paragraph (m)(3) of proposed § 1910.269 sets forth the exact procedure which would have to be followed in the order presented in the rule. Except as noted, the proposed rules are consistent with existing § 1926.950(d)(1), although the language has been taken in large part from ANSI C2–1984, Section 423. OSHA has attempted to simplify the language of the consensus standard and to write the requirements in performance-oriented terms whenever possible.

Paragraph (m)(3)(i), the first requirement, proposes that the system operator be requested to deenergize a particular section of line or equipment. In order for control to be maintained over authority, a single designated employee would be assigned this task. This designated employee thus becomes the employee in charge and is responsible for the clearance for work.

The second step (paragraph (m)(3)(ii)) would be to open all switches through which electrical energy could flow to the section of line or equipment. Also, the switches would be required to be tagged to indicate that employees are at work. This paragraph would ensure that the lines are disconnected from their sources of supply and would protect against the accidental reclosing of the switches.

Paragraph (m)(3)(iii) would also require the tagging of automatically and remotely controlled switches. An automatically or remotely control switch would also have to be rendered inoperable if the design of the switch allows for it to be made inoperable. This provision would also protect employees from the accidental operation of switches. OSHA requests public comment on whether it is appropriate to require all new and replacement switches that are to be automatically or remotely controlled to be designed so that they could be rendered inoperable and on whether it is feasible for such switches to be so designed.

Paragraph (m)(3)(iv) proposes that tags prohibit operation of the switches to which they are attached. They would also be required to state that employees are at work.

After the previous four requirements have been met and after the employee in charge of the work has been given a clearance by the system operator, the employee in charge would be required, by paragraph (m)(3)(v), to test the lines or equipment. This test would ensure that the lines had in fact been deenergized and would prevent accidents resulting from someone's opening the wrong disconnect. Existing § 1926.950(d)(1)(iii) permits visual inspection in lieu of tests. However, because of the increasing amount of cogeneration (electric generation of power by customers of the utility), which can unknowingly supply lines with electricity, a visual determination of the state of energization is not always accurate. OSHA believes it is important that lines and equipment on which work is to be performed always be tested for an energized condition, so that employees will not falsely believe that the line or equipment is dead.

Paragraph (m)(3)(vi) proposes the installation of the protective grounds required by proposed § 1910.269(n) at this point in the sequence of events. Since the lines or equipment have been deenergized and tested in accordance with the previous provisions, it is now safe to install a protective ground.

After the six previous rules have been followed, paragraph (m)(3)(vii) would permit the lines or equipment to be treated as deenergized.

Paragraph (m)(3)(viii) proposes that each independent crew separately follow the steps outlined in § 1910.269(m)(3) to ensure that a group of workers does not make faulty assumptions about what steps have been or will be taken by another group to deenergize lines or equipment.

In some cases, as when an employee in charge has to leave the job because of illness, it may be necessary to transfer a clearance. Under such conditions, paragraph (m)(3)(ix) would require the system operator and the employees in the crew to be informed of the transfer. The new employee in charge would then be responsible for the clearance. It is important that only one employee at a time be responsible for any clearance; otherwise, independent action by any worker could endanger the entire crew.

Once work is completed, the clearance will have to be released so that the lines or equipment can be reenergized. Paragraph (m)(3)(x) covers this procedure. To ensure that it is safe to release the clearance, the employee in charge must: (1) Notify workers in the crew of the release, (2) determine that they are clear of the lines and equipment, (3) determine that grounds have been removed, and (4) notify the system operator that the clearance is to be released.

According to paragraph (m)(3)(xi), action may be taken to reenergize the lines or equipment only after grounds and tags have been removed, after all clearances have been released, and after all employees are in the clear. This protects employees from the possibility that the line or equipment could be reenergized while employees are still at work.

Paragraph (m)(3)(xii) proposes that the employee releasing the clearance be the one who was responsible for requesting it. This rule would ensure that any one clearance is always under the control of a single employee.

Paragraph (n)

Paragraph (n) of proposed § 1910.269 addresses protective grounding. As noted in paragraph (n)(1), the entire paragraph (n) would apply to the grounding of deenergized transmission and distribution lines and equipment for the purpose of protecting employees. Sometimes, normally energized lines and equipment which have been deenergized to permit employees to work become accidentally energized by contact with another energized circuit or by failure of the clearance system outlined in § 1910.269(m). Grounding is used to protect employees from injury should such reenergizing occur. Grounding also provides protection against static charges on a line and induced voltages. (These static and induced voltages can be high enough to endanger employees, either directly from electric shock or indirectly from involuntary reaction.)

Additionally, paragraph (n)(1) indicates that paragraph (n)(4) would apply both to the grounding of transmission and distribution lines and equipment and to the protective

grounding of nonelectrical equipment such as aerial lift trucks. Under normal conditions, such equipment would not be connected to a source of electric energy. However, to protect employees in case of accidental contact of the equipment with live parts, protective grounding would be required elsewhere in the proposal (in § 1910.269(q)(3)(x), for example); and, to ensure the adequacy of this grounding, the provisions of paragraph (n)(4) would have to be followed.

The general requirement proposed in paragraph (n)(2) states the conditions under which lines and equipment must be grounded. Basically, in order for lines or equipment to be treated as deenergized, they must be deenergized under paragraph (m) of proposed § 1910.269 and grounded. Grounding could be omitted only if the installation of a ground is impracticable or if the conditions resulting from the installation of a ground would introduce more serious hazards than work without grounds. Since it is expected that conditions warranting the absence of protective grounds would be rare, OSHA invites public comment on what conditions are appropriate for this exception and on whether the standard should list the specific types of conditions for which grounding would not be required.

If grounds are not installed and the lines and equipment are to be treated as deenergized, however, additional precautions would have to be observed. Obviously, the lines and equipment would still have to be deenergized by the procedures of proposed § 1910.269(m). Also, there may be no possibility of contact with another source of voltage, and the hazard of induced voltage may not be present. Since these precautions do not protect against the possible reenergizing of the lines or equipment, the lack of grounding would be permitted only in very limited circumstances, as mentioned in the previous paragraph.

Paragraph (n)(3) of proposed § 1910.269 would require protective grounds to be installed at the work location. Under most fault conditions, this grounding location minimizes the voltage to which the worker would be exposed. However, if it is not feasible to provide a ground where the employee is working, grounds would be required on both sides of the work location. This type of situation could arise when an employee is working from an aerial lift between two structures supporting a transmission or distribution line. Providing a personal ground at the lift may not be feasible; and, in such an instance, grounding the line at each adjacent structure would nearly always provide the worker with adequate protection.

Paragraph (n)(4) proposes requirements which grounding equipment must meet. So that the protective grounding equipment does not fail, it would be required to have an ampacity high enough so that the fault current would be carried for the amount of time necessary to allow protective devices to interrupt the circuit. The impedance of the grounding equipment would be required to be low enough to ensure the quick operation of the protective devices. Although the grounding equipment alone cannot prevent the worker from receiving a perhaps lethal electric shock, these proposed rules would help ensure the prompt clearing of the circuit supplying voltage to the point where the employee is working. The grounding equipment would limit the duration and reduce the severity of any electric shock, but would not itself prevent shock from occurring. For this reason, the proposal does not recognize the use of protective grounds as the sole method of protection against electric shock. Other methods of protection, such as insulation or procedures for the deenergization of lines and equipment, are used in conjunction with protective grounding to protect employees adequately.

Paragraph (n)(5) of proposed § 1910.269 would require lines and equipment that are to be grounded to be tested for voltage. If a previously installed ground is evident, no test need be conducted. These proposed requirements prevent energized equipment from being grounded, which could result in injury to the employee installing the ground.

Paragraphs (n)(6) and (n)(7) set forth the proposed procedure for installing and removing grounds. To protect employees in the event that the "deenergized" equipment to be grounded is or becomes energized, the proposal would require the "equipment end" of the grounding device to be applied last and removed first and that insulating equipment be used for both procedures in order to protect workers.

With certain underground cable installations, a fault at one location along the cable can create a substantial potential difference between the earth at that location and the earth at other locations. Under normal conditions, this is not a hazard. However, if an employee is in contact with a remote ground (by being in contact with a conductor that is grounded at a remote station), he or she can be exposed to the difference in potential (because he or she is also in contact with the local ground). To protect employees in such situations, proposed paragraph (n)(8) would prohibit grounding cables at remote locations if a hazardous potential transfer could occur under fault conditions.

Proposed paragraph (n)(9) would permit the removal of grounds for test purposes. To protect workers, though, the previously grounded lines and equipment would have to be treated as energized while they remain ungrounded.

Paragraph (o)

Paragraph (o) of proposed § 1910.269 would set forth safety practice requirements covering electrical hazards arising out of the special testing of lines and equipment (namely, in-service and out-of-service, as well as new lines and equipment) to determine maintenance needs and fitness for service. Generally, the need to conduct tests on new and idle lines and equipment as part of normal checkout procedures, in addition to maintenance evaluation, is specified in the National Electrical Safety Code (ANSI C2–1984). Basically, as stated in paragraph (o)(1), the proposed rules would apply only to testing involving interim measurements utilizing high voltage, high power, or combinations of both, as opposed to testing involving continuous measurements as in routine metering, relaying and normal line work.

For the purposes of the proposed requirements, high-voltage testing is assumed to involve voltage sources having sufficient energy to cause injury and with magnitudes generally in excess of 1000 volts, nominal. High-power testing involves sources where fault currents, load currents, magnetizing currents, or line dropping currents are used for testing, either at the rated voltage of the equipment under test or at lower voltages. Paragraph (o) would cover such testing in laboratories, in shops and substations under the exclusive control of the electric utility, and in the field and on lines at sites also as part of the utility operation.

Examples of typical special tests in which either high-voltage sources or high-power sources are used as part of an electric utility's operation and maintenance activity include cable-fault locating, large capacitive load tests, high current fault-closure tests, insulation resistance and leakage tests, direct-current proof tests, and other tests requiring direct connection to power lines.

Excluded from the scope statement of proposed paragraph (o)(1) are routine

inspection and maintenance measurements made by qualified employees in accordance with established work practice rules where the hazards usually associated with the use of intrinsic high-voltage or high-power sources require only those normal precautions peculiar to such periodic work. Two typical examples of such excluded test work procedures would be "phasing-out" testing and testing for a "no voltage" condition.

Paragraph (o)(2)(i) of proposed § 1910.269 explains that employers would be required to establish additional work practices governing employees engaged in certain testing activities. These work practices are intended to delineate precautions that employees must observe to be protected from the hazards of high-voltage or high-power testing. For example, if high-voltage sources are used in the testing, employees would be required to follow established safety practices to protect against such typical hazards as inadvertent arcing or voltage overstress destruction, as well as accidental contact with objects which have become residually charged by induced voltage from electric field exposure. If power sources are used in the testing, employees would be required to follow established safety practices to protect against such typical hazards as ground voltage rise as well as exposure to excessive electromagnetically-caused physical forces associated with the passage of heavy current.

These practices would apply to work performed at both permanent and temporary test areas, i.e., areas permanently located in the controlled environment of a laboratory or shop and in areas temporarily located in the non-controlled field environment. As a minimum, the safety work practices would be required to cover the following types of test associated activities:

(1) Guarding the test area to prevent inadvertent contact with energized parts,

(2) Safe grounding practices to be observed,

(3) Precautions to be taken in the use of control and measuring circuits, and

(4) Periodic checks of field test areas.

Paragraph (o)(2)(ii) complements the general requirement regarding the use of safe work practices in test areas by proposing that all employees involved in this type of work be trained in these safety test practices, and further proposing that a periodic review of these practices by the employees be conducted from time to time as a means of providing reemphasis and updating.

Although specific work practices used in test areas are generally unique to the particular test being conducted, three basic elements affecting safety are commonly found to some degree at all test sites: guarding, grounding, and the safe utilization of control and measuring circuits. By considering safe work practices in these three categories, OSHA has attempted to achieve a performance-oriented standard applicable to utility work involving testing and test facilities.

OSHA believes that guarding can best be achieved when it is provided both around and within test areas. By controlling access to all parts, which are likely to become energized by either direct or inductive coupling, accidental contact by employees will be averted. Paragraph (o)(3)(i) proposes the guarding of permanent test areas by having them completely enclosed by walls or some other type of physical barrier. In the case of field testing, paragraph (o)(3)(ii) attempts to achieve a level of safety for temporary test sites comparable to that achieved in laboratory test areas. For these areas, a barricade of tapes and cones or observation by an attendant would be acceptable methods of guarding.

Since the effectiveness of the guarding means employed can be severely compromised by failing to remove them when they are not required, frequent safety checks must be made to monitor its use. For example, leaving barriers in place for a week at a time when testing is performed only an hour or two per day is likely to result in disregard for the barriers.

Within test areas, whether temporary or permanent, additional safety can be achieved by observing guarding practices that control access to test areas. Paragraph (o)(3)(iii) would therefore require that such guarding be provided if the test equipment or apparatus under test is likely to become energized as part of the testing by either direct or inductive coupling. A combination of guards and barriers, preferably interlocked, is intended to provide protection to all employees in the vicinity.

Suitable grounding is another important work practice that can be employed for the protection of personnel from the hazards of high-voltage or high-power testing. If high currents are intentionally employed in the testing, an isolated ground-return conductor, adequate for the service, would be required so that no intentional passage of heavy current, with its attendant voltage rise, is permitted in the ground grid or in the earth. Another safety consideration involving grounding is that all conductive parts accessible to the test operator during the time that the equipment is operating at high voltage shall be maintained at ground potential, except portions of the equipment that are isolated from the test operator by suitable guarding.

Paragraph (o)(4)(i) would require that grounding practices be established and implemented for particular test facilities and that the basic grounding practice be to treat as energized all ungrounded terminals of test equipment or apparatus under test until reliably determined otherwise. Paragraph (o)(4)(ii) proposes that visible grounds be properly applied before work is performed on the circuit or item or apparatus under test. Paragraph (o)(4)(iii) addresses the hazards resulting from the use of inadequate ground-returns in which a voltage rise in the ground grid or in the earth can result whenever high currents are employed in the testing. Test personnel who may be exposed to such potentials would be required to be protected by establishing an essentially equipotential safe area by employing an isolated ground-return system. Another grounding situation is recognized by paragraph (o)(4)(iv) in which grounding through the power cord of test equipment may be inadequate and actually increase the hazard to test operators. Normally, good practice requires the use of an equipment grounding conductor in the power cord to connect the equipment to a ground connection in the power receptacle. However, in some circumstances, this practice can prevent satisfactory measurements, or current induced in the grounding conductor can cause a hazard to personnel. If these conditions exist, the use of the equipment ground conductor is not mandatory and paragraph (o)(4)(iv) requires that an equivalent safety ground be provided. Paragraph (o)(4)(v) would further require that a ground be placed on the high-voltage terminal and any other exposed terminals when the test area is entered after deenergizing. Finally, in the case of high capacitance equipment or apparatus, before a direct ground could be applied, the initial grounding discharge would be required to be accomplished through a resistor having an adequate energy rating.

Paragraph (o)(4)(vi) recognizes the hazards associated with field testing in which test trailers or vans are used. In these cases, consideration must always be given to the possibility of voltage gradients developing in the earth during impulse, short-circuit, inrush, or oscillatory conditions. Such voltages may appear between the feet of an observer, or between his or her body and a grounded object, and are usually

referred to as "step" and "touch" potentials. Thus, in addition to requiring the chassis of such vehicles to be grounded, paragraph (o)(4)(iv) provides for a performance-oriented approach by requiring that protection be provided against hazardous touch potentials by bonding, by insulation, or by isolation. The protection provided by each of these methods is described in the following examples:

(1) Protection by bonding can be effected by providing, around the vehicle, an area covered by a metallic mat or mesh of substantial cross-section and low impedance which is bonded to the vehicle at several points and is also bonded to an adequate number of driven ground rods or, where available, to an adequate number of accessible points on the station ground grid. All bonding conductors should be of sufficient electrical size to keep the voltage developed during maximum anticipated current tests at a safe value. The mat should be of a size which precludes simultaneous contact with the vehicle and with the earth or with metallic structures not adequately bonded to the mat.

(2) Protection by insulation can be accomplished, for example, by providing around the vehicle an area of dry wooden planks covered with rubber insulating blankets. The physical extent of the insulated area should be sufficient to prevent simultaneous contact with the vehicle, or the ground lead of the vehicle, and with the earth or with metallic structures in the vicinity.

(3) Protection by isolation can be implemented by providing effective means to exclude personnel from any area where simultaneous contact can be made with the vehicle (or conductive parts electrically connected to the vehicle) and with other conductive materials. A combination of barriers together with effective, preferably interlocked, restraints to prevent the inadvertent exit from the vehicle during the testing may be employed.

Finally, a third category of safe work practices applicable to employees performing testing work, which complements the first two safety work practices of guarding and grounding, involves work practices associated with the installation of control and measurement circuits utilized at test facilities. Practices necessary for protection of personnel and equipment from the hazards of the high-voltage or high-power testing must be observed for every test where special signal-gathering equipment is used, i.e., meters, oscilloscopes, and other special instruments. In addition, special settings of protective relays and the re-examination of backup schemes may be necessary to ensure an adequate level of safety during the tests or to minimize the effects of the testing on other parts of the system under test. As a consequence, paragraphs (o)(5)(i) through (o)(5)(iii) address the principal safe work practices involving control and measuring circuit utilization within the test area. Generally control and measuring circuit wiring should remain within the test area. If this is not possible, however, paragraph (o)(5)(i) covers requirements to minimize hazards should it become necessary to have the test wiring routed outside the test area. Paragraph (o)(5)(ii) covers the avoidance of possible hazards arising from inadvertent contact with energized accessible terminals or parts of meters and other test instruments. Work practices involving the proper routing and connection of the temporary wiring to protect against damage are covered in paragraph (o)(5)(iii). This paragraph would also require the safety work practice of keeping separate, to the maximum extent possible, the various functional wiring used for the test set-up to minimize the coupling of hazardous voltages into the control and measuring circuits. A final work practice requirement for employee safety is covered in paragraph (o)(5)(iv) which would require, if employees are present within the guarded test area during the test, a test observer who can, in cases of emergency, immediately deenergize all control and measuring test circuits for safety purposes.

Since the environment in which field tests are conducted differs in important respects from that of the laboratory tests, extra care must be taken to ensure appropriate levels of safety. Permanent fences and gates for isolating the field test area are not usually provided, nor is there permanent conduit for the instrumentation and control wiring. As a further hazard, there may be other sources of high-voltage electric energy in the vicinity in addition to the source of test voltage.

It is not always possible in the field to prevent ingress of persons into a test area physically, as is accomplished by the fences and interlocked gates of the laboratory environment. Consequently, readily recognizable means are required to actively discourage such ingress.

Before test potential or current is applied to a test area, the test operator in charge would be required to ensure that all necessary barriers are in place.

As a consequence of these safety considerations, proposed paragraph (o)(6)(i) calls for a safety check to be made at temporary or field test areas at the beginning of each group of continuous tests. Paragraph (o)(6)(ii) would require that, as a minimum for the safety check, the person responsible for the testing verify, before the initiation of a continuous period of testing, the status of a general group of safety conditions.

Paragraph (p)

Requirements for mechanical equipment are proposed in § 1910.269(p).

Paragraph (p)(1) proposes general requirements for mechanical equipment used in the generation, transmission, or distribution of electric power. Paragraph (p)(1)(i) would require that the critical safety components of mechanical elevating and rotating equipment be inspected on each shift during which such equipment is used.

Paragraph (p)(1)(ii) would require a reverse signal alarm or a designated employee to signal when it is safe to back up the vehicle for vehicles operated under certain conditions exposing an employee to hazards. This provision is based on existing §§ 1926.601(b)(4) and 1926.602(a)(9)(ii), which apply to construction. Because electric utilities use the same equipment for maintenance work and for construction and because the type of work being performed is similar in both situations, OSHA believes it is appropriate to make the requirements applying to this equipment the same whether maintenance or construction work is being performed. As is the case in the construction standards, the proposed requirement would only apply to off-highway jobsites (not open to public traffic). The Department of Transportation has jurisdiction over the operation of vehicles on public roads. (It should be noted that the provision would apply to highway vehicles used at off-highway jobsites.)

Paragraph (p)(1)(iii) would prohibit the operator of an electric line truck from leaving his or her position at the controls while a load is suspended if doing so might endanger any employee, including the operator.

Paragraph (p)(1)(iv) would require roll-over protective structures for certain types of mechanical equipment. This equipment is frequently used by electric utilities during construction work, and Subpart W of Part 1926 requires it to have such protection. The proposal would extend the protection afforded by the construction standards to operations that do not involve construction work. The roll-over protective structures would be required to conform to Subpart W of Part 1926.

Paragraph (p)(2) proposes requirements for outriggers. Paragraph (p)(2)(i) would require that vehicular

equipment which is provided with outriggers be operated with the outriggers extended and firmly set. It would also require that the outriggers not be extended or retracted outside the clear view of the operator unless all employees are outside the range of possible equipment motion.

Paragraph (p)(2)(ii) applies where the work area or terrain precludes the use of outriggers and would limit the operation of the equipment only within the maximum load ratings as specified by the manufacturer for the particular configuration without outriggers.

Paragraph (p)(3) would limit the applied load for lifting equipment to loads within its maximum load rating for the conditions under which it is actually being used.

Even in electric-utility operations, contact with live parts through mechanical equipment causes many fatalities each year. Typical industry practice and existing rules in Subpart V of the Construction Standards require aerial lifts and truck-mounted booms to be kept away from exposed energized lines and equipment distances greater than or equal to those in proposed Table R–6. However, some contact with the energized parts does occur during the hundreds of thousands of operations carried out near overhead power lines each year. If the equipment operator is distracted briefly or if the distances involved or the speed of the equipment towards the line is misjudged, contact with the lines is the expected result, especially when the clearance distances are relatively small. (It should be noted that many accidents of this type occur in general industry even though a 10-foot clearance is required. Increasing the clearance distances would probably not reduce the number of accidents.) Because these types of contacts cannot be totally avoided, OSHA believes that additional requirements are necessary for operating mechanized devices near exposed energized lines. Paragraph (p)(4) of proposed § 1910.269 addresses this problem.

Paragraph (p)(4)(i) would require that the clearance distances in Table R–6 be maintained between the equipment and the live parts while equipment is being operated near exposed energized lines or equipment. This is consistent with current practices. If the clearance cannot be accurately determined by the operator, an extra person would be required, by paragraph (p)(4)(ii), to observe the operation and give warnings when the specified clearance distance is approached. In addition, if it is possible during operation for the equipment to come closer to the live parts than this clearance, one of two alternative protective measures would also have to be taken under proposed paragraph (p)(4)(iii). The first alternative is for the mechanical equipment and any attached load to be treated as live parts. The second alternative is for the equipment to be insulated for the voltage involved. Under this alternative, the mechanical equipment would have to be positioned so that uninsulated portions of the equipment could not come within the specified clearance distance of the line. The proposal would thus protect against contact with the energized parts and would protect employees from electric shock in case contact was made.

In the development of paragraph (p)(4), OSHA considered other methods of protecting employees from accidental contact with exposed energized lines. For example, OSHA considered allowing the mechanical equipment to be grounded as an additional option to the two alternatives proposed in paragraph (p)(4)(iii). However, grounding does not provide sufficient protection for employees, because if contact is made with a line of common distribution voltage, the equipment will still rise to a hazardous voltage with respect to earth only a few feet from the grounding point. OSHA is requesting comments and suggestions on the proposed rule and any additional methods of protecting employees from contact with energized parts through mechanical equipment.

Paragraph (q)

Paragraph (q) of proposed § 1910.269 would apply to work involving overhead lines or equipment. The types of work performed on overhead lines and addressed by this paragraph include the installation and removal of overhead lines, live-line bare-hand work, and work on towers and structures. While performing this type of work, employees are exposed to the common hazards of falls and electric shock.

Paragraph (q)(1)(i) would require the employer to determine that elevated structures such as poles and towers are of adequate strength to withstand the stresses which will be imposed by the work to be performed. For example, if the work involves removing and reinstalling an existing line on a utility pole, the pole will be subjected to the weight of the employee (a vertical force) and to the release and replacement of the force imposed by the overhead line (a vertical and possibly a horizontal force). The additional stress involved may cause the pole to break, particularly if the pole has rotted at its base. If the pole or structure could not withstand the loads to be imposed, it would be required to be reinforced so that failure does not occur. This rule would protect employees from falling to the ground upon failure of the pole or other elevated structure.

When poles are handled near overhead lines, it is necessary to protect the pole from contact with the lines. Paragraph (q)(1)(ii) would require this and would also require employees handling the poles to be insulated from the pole. These requirements protect the employees from hazards caused by falling power lines and by contact of the pole (which could be of wood, metal, or reinforced concrete) with the line. These requirements are in addition to the requirements in paragraph (p)(4) for operations involving mechanical equipment.

To protect employees from falling into holes into which poles are to be placed, paragraph (q)(1)(iii) proposes that the holes be guarded by barriers or attended by employees.

The provisions contained in proposed § 1910.269(q)(2) have been taken, in large part, from existing § 1926.955(c), on stringing and removing lines, and § 1926.955(d), on stringing adjacent to energized lines. However, the proposal has combined these provisions into a single paragraph (q)(2).

Paragraph (q)(2)(i) would require precautions to be taken to prevent the line being installed from contacting existing energized lines. Although specific measures are not listed in the proposal, common practice includes the use of the following techniques: stringing conductors by means of the tension stringing method (which keeps the conductors off the gound and clear of energized circuits) and the use of rope nets and guards (which physically prevent one line from contacting another). These precautions, or equivalent measures, are necessary to protect employees against electric shock and against the effects of equipment damage resulting from accidental contact of the line being installed with energized parts.

Even though the precautions taken under paragraph (q)(2)(i) minimize the possibility of accidental contact, there is still a significant risk that the line being installed could make contact with energized lines. Paragraph (q)(2)(i)(A) would require the line being installed, plus any connected equipment, to be treated as energized if any of several listed accident situations could energize the line being installed. This would ensure that, in the event of contact with other energized lines, these workers would be handling the equipment (which would now be energized as a result) only through insulating devices.

Paragraph (q)(2)(i)(B) would allow employees working aloft to be protected by grounding the line being installed. Unlike employees on the ground, those working on an elevated structure or in an aerial lift would not be exposed to a hazardous voltage gradient upon energization of the conductor being strung as long as the conductor was grounded at the work location.

Paragraph (q)(2)(ii) of proposed § 1910.269 would require the disabling of the automatic-reclosing feature of the devices protecting any circuit of more than 600 volts which would be passed over by the conductors being installed. If it were not made inoperative, this feature would cause the circuit protective devices to reenergize the circuit after they had tripped, exposing the employees to additional or more severe injury.

Paragraph (q)(2)(iii) proposes rules protecting workers from the hazard of voltage induced on lines being installed near (and usually parallel to) other energized lines. These rules, which provide supplemental provisions on grounding, would be in addition to those elsewhere in the proposal. In general, when there exists a hazard because of induced voltage on overhead lines, the lines being installed must be grounded to minimize the voltage and to protect employees handling the lines from electric shock.

OSHA has not provided guidelines for determining whether or not a hazard exists due to induced voltage. The hazard depends not only on the voltage of the existing line, but also on the length of the line being installed and the distance between the existing line and the new one. OSHA requests comments on what guidelines can be used to determine if an induced voltage presents a hazard to employees.

Paragraph (q)(2)(iv) proposes that reel handling equipment be in safe operating condition and be leveled and aligned. Proper alignment of the stringing machines will help prevent failure of the equipment, conductors, and supporting structures, which could result in injury to workers.

Prevention of the failure of the line pulling equipment and accessories is also the purpose of proposed paragraphs (q)(2) (v), (vi), and (vii). These provisions respectively would require the operation to be performed within the load limits of the equipment, would require the repair or replacement of defective apparatus, and would prohibit the use of conductor grips not specifically designed for use in pulling operations.

When the tension stringing method is used, the pulling rig (which takes up the pulling rope and thereby pulls the conductors into place) is separated from the reel stands and tensioner (which pay out the conductors and apply tension to them) by one or more spans (the distance between the structures supporting the conductors). In an emergency, the pulling equipment operator may have to shut down the operation.

Paragraph (q)(2)(viii) of proposed § 1910.269 would require communication to be maintained between the reel tender and the pulling rig operator, so that in case of emergency at the conductor supply end, the pulling rig operator can shut the equipment down before injury-causing damage occurs. This paragraph would also prohibit the operation of the pulling rig under unsafe conditions.

Paragraph (q)(2)(ix) would prohibit employees from unnecessarily working directly beneath overhead operations or on the cross arm to minimize exposure of employees to injury resulting from the failure of equipment, conductors, or supporting structures during pulling operations.

Under certain conditions, work must be performed on transmission and distribution lines while they remain energized. Sometimes, this work is accomplished using rubber insulating equipment or live-line tools. However, this equipment has voltage and other limitations which make it impossible to insulate the employee performing work on live lines under all conditions. In such cases, usually on medium- and high-voltage transmission lines, the work is performed using the live-line bare-hand technique. If work is to be performed "bare handed," the employee works from an insulated aerial platform and is electrically bonded to the energized line. Since there is essentially no potential difference across the worker's body, he or she is protected from electric shock. Proposed paragraph (q)(3) addresses the live-line bare-hand technique.

Paragraph (q)(3)(i) proposes that employees using or supervising the use of the live-line bare-hand method on energized lines be trained in the use of the technique. Periodic retraining, as necessary, would also be required. Without this training, employees would not be able to perform the highly specialized work safely.

Before work can be started, the voltage of the lines on which work is to be performed must be known. This voltage determines the clearance distances and the types of equipment which can be used. If the voltage is higher than expected, the clearances will be too small and the equipment may not be safe for use. Therefore, paragraph (q)(3)(ii) would require that a determination be made of the voltage of the circuit, of the clearance distances involved, and of the voltage limitations of equipment to be used.

Paragraph (q)(3)(iii) proposes that insulated tools and equipment be designed, tested, and intended for live-line bare-hand work and that they be kept clean and dry. This requirement is important to ensure that equipment does not fail under constant contact with high voltage sources.

Paragraph (q)(3)(iv) would require the automatic-reclosing feature of circuit protective devices to be made inoperative. In case of a fault at the work site, it is important for the circuit to be deenergized as quickly as possible and for it to remain deenergized once the protective devices have opened the circuit. This would prevent any possible injuries from becoming more severe.

Sometimes the weather makes live-line bare-hand work unsafe. For example, lightning strikes on lines being worked can create severe transient voltages, against which the proposed clearance distances may not provide complete protection. Additionally, the wind can reduce the clearance below acceptable values. To provide protection against environmental conditions which can increase the hazards by an unacceptable degree, paragraph (q)(3)(v) would prohibit live-line bare-hand work in the midst of a thunderstorm or under any conditions which reduce the clearance distances below required values. If insulating guards are provided to prevent hazardous approach to other energized parts and to ground, then work may be performed under conditions reducing the clearance distances.

Paragraph (q)(3)(vi) would require the use of a conductive device, usually in the form of a conductive bucket liner, which creates an area of equipotential in which the employee can safely work. The employee would be bonded to this device by means of conductive shoes or leg clips or by another effective method. Additionally, if necessary to protect employees further, electrostatic shielding would be required.

To avoid receiving a shock caused by charging current, the employee must bond the conductive bucket liner (or other conductive device) to the energized conductor before he or she touches the conductor. Typically, a hot stick is used to bring a bonding jumper (already connected to the conductive bucket liner) into contact with the live line. This connection brings the equipotential area surounding the

employee to the same voltage as that of the line. Paragraph (q)(3)(vii) would require the bonding of the conductive device before any employee contacts the energized conductor and would require this connection to be maintained until work is completed.

Paragraph (q)(3)(viii) would require aerial lifts used for live-line bare-hand work to be equipped with upper controls that are within reach of any employee in the bucket and with lower controls which permit override operation at base of the boom. Upper controls are necessary so that employees in the bucket can exactly control the lift's direction and speed of approach to the live line. Control by workers on the ground responding to directions from those in the bucket could lead to contact by an employee in the lift with the energized conductor before the bonding jumper is in place. Controls are needed at ground level so that employees in the lift who might be disabled as a result of an accident or illness could be promptly lowered and assisted.

For this reason, paragraph (q)(3)(ix) proposes that ground level controls not be operated except in case of emergency. OSHA requests comments on whether there are operations involving live-line bare-hand work that require the use of the lower controls in lieu of the ones in the lift.

Paragraph (q)(3)(x) would require aerial lift controls to be checked to ensure that they are in proper working order.

To protect employees on the ground from the electric shock that would be received upon touching the truck supporting the aerial lift, paragraph (q)(3)(xi) would require the truck to be grounded or treated as energized.

Aerial lifts that are used in live-line bare-hand work are exposed to the full line-to-ground voltage of the circuit for the duration of the job. To ensure that the insulating value of the lift being used is high enough to protect employees, paragraph (q)(3)(xii) would require a boom-current test to be made before work is started each day. The test would also be required when a higher voltage is encountered and when conditions change to a degree that warrants retesting the equipment.

Under the proposal, the test would consist of placing the bucket in contact with a source of voltage equal to that being encountered during the job and keeping it there for at least 3 minutes. To provide employees with a level of protection equivalent to that provided by American National Standard for Vehicle-Mounted Elevating and Rotating Aerial Devices (ANSI A92.2–1979), proposed § 1910.269(q)(3)(xii) would permit a leakage current of up to 1 microampere per kilovolt of nominal phase-to-*ground* voltage. In contrast, the corresponding provisions in Subpart V of Part 1926 (§ 1926.955(e)(11)) and in the draft submitted to OSHA by EEI and IBEW allow up to 1 microampere of current for every kilovolt of phase-to-*phase* voltage. (For a three-phase, Y-connected system, the phase-to-phase voltage equals 1.73 times the phase-to-ground voltage.) Because of the inconsistency between the proposal and OSHA's existing standard, the Agency requests comments on the appropriateness of the leakage current level permitted by the proposal.

Paragraph (q)(3)(xii) would require the suspension of related work activity any time (not only during tests) a malfunction of the equipment is evident. This requirement is intended to prevent the failure of insulated aerial devices during use.

Paragraphs (q)(3)(xiii), (q)(3)(xiv), and (q)(3)(xv) of proposed § 1910.269 would require the clearance distances specified in Table R–8 to be maintained from grounded objects and from objects at a potential different from that at which the bucket is energized. Under paragraph (q)(3)(xiii), the clearance distances in Table R–8 would not apply if the objects are protected by insulating guards. The distances listed in this table are basically the same as those in Table V–2 in Subpart V of the Construction Standards. It should be noted that the phase-to-ground clearances are the same as those proposed in Table R–6. Both the phase-to-ground and phase-to-phase clearances are based on equations which provide sufficient distance for arc-over protection plus a constant amount for inadvertent movement.

If work is being performed on the highest three voltages listed, the footnote to Table V–2 allows the clearance distance for a phase-to-phase exposure to be reduced to the smallest distance between the phase to which the employee is bonded and a grounded surface. However, this distance is engineered into the system based on a phase-to-ground voltage; a phase-to-phase voltage should result in a clearance higher by a factor of 1.73, at least, to account for the higher voltage involved. Since the clearances permitted by the footnote to Table V–2 are too small for phase-to-phase exposures, OSHA has proposed to increase the minimum distances under the footnote for phase-to-phase exposures by a factor of 1.73. OSHA invites comments on the appropriateness of the proposed footnote and requests suggestions alternative approaches. (For additional discussion of the distances in the proposed tables and the rationale for proposing them, see the explanation of proposed § 1910.269(l).)

Paragraph (q)(3)(xvi) would prohibit the use of hand lines between the bucket and boom and between the bucket and ground. Such use of lines could set up a potential difference across the employee in the bucket. If a non-conductive line is supported by the energized conductor, as permitted by the proposed paragraph, no potential difference is generated at the bucket. Unless the rope is insulated for the voltage, employees on the ground must treat it as energized.

For similar reasons, paragraph (q)(3)(xvii) would prohibit passing uninsulated equipment or materials to an employee bonded to an energized part.

Paragraph (q)(3)(xviii) would require a durable chart reflecting the clearance distances prescribed by Table R–8 to be mounted so that it would be visible to the operator of the boom. Of course, a table with clearances greater than those required would also be acceptable. Paragraph (q)(3)(xix) would require a non-conductive measuring device to be available to the employee in the lift. Compliance with these proposed provisions will assist the employee in determining the clearances required by the standard.

Paragraph (q)(4) of proposed § 1910.269 addresses the hazards associated with towers and other structures supporting overhead lines.

To protect employees on the ground from the hazards of falling objects, paragraph (q)(4)(i) would prohibit workers from standing under a tower or other structure, unless their presence is necessary to assist employees working above.

Paragraph (q)(4)(ii) relates to operations which involve lifting and positioning tower sections. The first proposed provision would require tag lines or other similar devices to be used to control tower sections being positioned. The use of tag lines protects employees from being struck by tower sections that are in motion.

Paragraph (q)(4)(iii) would require loadlines to remain in place until the load is secured so that it cannot topple and injure an employee.

Some weather conditions can make work from towers and other overhead structures more hazardous than usual. For example, icy conditions may make slips and falls much more likely, in fact even unavoidable. Under such conditions, work from towers and other structures would generally be prohibited

by proposed § 1910.269(q)(4)(iv). However, when emergency power restoration work is involved, the additional risk may be necessary for public safety, and the proposal would allow such work to be performed even in bad weather.

Paragraph (r)

Paragraph (r) of proposed § 1910.269 addresses safety considerations related to line-clearance tree trimming. As can be seen from the definition in proposed § 1910.269(x), line-clearance tree trimming is the trimming of any tree or brush that is within 10 feet (305 cm) of an electric power line. Since proposed § 1910.269 addresses hazards unique to electric utility operations, general tree trimming is not covered by this proposed paragraph. For example, tree trimming contractors performing work at a residence where there were no overhead power lines within 10 feet of any trees would not be required to follow proposed § 1910.269(r).

The requirements for this paragraph have been taken, in large part, from ANSI Z133.1–1982, *American National Standard Safety Requirements for Pruning, Trimming, Repairing, Maintaining, and Removing Trees, and for Cutting Brush.*

Paragraph (r)(1) covers the electrical hazards associated with line-clearance tree trimming. As proposed, this paragraph would not apply to qualified employees. These employees are highly trained and are adequately protected by other provisions in the proposal, including the requirements for personal protective equipment in paragraph (g) and for working on or near exposed energized parts in paragraph (1). Tree trimming workers, on the other hand, do not have such extensive training, and more stringent requirements dealing with electrical hazards are necessary and appropriate. Proposed paragraph (r)(1) sets forth such requirements.

In addressing these employees (who are not "qualified employees"), the proposal separates them into two groups: Line-clearance tree trimmers and other tree workers. The standard would allow only "line-clearance tree trimmers," as defined in paragraph (x), to perform tree trimming within 10 feet of power lines. Line-clearance tree trimmers have training in the techniques necessary to trim trees safely near overhead power lines. This training instructs these employees in methods of trimming trees so that the cut limbs will not contact the power lines. However, training in the use of electrical protective equipment is usually lacking. (For the purposes of paragraph (r), trainess working under the supervision of a qualified line-clearance tree trimmer are considered to be qualified line-clearance tree trimmers.) Other employees have received little or no instruction in the safe practices necessary for line-clearance tree trimming. The proposal treats these two groups of employees separately, taking their different degrees of training into account.

Paragraph (r)(1)(i) would require an inspection to be made of the tree on which work is to be performed to see if an electric conductor passes within 10 feet of the tree. This inspection will give an indication of whether an electrical hazard exists.

Not all employees possess the requisite knowledge and skills to enable them to work safely very close to energized electric power lines. Employees who are not line-clearance tree trimmers would be required by proposed paragraph (r)(1)(ii) to stay at least 10 feet (305 cm) from energized conductors and equipment. This distance would increase by 4 inches (10 cm) for every 10 kilovolts that the equipment is energized over 50 kilovolts. This rule would protect the worker who is not familiar with the electrical hazards involved from being electrocuted.

Paragraph (r)(1)(iii) would require that employees working on trees within 10 feet (305 cm) of exposed energized overhead conductors or equipment be line-clearance tree trimmers. This requirement would prevent employees who are not completely familiar with the hazards involved or the safety practices to be followed from working where an electrical hazard exists.

Paragraph (r)(l)(iv) lists the conditions under which a second qualified line-clearance tree trimmer would be required to be present. The listed conditions are: If the employee is to come closer than 10 feet (305 cm) to the energized part; if a branch or limb is closer to the live parts than the distances listed in Tables R–6 and R–7; or if roping must be used to remove branches or limbs from live parts. Under these conditions, a line-clearance tree trimmer is placed in a more hazardous environment than is usual, and errors are more likely to lead to an electrical accident. The second employee would be able to assist an employee in trouble or would be able to summon help readily.

In general, line-clearance tree trimmers do not have the experience or training for work on overhead electric power lines. However, they do have the training and skills necessary to be able to perform work safely near these lines. By using special techniques and equipment, these workers trim trees that are close to the overhead lines without bringing their bodies or other conductive objects within the danger zone. Therefore, paragraph (r)(l)(v) proposes the same clearance distances (listed in proposed Tables R–6 and R–7) for line-clearance work as those for regular line work, but the proposal does not permit line-clearance tree trimmers to come closer than the clearances in the tables even when using protective equipment.

Employees could receive an electric shock through the branches of the trees they are trimming if the branch, once it is cut or breaks free, contacts an energized conductor. To prevent electric shock to an employee if this should occur, paragraph (r)(l)(vi) would require branches that are closer to the lines than permitted under Table R–6 or R–7 to be removed by the use of insulating equipment in accordance with the requirements of proposed § 1910.269(j).

Paragraph (r)(l)(vii) would prohibit ladders, platforms, and aerial devices from coming closing to energized lines than the distances listed in Tables R–6 and R–7. This provision is intended to prevent electric shock to line-clearance tree trimmers, who are not familiar with the practices necessary to contact the lines safely.

Paragraph (r)(l)(viii) would prohibit line-clearance tree-trimming operations during storms and under emergency conditions. Line-clearance tree trimmers do not have sufficient training to enable them to work safely under such conditions.

In § 1910.269(r)(2), OSHA is proposing requirements for brush chippers. These proposed requirements would specify that chippers be equipped with a locking ignition system, that access panels be in place during operation, that the inlet feed hopper be of sufficient length to prevent workers from contacting the blades during operation, that trailer chippers be chocked or secured when not attached to a vehicle, and that employees wear proper eye and face protection in the area of operation. (Because no specific exemption is given in proposed paragraph (r)(2), the existing general machine guarding requirements of § 1910.212 would continue to apply to brush chippers.) The proposed requirements are derived from Section 5.3 of ANSI Z133.1–1982 and are intended to prevent injury to employees operating or maintaining brush chippers.

In § 1910.269(r)(3), OSHA is proposing requirements for sprayers and associated equipment. These proposed provisions would require walking and working surfaces to be slip-resistant. If the slippery conditions cannot be

removed, slip-resistant footwear or handrails meeting the requirements of Subpart D of Part 1910 would be required to be used to prevent employees from slipping. In addition, if the spraying operation takes place with the vehicle in motion, the area from which the operator works must be provided with guardrails to protect him or her from falling from the vehicle. These proposed requirements are based on the requirements of Section 5.4 of ANSI Z133.1–1982.

Paragraph (r)(4) proposes requirements for stump cutters. These proposed requirements would specify that cutters be equipped with enclosures or guards to protect employees from the blades and debris, and that employees wear eye and face protection in the immediate area of stump grinding operations. These requirements are essentially the same as those contained in Section 5.5 of ANSI Z133.1–1982.

Paragraph (r)(5) proposes requirements intended to protect employees from the hazards presented by power saws. Proposed paragraph (r)(5) emphasizes that the requirements of § 1910.266(c)(5) apply (dealing with instructions for power saw operations). In addition, § 1910.269(r)(5) proposes requirements for starting saws, saw design relative to chain movement and idling speed, saw operation, refueling, cleaning, and other saw maintenance. These requirements are based on Section 6.2 of ANSI Z133.1–1982 and on requirements contained in the draft standard recommended by EEI and IBEW.

In § 1910.269(r)(6), OSHA is proposing requirements for backpack power units. To protect employees operating or maintaining this equipment and other employees in the area, the proposed requirements specify that no one other than the operator be within 10 feet (305 cm) of the cutting head of the brush saw, that the unit be equipped with a quick shutoff switch, and that power unit engines be stopped for all cleaning, refueling, adjustments, and repairs. These requirements are based on requirements contained in Section 6.3 of ANSI Z133.1–1982.

Paragraph (r)(7) proposes requirements for climbing rope. To protect employees from hazards posed by rope breakage, these requirements propose that ropes have a specified minimum strength (taken from section 7.9 of the ANSI standard), that defective or damaged rope not be used, that rope contact with chemicals be avoided, that climbing rope not be spliced to effect repair, that rope ends be secured to prevent unraveling, and that ropes be stored properly. If there exists a possibility that the rope will be taken closer to exposed energized lines than the clearances specified in Table R–6 or R–7, employees on the ground or in contact with ground must treat the rope as energized and may not contact it unless electrical protective equipment is used.

Paragraph (s)

Proposed § 1910.269(s) addresses communication facilities associated with electric power generation, transmission, and distribution systems. Typical communications installations include those for microwave signaling and power line carriers.

Microwave signaling systems are addressed by proposed paragraph (s)(1). To protect employee's eyes from being injured by microwave radiation, paragraph (s)(1)(i) would prohibit employees from looking into an open waveguide or antenna which is connected to an energized source of microwave radiation.

Existing § 1910.97, which covers non-ionizing radiation, prescribes a warning sign with a special symbol indicating non-ionizing radiation hazards. Paragraph (s)(1)(ii) of proposed § 1910.269 would require areas which contain radiation in excess of the radiation protection guide set forth in § 1910.97 to be posted with the warning sign. Also, the proposal would require the lower half of that sign to be labeled as follows:

> Radiation in this area may exceed hazardous limitations and special precautions are required. Obtain specific instructoin before entering.

The sign would warn employees about the hazards present in the area and would inform them that special instructions would be necessary to enter the area.

In § 1910.97, the radiation protection guide is advisory only. Proposed § 1910.269(s)(1)(iii) would make the guide mandatory for electric utilities by requiring the employer to institute measures that prevent any employee's exposure from being greater than that set forth in the guide. These measures may be of an administrative nature (such as limitations on the duration of exposure) or of an engineering nature (such as a design of the system that limits the emitted radiation to that permitted by the guide) or may involve the use of personal protective equipment.

Power line carrier systems use the power line itself to carry signals between equipment at different points on the line. Because of this, OSHA is proposing, in paragraph (s)(2), that work associated with power line carrier installations be performed according to the requirements for work on energized lines.

Paragraph (t)

In many electric distribution systems, electrical equipment is installed in enclosures, such as manholes and vaults, set beneath the earth. Proposed § 1910.269(t) addresses safety for these underground electrical installations. The requirements proposed in this paragraph are in addition to requirements contained elsewhere in the proposal because paragraph (t) only contains considerations unique to underground facilities. For example, paragraph (e), relating to confined spaces, would also apply to underground operations involving entry into a confined space.

Paragraph (t)(1) would require the use of ladders or other climbing devices for entrance into and exit from manholes and subsurface vaults that are more than 4 feet (122 cm) deep. Because employees can easily be injured in the course of jumping into subsurface enclosures or in climbing on the cables and hangers which have been installed in these enclosures, the proposal would require the use of appropriate devices for employees entering and exiting manholes and vaults. The practice of climbing on equipment such as cables and cable hangers would be specifically prohibited by paragraph (t)(1). OSHA requests public comment on the appropriateness of requiring ladders or other climbing devices for subsurface enclosures more than 4 feet (122 cm) deep, as opposed to requiring them for shallower enclosures or for deeper enclosures.

Paragraph (t)(2) would require equipment used to lower materials and tools into manholes or vaults to be capable of supporting the weight and would require this equipment to be checked for defects before use. Along with head protection requirements contained in Subpart I, this provision would protect employees against falling tools and material. To provide additional protection for employees in the manhole or vault, paragraph (t)(2) would require these employees to be in the clear when hot solder or other hot compounds are lowered into the enclosure, because of the possibility of burns in case of a spill. OSHA requests comments on whether the lowering of other materials poses hazards to employees that are not addressed in the proposal.

Paragraph (t)(3) proposes a requirement for attendants for manholes. During the time work is being

performed in a manhole which contains electric equipment energized at more than 250 volts, an employee would be required to be available in the immediate vicinity (but not normally in the manhole) to render emergency assistance as may be needed. However, the attendant would be allowed to enter the manhole, for brief periods, to provide other than emergency assistance to those inside. Also, an employee working alone would be permitted to enter a manhold briefly for the purpose of inspection, housekeeping, taking readings, or other similar work, if this work could be performed safely. OSHA requests comments on whether employees should ever be allowed to enter manholes alone and, if so, under what conditions and for what length of time. Direct communications would be required to be maintained among all employees involved in the job, including any attendants, the employees in the manhole, and employees in separate manholes working on the same job.

The provisions proposed in paragraph (t)(3) are necessary so that assistance can be provided in emergencies to employees working in manholes, where the employees work unobserved and where undetected injury is likely to occur. Taken from existing § 1926.956(b)(1), these requirements have been accepted as protecting employees within the manhole without exposing the attendants outside to a greater risk. The existing and proposed standard apply to manholes containing equipment energized at any voltage. However, EEI and IBEW suggested that OSHA required attendants only if the voltage exceeds 250 volts. Although it might seem safe to allow employees to work alone in manholes containing equipment energized at 250 volts or less, employees could be seriously injured at these lower voltages under certain conditions. OSHA requests public comment on whether an attendant is necessary for entry into manholes or vaults containing electric equipment energized at 250 volts or less.

To install cables into the underground ducts, or conduits, which will contain them, employees use a series of short jointed rods or a long flexible rod inserted into the ducts. The insertion of these rods into the ducts is known as "rodding." The rods are used to thread the cable-pulling rope through the conduit. After the rods have been withdrawn and the cable-pulling ropes have been inserted, the cables can then be pulled through by mechanical means.

Paragraph (t)(4) of proposed § 1910.269 would require the duct rods to be inserted in the direction presenting the least hazard to employees. To make sure that the rod does not contact live parts in the far manhole or vault, the proposed rule would also require an employee to be stationed at the remote end of the rodding operation.

If any energized cables are to be moved during underground operations, paragraph (t)(5) would require them to be inspected for possible defects that could lead to a fault. (If a defect is found, the requirements of paragraph (t)(7) would apply.) Then, the cables could be moved only under the supervision of a qualified employee. These provisions would protect employees against possibly defective cables, which could fault upon being moved, leading to serious injury.

To prevent accidents resulting from working on the wrong cable, one that may be energized, paragraph (t)(6) would require the identification of the proper cable when multiple cables are present in a work area. The identification must be made by electrical means, unless the proper cable is obvious because of appearance or location.

Since defective energized cables may fail with an enormous release of energy, precautions must be taken to minimize the possibility of such an occurrence while an employee is working in a manhole. Therefore, paragraph (t)(7) proposes to prohibit employees from working in a manhole which contains an energized cable with a defect that could lead to a fault. Typical abnormalities that could expose employees to injury are listed as: oil or compound leaking from a cable or joint (splice), a broken cable sheath or joint sleeve, hot localized surface temperatures on a cable or joint, or a joint that is swollen so much that its circumference exceeds 3.5 times the standard sleeve diameter. OSHA invites comments on whether there are additional defects which should be listed (though the performance language of the rule includes any obvious major abnormality, regardless of whether it is listed). OSHA also invites data on whether any of the listed defects could not possibly lead to a fault in the cable system.

Under some service load conditions, it may not be acceptable for the electric utility to deenergize the cable with the defect at the same time that another line is deenergized for maintenance work. In such cases, the proposal would allow the defective cable or splice to remain energized as long as the employees in the manhole are protected against the possible effects of a failure. For example, a ballistic blanket wrapped around a defective splice can protect against injury from the effects of a fault in the splice.

Paragraph (t)(8) would require metallic sheath continuity to be maintained while work is performed on underground cables. Bonding across an opening in a cable's sheath protects employees against shock from a difference in potential on either side of the opening.

Paragraph (u)

Paragraph (u) of proposed § 1910.269 addresses work performed in substations. As is the case elsewhere in the proposal, the provisions of this paragraph apply in addition to the requirements contained in other portions of the proposal, such as paragraph (1) on clearances.

Paragraph (u)(1) would require that enough space be provided around electric equipment to allow ready and safe access to and operation and maintenance of the equipment. This rule would prevent employees from contacting exposed live parts as a result of insufficient maneuvering room. A note has been proposed to recognize, as constituting compliance, the provisions of ANSI C2–1987 for the design of workspace for electric equipment. OSHA realizes that older installations may not meet the exact dimensions set forth in the latest version of the national consensus standard. The Agency believes that the language of proposed § 1910.269(u)(1) is sufficiently performance oriented that older installations built to specifications in the standards that were in effect at the time they were constructed would likely meet the requirement for sufficient workspace.

Proposed paragraph (u)(2) would require draw-out-type circuit breakers to be inserted and removed while the breaker is in the open position. Additionally, if the design of the control devices permits, the control circuit for the circuit breaker would have to be rendered inoperative. (Some circuit breaker and control device designs do not incorporate a feature allowing the control device for the breaker to be rendered inoperative.) These provisions are intended to prevent arcing which could injure employees.

Because voltages can be impressed or induced on large metal objects near substation equipment, paragraph (u)(3)(i) would require conductive fences around substations to be grounded. Continuity across openings would also be required in order to eliminate voltage differences between adjacent parts of the fence.

Paragraph (u)(3)(ii) proposes the locking of unattended substations. Although this provision appears to be related to public safety, worker safety could also be affected by undeterred public access to stations. For example, an unauthorized person in a substation could accidentally energize circuits which have been deenergized for work to be performed.

Paragraph (u)(4) addresses the guarding of energized parts. Rooms and spaces containing electric supply conductors or equipment would be required to be enclosed within fences, screens, partitions, or walls to prevent unqualified persons from entering. The entrances to such rooms and spaces would be required to be locked or attended, and warning signs would have to be posted. These provisions, which are proposed in paragraph (u)(4)(i), are intended to prevent unqualified persons from gaining access to high voltage equipment and from contacting exposed live parts.

Paragraph (u)(4)(ii) would require live parts operating at more than 150 volts to be guarded, by physical guards or by location, or insulated. This provision would protect qualified employees from accidentally contacting energized parts. Guidance for clearance distances appropriate for guarding by location can be found in ANSI C2. Installations meeting the ANSI provisions comply with paragraph (u)(4)(ii). Paragraphs (u)(4) (i) and (ii) are based on Sections 110A and 124A.1, respectively, of ANSI C2–1987.

Paragraph (u)(4)(iii) would require the guarding of live parts within a compartment to be maintained during operation and maintenance functions. This guarding is intended to prevent accidental contact with energized parts and to prevent objects from being dropped on energized parts. However, since access must be gained to energized equipment by qualified employees, an exception to this proposed requirement would allow the removal of guards for this purpose. In such cases, paragraph (u)(4)(iv) would protect other employees nearby by requiring the installation of protective barriers around the work area.

So that employees can receive pertinent information on conditions that affect safety at the substation, paragraph (u)(5)(i) would require employees who do not regularly work at the station to report their presence, usually to the employee in charge. Typical conditions affecting safety in substations include the location of energized equipment in the area and the limits of any deenergized work area. Paragraph (u)(5)(ii) proposes that this specific information be communicated to employees during the job briefing required by proposed §1910.269(c).

Paragraph (v)

Paragraph (v) of proposed § 1910.269 contains requirements pertaining to electric power generating plants and to work practices used in these plants. As is the case elsewhere in the proposal, the provisions of paragraph (v) would apply in addition to the other requirements of the standard.

Paragraph (v)(1)(i) would require the employer to maintain interlocks and other safety devices (such as relief valves) in a safe and operable condition. This requirement would ensure that these devices perform their intended function of protecting workers when called upon to do so. To ensure further that these devices remain operable, paragraph (v)(1)(ii) would prohibit them from being modified to defeat their function, except as necessary for the test, repair, or adjustment of the device.

Sometimes the brushes on a generator or exciter must be replaced while the machine is in operation. This work is unusually hazardous, and extreme caution must be observed by employees performing the job. To protect these workers, paragraph (v)(2) proposes extra requirements for replacing brushes while the generator is in service. Since filed windings and exciters are operated in an underground condition, there is no voltage with respect to ground on the brushes as long as there is no ground fault in the circuit. So that no voltage to ground is present while employees are changing the brushes, paragraph (v)(2)(ii) would require the exciter-field circuit to be checked to ensure that a ground condition does not exist. Additionally, any ground detection devices must be disconnected and tagged.

Paragraph (v)(3) would require that enough space be provided around electric equipment to allow ready and safe access to, and operation and maintenance of, the equipment. this rule would prevent employees from contacting exposed live parts as a result of insufficient maneuvering room. A note has been proposed to recognize, as constituting compliance, the provisions of ANSI C2–1987 for the design of workspace for electric equipment. OSHA realizes that older installations may not meet the exact dimensions set forth in the latest version of the national consensus standard. The Agency believes that the language of proposed § 1910.269(v)(3) is sufficiently performance oriented that older installations built to specifications in the standards that were in effect at the time they were constructed would likely meet the requirement for sufficient workspace.

Paragraph (v)(4) addresses the guarding of energized parts. Rooms and spaces containing electric supply conductors or equipment would be required to be enclosed within fences, screens, partitions, or walls to prevent unqualified persons from entering. The entrances to such rooms and spaces would be required to be locked or attended, and warning signs would have to be posted. These provisions, which are proposed in paragraph (v)(4)(i), are intended to prevent unqualified persons from gaining access to high voltage equipment and from contacting exposed live parts.

Paragraph (v)(4)(ii) would require live parts operating at more 150 volts to be guarded, by physical guards or by location, or insulated. This provision would protect qualified employees from accidentally contacting energized parts. Guidance for clearance distances appropriate for guarding by location can be found in ANSI C2. Installations meeting the ANSI provisions comply with paragraph (v)(4)(ii). Paragraphs (v)(4) (i) and (ii) are based on Sections 110A and 124A.1, respectively, of ANSI C2–1987.

Paragraph (v)(4)(iii) would require the guarding of live parts within a compartment to be maintained during operation and maintenance functions. This guarding is intended to prevent accidental contact with energized parts and to prevent objects from being dropped on energized parts. However, since access must be gained to energized equipment by qualified employees, an exception to this proposed requirement would allow the removal of guards for this purpose. In such cases, paragraph (v)(4)(iv) would protect other employees nearby by requiring the installation of protective barriers around the work area.

Paragraph (v)(5) of proposed § 1910.269 addresses the breaking of pressure connections. If hazardous pressures or temperatures may be present on a line, paragraph (v)(5)(i) would require that the line be isolated, drained, and locked out or tagged in accordance with proposed § 1910.269(d) before a valve bonnet or suffing box gland is moved or removed and before a flanged joint or other pressure connection is broken.

Paragraph (v)(5)(ii) would require that the bolts, nuts, or other fasteners then be loosened. However, before they are removed, special care must be exercised to ensure that the connection is not under pressure. For example, once the

fasteners are loosened, the cover should carefully be tapped loose to allow any residual pressure to be relieved.

Boilers are an essential part of steam-driven electric generating plants. Water is heated and converted to steam, which in turn drives the steam turbine generating equipment. Boilers, whether of the watertube or firetube type, contain spaces that must be entered periodically for maintenance.

To ensure that work can be safely initiated, paragraph (v)(6)(i) would require an inspection to be undertaken by a designated person. To protect employees who may have to reenter the work area from hazards arising from incomplete work or other problems which may have occurred during the course of work, this paragraph would require a similar inspection to be performed after work is completed. As a further precaution, this paragraph proposes a requirement for eye protection during cleaning operations.

Proposed paragraph (v)(6)(ii) would require that provision be made to adequately shield employees working near the end of water or steam tubes during cleaning operations.

In § 1910.269(v)(7), OSHA is proposing requirements for chemical cleaning of boilers and pressure vessels. These proposed requirements specify that areas be cordoned off to restrict access during cleaning and that the number of workers in the area be limited to those needed to do the operation. Because of the flammability of chemicals used in cleaning and the possibility of flammable gases in the boiler or pressure vessel, the proposal would prohibit smoking, welding, and other ignition sources during cleaning operations. In addition, requirements are proposed for the use of protective clothing, goggles, boots, and gloves and for the availability of clean water or emergency showers in the general area of work. These proposed provisions recognize the hazards of chemical cleaning and are intended to minimize risks to employees during these operations.

In § 1910.269(v)(8), OSHA is proposing requirements for chlorine system safety. (These requirements would, of course, be in addition to other provisions in Part 1910 addressing the hazards of exposure to chlorine, such as those in Subparts I and Z.) OSHA proposes that gaseous chlorine system enclosures be posted with signs restricting entry and warning of the hazards. Entry into the restricted area would be permitted only for designated employees equipped with personal protective equipment and would be limited to the number required to perform the task. In addition, OSHA proposes that emergency repair kits for repair of chlorine leaks be available and that chlorine tanks, pipes, and equipment be purged and isolated from other sources of chlorine before employee operations begin. Lastly, OSHA proposes that the employer take precautions to prevent accidental mixing of chlorine with reactive materials which could produce a hazardous situation.

Paragraph (v)(9) of proposed § 1910.269 proposes requirements for boiler repair work. These proposed requirements specify that boiler furnaces and ash hoppers be inspected for possible falling objects, such as failed liners, before repair work is begun. If this hazard exists, overhead protection would be required to be provided. Additionally, OSHA proposes that employees stand clear of the opening of an operating boiler when opening the door to prevent injury which may be caused by hot gases escaping from the open door.

In § 1910.269(v)(10), OSHA is proposing requirements for turbine-generator systems. Turbine generators are typically cooled by air or hydrogen circulated by fans mounted on the generator rotor. The requirements proposed in paragraph (v)(10) address the fire and explosion hazards of hydrogen in turbine generators and are based on requirements in the draft standard recommended by EEI and IBEW. These proposed requirements would prohibit smoking or other ignition sources near hydrogen or hydrogen sealing systems and require the posting of signs warning of the explosion hazard. In addition, conditions of excessive hydrogen makeup or abnormal pressure loss would be considered to be an emergency situation requiring correction, and a quantity of inert gas suitable for purging hydrogen from generators would be required to be available.

In paragraph (v)(11), OSHA is proposing requirements for the handling of coal and ash, including the use of railroad equipment and conveyors. Paragraph (v)(11)(i) would permit only designated persons to operate railroad equipment. Designated persons are persons who are qualified to perform a given task (in this instance, operate railroad equipment) and who are assigned by the employer to perform this task.

Restricting the running of railroad equipment to persons who are knowledgeable of the way to operate the equipment and of the accepted rules, such as right-of-way and signalling, will prevent accidents by assuring that the equipment operator is competent.

In paragraph (v)(11)(ii), a warning is required to be given before a locomotive or locomotive crane is moved. This warning will allow employees the opportunity to stand clear of the train and track before the equipment moves.

The proposal would require, in paragraphs (v)(11) (iii) and (iv), that drawheads not be aligned by employees kicking the drawheads (to prevent injury to or loss of the employees' feet) and that drawheads and knuckles not be shifted while railroad equipment is in motion (to prevent runaway rail cars). (A drawhead is the body of the automatic coupler, and the knuckle is the movable arm which connects with the drawhead to form the coupling on cars and locomotives.)

Paragraph (v)(11)(v) proposes that railroad cars, when stopped for unloading, be blocked to prevent the cars from moving.

In paragraph (v)(11)(vi), the standard would require an emergency means to enable employees to stop railcar dumping during this operation. In the event an incident occurs, this safeguard will allow interruption of the dumping operation to preclude or minimize injury to employees.

Paragraph (v)(11)(vii) proposes that employees be trained and knowledgeable if they work in areas where coal- and ash-handling conveyors operate. For example, their training and knowledge should be thorough in the subjects of the operation of the conveyor system, the hazards associated with conveyors, how to minimize these hazards, and in the requirements of this standard that pertain to conveyor operation.

The standard would require, in paragraph (v)(11)(viii), that employees be prohibited from riding on coal- or ash-handling conveyors. Belt conveyors are not designed to carry persons and riding the conveying medium can be very hazardous. This paragraph would further require that employees only be allowed to cross over a belt conveyor at walkways, unless the conveyor is locked out or tagged in accordance with proposed § 1910.269(d).

Paragraph (v)(11)(ix) addresses the hazard of unexpected startup of conveyors. If a conveyor could cause injury when it is started, the proposal would require that personnel in the area be alerted by a signal or by a designated employee that the conveyor is about to start. For automatically and remotely controlled conveyors, an audible warning device that could be heard at all points along the conveyor where personnel could be present would be required. However, a visual warning

would be permitted if it would be more effective in alerting employees.

Exceptions to the requirement for warning devices would be given if the system function would be seriously hindered by the required time delay or if the intent of the warning could be misinterpreted (as when many different conveyors and allied devices are used). In such cases, warning signs would be required to be provided at locations along the conveyor where it is not guarded by position or location. These exceptions protect employees at conveyor installations that cannot have warning devices installed for design reasons. OSHA requests information on safer alternatives to warning signs.

The provisions of paragraph (v)(11)(ix) are intended to protect employees from getting caught in and injured by a conveyor that is started unexpectedly. This paragraph is based on provisions in Safety Standards for Conveyors and Related Equipment, ASME/ANSI B20.1–1987.

Paragraph (v)(11)(x) addresses hazards associated with emergency situations involving automatically and remotely controlled conveyors. These conveyors would be required to have emergency stop devices so that the equipment could be deenergized in case an employee becomes endangered by its operation. However, if the design, function, and operation of a conveyor is not hazardous to personnel, an emergency stop would not be required.

The emergency stop devices would have to be easily identifiable and would have to be placed anywhere the conveyor is not guarded. They would also be required to act directly on the control of the conveyor (not dependent on the stopping of other intermediate equipment) and to be installed so that they cannot be overridden.

The requirements proposed in paragraph (v)(11)(x) are also based on ASME/ANSI B20.1–1987.

In § 1910.269(v)(11)(xi), OSHA is proposing that, where a combustible atmosphere may be produced in coal-handling operations, sources of ignition be eliminated or controlled to prevent ignition of combustible gases. This requirement is proposed to mitigate the hazard of fire and explosion in coal-handling operations and would indicate that a combustible atmosphere may occur in these operations. An area in which this may occur must be considered a Class II location as far as ignition sources are concerned. (See Subpart S of Part 1910 for requirements pertaining to the control of electrical ignition sources in Class II locations, which are locations that are hazardous because of the presence of combustible dust, such as coal dust.)

In paragraphs (v)(11) (xii) and (xiii), OSHA is proposing that employees not be allowed to work on or beneath overhanging coal, and that employees entering a bunker or silo wear a safety harness with lifeline attached to a fixed support outside the bunker attended at all times by a standby employee. Based on requirements contained in the draft standard recommended by EEI and IBEW, these requirements address the hazards of being struck or crushed by falling coal and of suffocating by being buried in coal.

Paragraph (v)(12) proposes requirements for walking and working surfaces. Proposed paragraph (v)(12)(i) emphasizes that the requirements of Subpart D of Part 1910 would continue to apply. However, paragraph (v)(12)(ii) would provide an exception to the Subpart D requirements whereby a floor hole, through which passes machinery, piping, or other equipment that may expand or contract in the hole, is permitted to be guarded by a toeboard if the opening around the machinery or pipe is 12 inches (30.5 cm) or less. This provision recognizes the need to provide for expansion and contraction of equipment, and OSHA believes that a toeboard will normally prevent an employee's foot from entering the opening as well as prevent tools from falling through the hole. However, OSHA recognizes that this condition is not unique to electric utility workplaces, and comments are requested on whether this exception to an existing general industry requirement is warranted and whether it will provide adequate protection.

Paragraph (v)(13) proposes that employees working near gates, valves, intakes, or flumes of a hydroplant would be required to be warned before changes are made in water flow rates, if such a change would pose a hazard to employees.

Paragraph (w)

Paragraph (w) proposes requirements for special conditions that are encountered during electric power generation, transmission, and distribution work.

Since capacitors store electric charge and can release electrical energy even when disconnected from their sources of supply, some additional precautions to those proposed in paragraphs (m) (deenergizing lines and equipment) and (n) (grounding) of § 1910.269 may be necessary when work is performed on capacitors or on lines which are connected to capacitors. Paragraph (w)(1) proposes precautions which will enable this equipment to be considered as deenergized. Under paragraph (w)(1)(i), capacitors on which work is to be performed would have to be disconnected from their sources of supply and short-circuited. This would not only remove the sources of electric current but would relieve the capacitors of their charge as well. However, for work on individual capacitors in a series-parallel capacitor bank, each unit would have to be short-circuited between its terminals and the capacitor tank or rack, with the rack grounded; otherwise, individual capacitors could retain a charge. This consideration is proposed in paragraph (w)(1)(ii). Lastly, paragraph (w)(1)(iii) would require lines to which capacitors are connected to be short-circuited before the lines can be considered deenergized.

Although the magnetic flux density in the core of a current transformer is usually very low, resulting in a low secondary voltage, it will rise to saturation if the secondary circuit is opened while the transformer primary is energized. If this occurs, the magnetic flux will induce a voltage in the secondary winding high enough to be hazardous to the insulation in the secondary circuit and to personnel. Because of this hazard to workers, paragraph (w)(2) would prohibit the opening of the secondary circuit of a current transformer while the primary is energized. If the primary cannot be deenergized for work to be performed on the secondary, then the secondary circuit would have to be bridged so that an open-circuit condition would not result.

In a series streetlighting circuit, the lamps are connected in series, and the same current flows in each lamp. This current is supplied by a constant-current transformer, which provides a constant current at a variable voltage from a source of constant voltage and variable current. Like the current transformer, the constant current source attempts to supply current even when the secondary circuit is open. The resultant open-circuit voltage can be very high and hazardous to employees. For this reason, paragraph (w)(3) proposes a requirement, similar to that in paragraph (w)(2), that either the streetlighting transformer be deenergized or the circuit be bridged to avoid an open-circuit condition.

Frequently, electric power generation, transmission, and distribution employees must work at night or in enclosed places, such as manholes, that are not illuminated by the sun. Since inadvertent contact with live parts can be fatal, good lighting is important to the

safety of these workers. Therefore, paragraph (w)(4) proposes that sufficient illumination be provided so that work can be performed safely. Specific guidance is not provided in the proposal, but OSHA requests comments and supporting data with respect to levels of illumination that are necessary for safety.

To protect employees working in areas that expose them to the hazards of drowning, paragraph (w)(5) would require the provision and use of personal flotation devices. Additionally, to ensure that these devices will provide the necessary protection upon demand, they would have to be approved by the U.S. Coast Guard, be maintained in safe condition, and be regularly inspected for defects that render them unsuitable for use. Employees would not be permitted to cross streams unless a safe means of passage is provided.

Employees working in areas exposed to pedestrain or vehicular traffic are exposed to additional hazards compared to those working on the employer's premises, where public access is restricted. One serious additional hazard faced by workers exposed to the public is that of being struck by a vehicle (or even by a person). To protect employees against being injured as a result of traffic mishaps, paragraph (w)(6) would require the placement of warning signs or flags or other warning devices to channel approaching traffic away from the work area if the conditions in the area pose a hazard to employees. If warning signs are not sufficient protection or if employees are working in an area in which there are excavations, barricades would have to be erected. Additionally, warning lights would be required for night work.

Paragraph (w)(7) would caution employees about the hazards of voltage backfeed due to sources of cogeneration or due to the configuration of the circuit involved. Under conditions of voltage backfeed, the lines upon which work is to be performed remain energized after the main source of power has been disconnected. As noted by this section, the lines would have to be worked as energized, under the provisions of paragraph (1) of proposed § 1910.269, or could be worked as deenergized, following paragraphs (m) and (n) of proposed § 1910.269. The referenced paragraphs contain the appropriate precautions to be taken in case of voltage backfeed.

Sometimes electric power generation, transmission, and distribution work involves the use of lasers. Appropriate requirements for the installation, operation, and adjustment of lasers are contained in existing § 1926.54 of the Construction Standards.

Rather than develop different requirements for electric power generation, transmission, and distribution work, OSHA has proposed to adopt the construction regulation by reference in paragraph (w)(8) of § 1910.269.

To ensure that hydraulic equipment retains its insulating value, paragraph (w)(9) would require the hydraulic fluid used in insulated sections of such equipment to be of the insulating type.

Paragraph (x)

Proposed § 1910.269(x) contains definitions of terms used in the proposal. Since these definitions have been taken, in large part, from consensus standards and existing OSHA regulations and since the definitions included are generally self-explanatory, OSHA expects these terms to be well understood, and no explanation is given here. However, in the discussion of the proposed provision in which the term first appears, the Agency has provided an explanation of any term whose meaning may not be readily apparent. OSHA requests public comment on these definitions and welcomes any suggestions offered by the public.

## IV. Summary of the Preliminary Regulatory Impact and Regulatory Flexibility and Environmental Impact Assessment

*Introduction*

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory impact analysis be conducted for any rule having major economic consequences for the national economy, individual industries, geographical regions, or levels of government. In addition, the Regulatory Flexibility Act of 1980 (Pub. L. 96–353, 94 Stat. 1164 [5 U.S.C. 601, *et seq.*]) requires OSHA to determine whether a proposed regulation will have a significant economic impact on a substantial number of small entities, and the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) requires the agency to assess the environmental consequences of regulatory actions.

In order to comply with these requirements OSHA has prepared a Preliminary Regulatory Impact and Regulatory Flexibility Assessment (PRIA) for the proposed electric power generation, transmission, and distribution standard. This assessment includes a profile of the industries that would be affected, the estimated number of employees who would be affected and the technological feasibility, costs, benefits, and overall economic impact of the proposed standard. The PRIA is available in the OSHA Docket Office.

Since the proposed standard is not likely: (1) To have an annual effect on the economy of $100 million; (2) to result in a major increase in costs or prices for consumers, industries, government agencies, or geographic regions; or (3) to have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises, the proposal does not constitute a major rule under the cost criteria of Executive Order 12291.

*Data Sources*

The primary source of information used for this assessment is a June 1986 report by the Eastern Research Group (ERG) entitled, "Preparation of an Economic Impact Study for the Proposed OSHA Regulation Covering Electric Power Generation, Transmission, and Distribution." (This document is also available in the Docket Office.) OSHA welcomes additional comments, and all information supplied will be carefully reviewed and evaluated for incorporation into the Regulatory Impact Assessment (RIA) that will accompany the final rule.

*Industry Profile*

The three distinct phases in supplying electricity to an electric utility's customers are: (1) Generation; (2) transmission, and (3) distribution. Electric power generation is the use of generating plants to convert the energy from fossil fuel, water, nuclear fuel, geothermal sources, the sun, etc. to electricity. Electric power transmission carries the huge quantities of generated elecricity to the systems that deliver the electricity. Electric power distribution carries the electricity to its industrial, commercial, and residential users.

The proposed standard would primarily affect electric utilities, electrical contractor line crews, and line-clearance tree-trimming contractors. There are approximately 3,200 companies and organizations that comprise the electric utility industry. Of these, 273 are privately owned, 958 are rural cooperatives, and about 2,000 are publicly owned. Private utilities are the largest entities within the electric utilities as evidenced by the fact that the largest 183 private utilities generate about 75 percent of the electricity in the United States. Of these 183 electric utilities, 145 are vertically integrated

(i.e., they own generating plants, transmission systems, and distribution networks), 26 have only generation plants, 3 have only transmission systems, and 9 have transmission systems and distribution networks. Electric utilities are found in two SIC codes. SIC 911 (Electric Services: "Establishments engaged in the generation, transmission, and/or distribution of electric energy for sale") and SIC 4931 (Electric and Other Services Combined: "Establishments primarily engaged in providing electric services in combination with other services, with electric services as the major part though less than 95 percent of the total").

The market structure in which electric utilities function is best described as a regulated monopoly. There are substantial economies of scale in electric power operations within a given geographical area so that the most technologically efficient system is to have one or a few electric power suppliers. The rates that electric utilities can charge, however, are subject to approval by state or local government agencies. In general, these agencies allow a utility to recoup its expenditures plus a percentage of its capital assets. Included within these expenditures are those spent upon the safety and health of the employees.

OSHA estimates that the revenue from the electric power operations of all electric utilities was about $170 billion in 1985. Of this revenue, the 183 largest private electric utilities received about $135 billion and had an average revenue of about $738 million from electric power operations.

Electrical contractor line crews are used by electric utilities to perform operation, maintenance, and construction activities. Most of the approximately 1,800 contractors who do this work for electric utilities are medium-sized electrical contractors who also work on other projects for other clients.

Line-clearance tree-trimming contractors are used by electric utilities to perform routine tree-trimming around power lines. There are 55 larger and medium size landscaping companies that have about 95 percent of this business and between 1,500 and 2,000 small companies that perform the rest of this work.

OSHA has no information concerning the revenues received by these two types of contractors from work performed for electric utilities. OSHA requests information concerning these revenues, and any information received will be reviewed for incorporation into the RIA that will accompany the final rule.

*Population-at-Risk*

The data currently available to OSHA indicate that the proposed standard would affect 657,775 employees. Of these, 608,575 are employed by electric utilities, about 13,200 are employed by electrical contractors, and about 36,000 are employed by line-clearance tree-trimming contractors. Of the 608,575 electric utility employees who perform electrical power operations, 138,399 are operation and maintenance personnel who face the most risk from hazards that are the primary focus of this proposed standard. (A total of 284,210 employees would face some risk from these hazards.)

*Technological Feasibility*

OSHA has determined that the proposed standard is technologically feasible. The proposal would not require the installation of large-scale, state-of-the-art capital equipment. All of the provisions of the proposal involve equipment, evaluations, and work practices that are widely used and readily available. In this regard, it should be noted that the proposal is based substantially upon three source documents: A draft proposal jointly submitted by the Edison Electric Institute and the International Brotherhood of Electrical Workers; a national consensus standard, the National Electrical Safety Code (ANSI C–2); and the requirements of Subpart V of OSHA's current construction standards in 29 CFR Part 1926.

*Summary of Cost*

OSHA has used current work practices as its baseline for estimating the cost of attaining full compliance with the proposed standard, and these estimates are summarized in Table A. As seen in the table, OSHA has estimated that the annual cost of full compliance with the proposed standard would be about $20.723 million of which $16.341 million would be spent by electric utilities, $1.608 million would be spent by contractor line crews, and $2.774 million would be spent by line-clearance tree-trimming contractors. As shown in Table A, the provision having the highest annual cost (i.e., $5.605 million) is the requirement for initial and refresher safety training. The next highest annual cost (i.e., $3.380 million) is for inspecting mechanical elevating equipment, such as bucket and boom trucks working in enclosed and entry-permit confined spaces.

*Benefits*

The proper use of safety equipment and appropriate work practices will prevent fatalities in electric utilities. About 70-percent of the fatalities occurring in electric utilities are a consequence of employee contact with electric wiring or an electrical apparatus. This is particularly hazardous because the electricity is transmitted at thousands and hundreds of thousands of volts.

OSHA has estimated that there are between 68 and 75 fatalities occurring annually among electric utility and electric utility contractor employees. In addition, there are an estimated 43,725 annual injuries, of which 21,175 are lost-workday injuries and 22,560 are non-lost-workday injuries. The number of annual lost workdays is about 367,255.

TABLE A.—COST OF COMPLIANCE WITH THE PROPOSED STANDARD BY INDUSTRY AND BY PROVISION

[In millions of 1986 dollars]

| Industry (provision) | Cost [1] |
|---|---|
| Electric utilities: | |
| Refresher safety training | 4.307 |
| Safety enforcement | 3.380 |
| CPR and first aid training | .119 |
| Enclosed spaces | 2.498 |
| Lockout/tagout procedures | .007 |
| Mechanical elevating equipment inspection | 2.539 |
| Working on overhead lines | 1.271 |
| Insulating blanket retesting | .485 |
| Line clearance procedures | 1.087 |
| High-voltage testing safety procedures | .009 |
| Isolation and depressurization of connections | .639 |
| Subtotal | 16.341 |
| Contract linemen: | |
| Refresher safety training | .831 |
| CPR and first aid training | .230 |
| Mechanical elevating equipment inspection | .368 |
| Working on overhead lines | .179 |
| Subtotal | 1.608 |
| Line-clearance tree-trimming contractors: | |
| Initial safety training | .467 |
| CPR and first aid training | 2.307 |
| Subtotal | 2.774 |
| Total | 20.723 |

[1] Annual cost of compliance.

The proposed standard would not cover electrical utilization hazards currently covered by existing Part 1910 but would address those work practices involving the generation, transmission, and distribution of electricity. In particular, the proposed standard is designed to reduce the hazards that cause fatalities and serious lost-workday injuries. The hazards that are

directly covered by the proposed standard are electrocution and injuries due to electric shock. In addition, the proposed standard would directly affect fatalities and injuries associated with four other types of accidents: (1) Struck by or struck against; (2) fall; (3) caught in or between; and (4) contact with temperature extremes. OSHA has determined that in electric utilities 95-percent of all fatalities, 56.2-percent of all injuries, 45.2-percent of the lost-workday injuries, and 59.8-percent of the non-lost-workday injuries are due to electric shock or to one of these 4 types of accidents. After adjusting for the injuries that are caused by hazards that are not addressed by the proposed standard or that are already addressed by the existing General Industry Standards, OSHA has determined that the proposed standard could address the hazards that annually cause 30 to 34 fatalities and 3,260 injuries (of which 1,290 are lost-workday injuries, involving 22,345 annual lost workdays, and 1,970 are non-lost-workday injuries) incurred by electric utility and electric utility contractor employees.

OSHA has determined that of these fatalities and injuries, about 80-percent of the electrocutions, 60-percent of the other fatalities, and two thirds of the injuries would be prevented by compliance with the proposed standard. Thus, OSHA has estimated that compliance with this proposed standard would annually prevent between 24 and 28 fatalities and 2,175 injuries of which 860 are lost-workday injuries, involving 14,920 prevented lost workdays, and 1,315 are non-lost-workday injuries.

*Economic Impact*

The proposed standard would have an economic impact upon electric utilities; however, the $16.341 million annual cost of compliance is about 0.1-percent of the estimated $18.764 billion in annual net income after taxes. In addition, the expenditures upon employee safety would be considered to be a cost of electric power production that public utility rate commissions would allow electric utilities to capture through minimum rate increases. OSHA believes that the proposed standard would have no significant economic impact upon the electrical contract line crews and line-clearance tree-trimming contractors. Their increased costs would be passed onto the electric utility which, in turn, would pass these costs onto its customers. OSHA requests information concerning this conclusion, and any comments received will be reviewed and evaluated for incorporation into the final rule and into the RIA that will accompany the final rule.

*Regulatory Flexibility Analysis*

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601), the Assistant Secretary has preliminarily determined that the proposed standard would not have a significant impact upon a substantial number of small entities. OSHA solicits comments and information on this issue, and any comments received will be reviewed and evaluated for incorporation into the RIA of the final rule.

*Environmental Impact Assessment—Finding of No Significant Impact*

The proposed standard and its alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR Part 1500), and the Department of Labor's NEPA Procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed standard will have no significant environmental impact. The procedures and applications of the proposed provisions do not impact on air, water or soil quality, plant or animal life, the use of land, or other aspects of the environment and therefore are not anticipated to have any significant effect on the environment.

**V. Federalism**

This proposed standard has been reviewed in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States before taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of State law only if there is a clear Congressional intent for the agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act) expresses Congress' clear intent to preempt State laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act a State can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan-States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

The Federally proposed electric power generation, transmission, and distribution standard is drafted so that employers in every State would be protected by general, performance-oriented standards. To the extent that there are State or regional peculiarities caused by the terrain, the climate, or other factors, States with occupational safety and health plans approved under Section 18 of the OSH Act would be able to develop their own State standards to deal with any special problems. Morevover, the performance nature of this proposed standard, of and by itself, allows for flexibility by all States and employers to provide as much safety as possible using varying methods consonant with conditions in each State.

In short, there is a clear national problem related to occupational safety in electric transmission and distribution work. While the individual States, if all acted, might be able collectively to deal with the safety problems involved, most have not elected to do so in the seventeen years since the enactment of the OSH Act. States which have elected to participate under Section 18 of the OSH Act would not be preempted by this proposed regulation and would be able to deal with special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard. State comments are invited on this proposal and will be fully considered before a final rule is promulgated.

**VI. OMB Review Under the Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980 (454 U.S.C. 3501, *et seq.*) and the regulations issued pursuant thereto (5 CFR Part 1320), OSH certifies that it has submitted the information collection requirements contained in paragraphs (d)(2)(ii) and (d)(2)(iii) of this proposed standard to the Office of Management and Budget (OMB) for review under section 3504(h) of that Act.

Public reporting burden for this collection of information is estimated to be 80 hours per response, including the time for reviewing 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 Docket Office at the address listed in the Public Participation section of this preamble and to the Office of Information and Regulatory Affairs; Office of Management and Budget, Washington, DC 20503.

## VII. Public Participation

Interested persons are invited to submit written comments with respect to this proposal and all issues involved therein. The data, views, and arguments must be postmarked on or before May 1, 1989 and submitted in quadruplicate to the Docket Officer; Docket No. S–015, Rm. N3670; U.S. Department of Labor, Occupational Safety and Health Administration; 200 Constitution Ave., NW.; Washington, DC 20210. Written submissions must clearly identify the provisions of the proposal which are addressed and the position taken with respect to each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the Docket Office. All timely written submissions received will be made part of the record of this proceeding.

Additionally, under section 6(b)(3) of the OSH Act (29 U.S.C. 657(b)(3)) and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal public hearing. The objections and hearing requests should be submitted in quadruplicate to the Docket Office at the aforementioned address and must comply with the following conditions:

1. The objections must include the name and address of the objector;
2. The objections must be postmarked on or before May 1, 1989 and submitted to the Docket Office at the previously mentioned address;
3. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
4. Each objection must be separately stated and numbered; and
5. The objections must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

If objections and requests for a hearing are timely filed, a hearing will be scheduled under section 6(b)(3) of the OSH Act.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issues involved.

## VIII. State Plan Standards

The 23 States and 2 Territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within 6 months of the publication date of a final standard. These States are: Alaska, Arizona, California,[4] Connecticut,[4] Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York,[4] North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming. Until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate.

## IX. List of Index Terms

### List of Subjects in 29 CFR Part 1910

Electric power, Fire Prevention, Flammable materials, Occupational safety and health, Occupational Safety and Health Administration, Safety, Signs and symbols, and Tools.

## X. Authority

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 sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599, 29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 9–83 (48 FR 35736), and 29 CFR Part 1911, it is proposed to amend 29 CFR Part 1910 as set forth below.

Signed at Washington, DC, this 24th day of January 1989.

**John A. Pendergrass,**

*Assistant Secretary of Labor.*

Part 1910 of Title 29 of the Code of Federal Regulations would be amended as follows:

## PART 29—[AMENDED]

1. The authority citation for Subpart I of Part 1910 would be revised to read as follows:

**Authority:** Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable.

Sections 1910.134 and 1910.137 also issued under 29 CFR Part 1911.

2. By revising § 1910.137 to read as follows:

### § 1910.137 Electrical protective equipment.

(a) *Design requirements.* Insulating blankets, matting, covers, line hose, gloves, and sleeves made of rubber shall meet the following requirements:

(1) *Manufacture and marking.* (i) Blankets, gloves, and sleeves shall be produced by a seamless process.

(ii) Each item shall be clearly marked as follows:

(A) Class 0 equipment shall be marked Class 0.

(B) Class 1 equipment shall be marked Class 1.

(C) Class 2 equipment shall be marked Class 2.

(D) Class 3 equipment shall be marked Class 3.

(E) Class 4 equipment shall be marked Class 4.

(F) Non-ozone-resistant equipment other than matting shall be marked Type I.

(G) Ozone-resistant equipment other than matting shall be marked Type II.

(H) Other markings, such as the manufacturer's identification and the size of the equipment, may be provided, as appropriate.

(iii) Markings shall be nonconducting and shall be applied in such a manner as not to impair the insulating qualities of the equipment.

(iv) Markings on gloves shall be confined to the cuff portion of the glove.

(2) *Electrical requirements.* (i) Equipment shall be capable of withstanding the a-c proof-test voltage specified in Table I–2 or the d-c proof-test voltage specified in I–3. The proof test shall reliably indicate that the equipment can withstand the voltage involved. The test voltage shall be applied continuously for 3 minutes for equipment other than matting and shall be applied continuously for 1 minute for matting.

(ii) When the a-c proof test is used on gloves, the 60-hertz proof-test current may not exceed the values specified in Table I–2 at any time during the test period. If the a-c proof test is made at a frequency other than 60 hertz, the permissible proof-test current shall be computed from the direct ratio of the frequencies.

(iii) Equipment that has been subjected to a minimum breakdown voltage test may not be used for electrical protection.

(iv) Material used for Type II insulating equipment shall be capable of

[4] Plan covers only State and local government employees.

withstanding an ozone test, with no visible effects. Any visible signs of ozone deterioration of the material, such as checking, cracking, breaks, or pitting, is evidence of failure to meet the requirements for ozone-resistance material.

(3) *Workmanship and finish.* (i) Equipment shall be free of harmful physical irregularities which can be detected by thorough test or inspection.

(ii) Surface irregularities that may be present on all rubber goods because of imperfections on forms or molds or because of inherent difficulties in the manufacturing process and that may appear as indentations, protuberances, or imbedded foreign material are acceptable under the following conditions:

(A) The indentation or protuberance tends to blend into a smooth slope when the material is stretched.

(B) Foreign material remains in place when the insulating material is folded and stretches with the insulating material surrounding it.

(C) No irregularities occur in the palm-side of a glove, exclusive of the gauntlet, or in the finger or thumb crotches.

Note: Rubber insulating equipment meeting the following national consensus standards is deemed to be in compliance with paragraph (a) of this section:

American Society for Testing and Materials (ASTM) D 120–87, Specification for Rubber Insulating Gloves.
ASTM D 178–81, Specification for Rubber Insulating Matting.
ASTM D 1048–87, Specification for Rubber Insulating Blankets.
ASTM D 1049–83, Specification for Rubber Insulating Covers.
ASTM D 1050–85, Specification for Rubber Insulating Line Hose.
ASTM D 1051–87, Specification for Rubber Insulating Sleeves.

(b) *In-service care and use.* (1) Electrical protective equipment shall be maintained in a safe, reliable condition.

(2) The following specific requirements apply to insulating blankets, covers, line hose, gloves, and sleeves made of rubber:

(i) Maximum use voltages shall conform to those listed in Table I–4.

(ii) Insulating equipment shall be inspected for damage before each day's use and immediately following any incident that can reasonably be suspected of having caused damage. Insulating gloves shall also be given an air test.

(iii) Insulating equipment with any of the following defects may not be used:

(A) A hole, tear, puncture, or cut;

(B) Ozone cutting or ozone checking;

(C) An embedded foreign object;

(D) Any of the following texture changes: swelling, softening, hardening, or becoming sticky or inelastic.

(E) Any other defect that damages the insulating properties.

(iv) Insulating equipment found to have other defects that might affect its insulating properties shall be removed from service and returned for testing under paragraphs (b)(2)(viii) and (b)(2)(ix) of this section.

(v) Insulating equipment shall be cleaned as needed to remove foreign substances.

(vi) Insulating equipment shall be stored in such a location and in such a manner as to protect it from light, temperature extremes, excessive humidity, ozone, and other injurious substances and conditions.

(vii) Protector gloves shall be worn over insulating gloves, except as follows:

(A) Protector gloves need not be used with Class 0 gloves, under limited-use conditions, where small equipment and parts manipulation necessitate unusually high finger dexterity.

(B) Any other class of glove may be used for similar work without protector gloves if the possibility of physical damage to the gloves is small and if the class of glove is one class higher than that required for the voltage involved. Insulating gloves that have been used without protector gloves may not be used at a higher voltage until they have been tested under the provisions of paragraphs (b)(2)(viii) and (b)(2)(ix) of this section.

(viii) Electrical protective equipment shall be subjected to periodic electrical tests. Test voltages and the maximum intervals between tests shall be in accordance with Tables I–4 and I–5.

(ix) The test method used under paragraphs (b)(2)(viii) and (b)(2)(xi) of this section shall reliably indicate whether the insulating equipment can withstand the voltages involved.

Note: Standard electrical test methods considered as meeting this requirement are given in the following national consensus standards:

American Society for Testing and Materials (ASTM) D 120–87, Specification for Rubber Insulating Gloves.
ASTM D 1048–87, Specification for Rubber Insulating Blankets.
ASTM D 1049–83, Specification for Rubber Insulating Covers.
ASTM D 1050–85, Specification for Rubber Insulating Line Hose.
ASTM D 1051–87, Specification for Rubber Insulating Sleeves.
ASTM F 478–87, Specification for In-Service Care of Insulating Line Hose and Covers.
ASTM F 479–83, Specification for In-Service Care of Insulating Blankets.
ASTM F 496–85, Specification for In-Service Care of Insulating Gloves and Sleeves.

(x) Insulating equipment failing to pass inspections or electrical tests may not be used by employees, except as follows:

(A) Rubber insulating line hose may be used in shorter lengths with the defective portion cut off.

(B) Rubber insulating blankets may be repaired using a compatible patch that results in physical and electrical properties equal to those of the blanket.

(C) Rubber insulating blankets may be salvaged by severing the defective area from the undamaged portion of the blanket. The resulting undamaged area may not be smaller than 22 inches by 22 inches (560 mm by 560 mm) for Class 1, 2, 3, and 4 blankets.

(D) Rubber insulating gloves and sleeves with minor physical defects, such as small cuts, tears, or punctures, may be repaired by the application of a compatible patch. Also, rubber insulating gloves and sleeves with minor surface blemishes may be repaired with a compatible liquid compound. the patched area shall have electrical and physical properties equal to those of the surrounding material. Repairs to gloves are permitted only in the gauntlet area.

(xi) Repaired insulating equipment shall be retested before it may be used by employees.

(xii) The employer shall certify that equipment has been tested in accordance with the requirements of paragraphs (b)(2)(viii), (b)(2)(ix), and (b)(2)(xi) of this section. The certification shall identify the equipment that passed the test and the date it was tested.

TABLE I-2.—A-C PROOF-TEST REQUIREMENTS

| Class of Equipment | Proof-Test Voltage rms V | Maximum Proof-Test Current, mA (gloves only) | | | |
|---|---|---|---|---|---|
| | | 267-mm (10.5-in) Glove | 356-mm (14-in Glove | 406-mm (16-in) Glove | 457-mm (18-in) Glove |
| 0 | 5,000 | 8 | 12 | 14 | 16 |
| 1 | 10,000 | ..... | 14 | 16 | 18 |
| 2 | 20,000 | ..... | 16 | 18 | 20 |
| 3 | 30,000 | ..... | 18 | 20 | 22 |
| 4 | 40,000 | ..... | ..... | 22 | 24 |

TABLE I-3.—D-C PROOF-TEST REQUIREMENTS

| Class of equipment: | Proof-test voltage, avg V |
|---|---|
| 0 | 20,000 |
| 1 | 40,000 |
| 2 | 50,000 |
| 3 | 60,000 |
| 4 | 70,000 |

NOTE.—The d-c voltages listed in this table are not appropriate for proof testing rubber insulating line hose or covers. For this equipment, d-c proof tests shall use a voltage high enough to indicate that the equipment can be safely used at the voltages listed in Table I-4. See ASTM D 1050-85 and ASTM D 1049-83 for further information on proof tests for rubber insulating line hose and covers.

TABLE I-4.—RUBBER INSULATING EQUIPMENT, VOLTAGE REQUIREMENTS

| Class designation | Maximum use voltage [1] a-c—rms | Retest voltage a-c—rms | Retest voltage d-c—avg |
|---|---|---|---|
| 0 | 1,000 | 5,000 | 20,000 |
| 1 | 7,500 | [2] 10,000 | 40,000 |
| 2 | 17,000 | [2] 20,000 | 50,000 |
| 3 | 26,500 | [2] 30,000 | 60,000 |
| 4 | 36,000 | [2] 40,000 | 70,000 |

[1] The maximum use voltage is the a-c voltage (rms) classification of the protective equipment that designates the maximum nominal design voltage of the energized system that may be safely worked. The nominal design voltage is equal to the phase-to-phase voltage on multiphase circuits. If there is no multiphase exposure in a system area and if the voltage exposure is limited to the phase-to-ground potential, the phase-to-ground potential is considered to be the nominal design voltage.

[2] If use is limited to nominal voltages less than the maximum use voltage, the voltage at which other than Class 0 equipment is tested may be reduced according to the following formula:

Retest voltage (a-c, rms) = nominal use voltage + 2000 + (0.05 × retest voltage given in Table I-4)

TABLE I-5.—RUBBER INSULATING EQUIPMENT TEST INTERVALS

| Type of equipment | When to test |
|---|---|
| Rubber insulating line hose. | Upon indication that insulating value is suspect. |
| Rubber insulating covers. | Upon indication that insulating value is suspect. |
| Rubber insulating blankets. | Before first issue and every 12 months thereafter.[1] |
| Rubber insulating gloves. | Before first issue and every 6 months thereafter.[1] |

TABLE I-5.—RUBBER INSULATING EQUIPMENT TEST INTERVALS—Continued

| Type of equipment | When to test |
|---|---|
| Rubber insulating sleeves. | Before first issue and every 12 months thereafter.[1] |

[1] If the insulating equipment has been electrically tested but not issued for service, it may not be placed into service unless it has been electrically tested within the previous 12 months.

3. The authority citation for Subpart R of Part 1910 would be revised to read as follows:

**Authority:** Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable.

Sections 1910.261, 1910.262, 1910.265, 1910.266, 1910.267, 1910.268, 1910.269, 1910.274, 1910.275 also issued under 29 CFR Part 1911.

4. By adding § 1910.269 to Subpart R to read as follows:

**§ 1910.269 Electric power generation, transmission, and distribution.**

(a) *General*—(1) *Application.* (i) This section covers work practices, installations, and equipment associated with the operation and maintenance of electric power generation, control, transformation, transmission, and distribution lines and equipment. These provisions apply to:

(A) Power generation, transmission, and distribution installations, including related equipment for the purpose of communication or metering, which are under the exclusive control of the utility and are accessible only to qualified employees as part of the utility operation; and

(B) Other installations at an electric power generating station, as follows:

(*1*) Fuel and ash handling and processing installations, such as coal conveyors and crushers,

(*2*) Water and steam installations, such as penstocks, pipelines, and tanks, providing a source of energy for turbine generators,

(*3*) Chlorine and hydrogen systems, and

(*4*) Walking and working surfaces within an electric power generating station.

(C) Test sites under the exclusive control of electric utilities where electrical testing, involving temporary measurements associated with electric power generation, transmission, and distribution, is performed in laboratories, in the field, in substations, and on lines, as opposed to metering, relaying and routine line work; and

(D) Line-clearance tree-trimming operations, as follows:

(*1*) The entire § 1910.269, except paragraph (r)(1), applies to line-clearance tree-trimming operations performed by qualified employees (those who are knowledgeable in the construction and operation of electric power generation, transmission, or distribution equipment and the hazards involved).

(*2*) Paragraphs (a), (b), (c), (g), (k), (p), and (r) of this section apply to line-clearance tree-trimming operations performed by line clearance tree trimmers who are not qualified employees.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, § 1910.269 does not apply:

(A) To construction work, as defined in §1910.12;

(B) To work performed on electric power generation and distribution equipment contained in industrial establishments and non-utilities; or

(C) To electrical installations, electrical safety-related work practices, or electrical maintenance considerations covered by Subpart S of this part.

(iii) This section applies in addition to all other applicable standards contained in this Part 1910. Specific references in this section to other sections of Part 1910 are provided for emphasis only.

(2) *Training.* (i) Employees shall be trained in and familiar with the safety-related work practices, safety procedures, and other personnel safety requirements in this section that pertain to their respective job assignments. Employees shall also be trained in and familiar with any other safety practices, including applicable emergency

procedures, which are not addressed by this section but which are necessary for their safety.

(ii) Qualified employees shall also be trained and competent in:

(A) The skills and techniques necessary to distinguish exposed live parts from other parts of electric equipment,

(B) The skills and techniques necessary to determine the nominal voltage of exposed live parts,

(C) The clearance distances specified in this section corresponding to the voltages to which the qualified employee will be exposed, and

(D) The proper use of the special precautionary techniques, personal protective equipment, insulating and shielding materials, and insulated tools associated with working on or near exposed energized parts of electric equipment.

Note.—For the purposes of this section, a person must have this training in order to be considered a qualified person.

(iii) The training required by paragraph (a)(2) of this section shall be of the classroom or on-the-job type.

(iv) The employer shall certify that each employee has received the training required by paragraph (a)(2) of this section. This certification shall be made when the employee successfully completes the training and shall be maintained for the duration of the employee's employment.

(3) *Existing conditions.* Existing conditions shall be determined before work is started. Such conditions include, but are not limited to, the nominal voltages of lines and equipment, including switching transients, induced voltages, integrity of grounds, condition of poles, environmental conditions relative to safety, and the locations of circuits and equipment, including power and communication lines, CATV, and fire arlarm circuits.

(b) *Medical services and first aid.* The employer shall provide medical services and first aid as required in § 1910.151. In addition to the requirements of § 1910.151, the following requirements also apply:

(1) *Cardiopulmonary resuscitation and first aid training.* (i) When employees are working on or with energized lines or equipment, persons trained in first aid including cardiopulmonary resuscitation (CPR) shall be available as follows:

(A) For field work involving two or more employees at a work location, at least two trained persons shall be available.

(B) For fixed work locations such as generating stations, the number of trained persons available shall be sufficient to enable emergency treatment to begin within 4 minutes of an accident.

(ii) The first aid training shall be equivalent to that provided by the American Red Cross multimedia course.

(2) *First aid supplies.* First aid supplies recommended by a physician shall be placed in weatherproof containers, unless stored indoors, and containers shall be readily accessible.

(3) *First aid kits.* Each first aid kit shall be properly maintained, shall be readily available for use, and shall be inspected at least once per year in accordance with an established schedule.

(c) *Job briefing.* Before starting each job, the employer shall ensure that the employee in charge shall conduct a job briefing with the employees involved. The briefing shall cover such subjects as: Hazards associated with the job, work procedures involved, special precautions, energy source controls, and personal protective equipment requirements.

(1) *Number of briefings.* If the work or operations to be performed during the work day or shift are repetitive and similar, at least one job briefing shall be conducted before the start of the first job of the day or shift. Additional job briefings shall be held if significant changes, which might affect the safety of the employees, occur during the course of the work.

(2) *Extent of briefing.* A brief discussion is satisfactory if the work involved is routine and if the employee, by virtue of training and experience, can reasonably be expected to recognize and avoid the hazards involved in the job. A more extensive discussion shall be conducted:

(i) If the work is complicated or particularly hazardous, or

(ii) If the employee cannot be expected to recognize and avoid the hazards involved in the job.

(3) *Working alone.* Paragraph (c) of this section does not apply if an employee is working alone.

(d) *Hazardous energy control (lockout/tagout) procedures*—(1) *Application.* The provisions of this paragraph apply to the use of lockout/tagout procedures for the control of energy sources in installations for the purpose of electric power generation, including related equipment for communication or metering. Locking and tagging procedures for the deenergization control of electric energy sources which are used exclusively for purposes of transmission and distribution are addressed by paragraph (m) of this section.

Note.—Installations in electric power generation facilities that are not for the purpose of generation are covered under § 1910.147.

(2) *General.* (i) The employer shall ensure that, before an employee performs any activities where the unexpected energization, start-up, or release of stored energy could occur and cause injury, all potentially hazardous energy sources shall be isolated, locked out/tagged out, and otherwise disabled, in accordance with this paragraph (d).

(ii) A procedure shall be developed, documented, and implemented by the employer for the control of potentially hazardous energy sources covered by this paragraph (d).

(iii) The procedure shall clearly and specifically outline the scope, purpose, responsibility, authorization, rules, and techniques to be applied to the control of hazardous energy, and measures to enforce compliance including, but not limited to, the following:

(A) A specific statement as to the intended use of this procedure;

(B) Specific procedural steps for the shutting down, isolating, blocking and securing of energy sources;

(C) Specific procedural steps for the removal and transfer of locks or tags or both and the responsibility for them; and

(D) Specific requirements for testing a system to determine and verify the effectiveness of lockout/tagout and other energy control measures.

(iv) The employer shall conduct periodic inspections to ensure that the provisions of paragraph (d) of this section are being implemented.

(v) The inspections shall be performed by authorized employees and shall be designed to correct any deviations or inadequacies observed.

(vi) The employer shall certify that the inspections required by paragraphs (d)(2)(iv) and (d)(2)(v) of this section have been accomplished. If normal work schedule and operation records demonstrate adequate inspection activity, no additional certification is required.

(vii) The employer shall provide training to ensure that the purpose and function of the energy control procedures are understood by employees and that the knowledge and skills required for the safe application and removal of energy controls are available as needed.

(A) Authorized employees shall receive training in the recognition of applicable hazardous energy sources and in the use of adequate methods and means for energy isolation and control.

(B) Affected employees shall be instructed in the purpose and use of the energy control procedure.

(C) Other employees who may have access to the area containing the equipment or the controls shall be instructed about the energy control procedure being used and about how it affects their work operations.

(viii) Periodic retraining, either by regular on-the-job work assignment or by specific training, shall be provided by the employer for all authorized and affected employees at least on an annual basis to maintain employee proficiency and to introduce new or revised control methods and procedures.

(ix) The employer shall certify that employee training has been accomplished and has been kept up to date.

(3) *Locks and tags.* (i) Locks or tags or both shall be provided by the employer and shall be the only authorized devices used for lockout/tagout of energy sources.

(ii) Locks and tags shall be capable of withstanding the environment to which they are exposed for the maximum period of time that exposure is expected.

(iii) Locks and tags shall be standardized in at least one of the following criteria: Color, shape, size, type, or format.

(iv) Locks shall be of such key code complexity that removal by any other means than the regular key would require excessive force or unusual techniques, such as metal cutting tools. Tags and attachment mechanisms shall be of such design that the possibility of accidental removal is minimized.

(v) Locks and tags shall include provisions for the identification of the employees applying or authorizing the application of the device.

(vi) Tags shall warn against hazardous conditions if the equipment is reenergized and shall include one of the following legends: Do Not Start, Do Not Open, Do Not Close, Do Not Energize, or similar language.

Note.—For specific provisions covering accident prevention tags, see § 1910.145.

(4) *Energy isolating devices.* (i) Each energy isolating device shall be labeled or marked to indicate its purpose, unless it is located and arranged so its purpose is evident.

(ii) Energy isolating devices may be operated only by authorized employees or under the direct supervision of authorized employees.

(5) *Notification.* Affected employees shall be notified of the application and removal of lockout/tagout controls whenever such controls directly affect the employees' work activities. Notification shall be made as follows:

(i) By the employer or an authorized employee;

(ii) Before the application of lockout/tagout controls; and

(iii) Before the removal of lockout/tagout controls from the equipment or process.

(6) *Lockout/tagout application.* (i) Operating controls that would allow the operation of the equipment upon which work is being performed shall be turned off or to the neutral position by designated employees.

(ii) Energy isolating devices shall be operated in such a manner as to isolate the equipment or process from energy sources.

(iii) A lock or a tag or both shall be applied to each energy isolating device by an authorized employee.

(iv) Locks shall be attached in such a manner as to hold energy isolating devices in a safe position, or tags shall be attached in such a manner as to inhibit the operation of energy isolating devices. Tags shall be attached to the energy isolating device unless the installation precludes this attachment. In such cases, the tags shall be located as to be immediately obvious to anyone attempting to operate the energy isolating devices.

(v) Following the application of locks or tags or both to energy isolating devices, all potentially hazardous stored or residual energy shall be detected and shall be relieved, disconnected, or restrained so as to be rendered safe.

(vi) If there is a possibility of reaccumulation of stored energy to hazardous level, verification of isolation shall be continued until the activity is completed or until the possibility of such accumulation no longer exists.

(vii) Before work is started on equipment or processes that have been locked out or tagged out, an authorized employee shall inspect the equipment or processes and take other steps necessary to verify that isolation and deenergization of the equipment or process has been accomplished. If direct contact is to be made with normally energized parts during work, a test shall be performed to ensure that these parts are deenergized.

(viii) The steps taken under paragraph (d)(6)(vii) of this section shall ensure that the locks or tags or both are so positioned or located that the energy isolating or disconnecting means has isolated and deenergized the equipment or process effectively and that any stored energy has been rendered safe.

(7) *Release from lockout/tagout.* (i) Before energy is restored to the equipment or process, an authorized employee shall make a visual inspection of the work area to determine that all nonessential items have been removed, that all components are operationally intact, and that no inadvertent equipment start-up will result.

(ii) Before energy is restored to the equipment or process, verification shall be made by an authorized employee that employees are in the clear.

(iii) A lock or tag may be removed from each energy isolating device only by the employee who applied the lock or tag. However, locks and tags may be removed under the direction of an authorized employee under the following conditions, only if the authorized employee follows specific procedures which have been developed for those conditions:

(A) If the employee who applied a personal lock or tag is not available to remove it; or

(B) If unique operating conditions involving complex systems are present and the employer can demonstrate that it is not feasible to do otherwise.

(8) *Additional requirements.* (i) If the energy isolating devices are locked or tagged, and if there is a need to test or position the equipment or process, the following sequence of actions shall be implemented:

(A) Clear the equipment or process of tools and materials;

(B) Clear the employees from the equipment or process areas;

(C) Clear the controls of locks and tags according to the establishing procedure;

(D) Energize and proceed with the testing or positioning; and

(E) Deenergize all systems, reapply energy control measures in accordance with paragraph (d)(6) of this section to continue the work.

(ii) When locks or tags belonging to a crew, craft, department, or other group are used, the procedures shall afford affected employees a level of protection equivalent to that provided by personal locks or tags.

(iii) Specific procedures shall be implemented to provide for the continuity of lockout/tagout protection during shift or employee changes.

(iv) The employer shall ensure that contractors and their employees follow the lockout/tagout procedures in place at the work site. If the contractor does not provide authorized persons who have been properly trained in the lockout/tagout procedure in use, the employer shall provide an authorized employee to operate or direct the operation of the energy isolating devices and installation of the locks and tags.

(e) *Enclosed spaces.* This paragraph covers enclosed spaces that may be entered by employees. It does not apply to vented vaults.

(1) *Safe work practices.* The employer shall assure the use of safe work practices for entry into and work in enclosed spaces.

(2) *Evaluation of potential hazards.* Before any entrance cover to an enclosed space is removed, the employer shall determine whether it is safe to do so after evaluating any atmospheric pressure or temperature differences and whether there might be a hazardous atmosphere in the space. Any conditions making it unsafe to remove the cover shall be eliminated before the cover is removed.

(3) *Removal of covers.* When covers are removed from enclosed spaces, the opening shall be promptly guarded by a railing, temporary cover, or other temporary barrier intended to prevent an accidental fall through the opening and to protect employees working in the space from objects entering the space.

(4) *Hazardous atmosphere.* Employees may not enter any enclosed space while it contains a hazardous atmosphere, unless the employee is protected from the hazards that exist or may develop within the space.

(5) *Attendants.* While work is being performed in the enclosed space, a person with basic first aid training shall be immediately available to render emergency assistance if there is reason to believe that a hazard may exist in the space or if a hazard exists because of traffic patterns in the area of the opening used for entry. That person is not precluded from performing other duties outside the enclosed space.

(6) *Calibration of test instruments.* Test instruments used to monitor atmospheres in enclosed spaces shall be kept in calibration.

(7) *Testing for flammable gases and vapors.* Before an employee enters an enclosed space, the internal atmosphere shall be tested for flammable gases and vapors with a direct-reading meter or similar instrument capable of collection and immediate analysis of data samples without need for off-site evaluation.

(8) *Testing for oxygen deficiency.* Before an employee enters an enclosed space, the internal atmosphere shall be tested for oxygen deficiency with a direct-reading meter or similar instrument, capable of collection and immediate analysis of data samples without need for off-site evaluation. If continuous forced air ventilation is provided, oxygen deficiency testing is not required.

(9) *Ventilation and monitoring.* If flammable gases or vapors are detected or if an oxygen deficiency is found, forced air ventilation shall be used to maintain oxygen at a safe level and to prevent a hazardous concentration of flammable gases and vapors from accumulating. A continuous monitoring program to ensure that no increase in flammable gas or vapor concentration occurs may be followed in lieu of ventilation, if flammable gases or vapors are detected at safe levels.

(10) *Specific ventilation requirements.* If continuous forced air ventilation is used, it shall begin before entry is made and shall be maintained long enough to ensure that a safe atmosphere exists before employees are allowed to enter the work area. The forced air ventilation shall be so directed as to ventilate the immediate area where employees are present within the enclosed space and shall continue until all employees leave the enclosed space.

(11) *Air supply.* The air supply for the continuous forced air ventilation shall be from a clean source and may not increase the hazards in the enclosed space.

(12) *Open flames.* If open flames are used in enclosed spaces, a test for flammable gases and vapors shall be made immediately before the open flame device is used and at least once per hour while the device is used in the space.

(f) *Trenches and excavations.* Trenching and excavation operations shall comply with §§ 1926.650, 1926.651, 1926.652, and 1926.653 of this chapter.

(g) *Personal protective equipment.*—(1) *General.* Personal protective equipment shall meet the requirements of Subpart I of this Part. Head protection meeting the requirements of American National Standard for Industrial Protective Helmets for Electrical Workers (ANSI Z89.2–1971) is deemed to be in compliance with § 1910.135.

(2) *Fall protection.* (i) Body belts, lifelines, and lanyards for fall arrest shall meet the requirements of § 1926.104 of this chapter.

(ii) Body belts and safety straps for work positioning shall meet the requirements of § 1926.959 of this chapter.

(iii) Body belts, safety straps, lanyards, lifelines, and body harnesses shall be inspected before use each day to determine that the equipment is in safe working condition. Defective equipment may not be used.

(iv) Lifelines shall be protected against being cut or abraded.

(v) Fall arrest equipment, work positioning equipment, or travel restricting equipment shall be used by employees working at elevated locations more than 4 feet (1.2 m) above the ground on poles, towers, trees, or structures and by employees working from vehicle-mounted elevating and rotating work platforms if other fall protection has not been provided. The use of fall protection equipment is not required when a qualified employee who meets the requirements of paragraph (h)(5) of this section is climbing or changing location on poles, towers, or similar structures containing steps or step bolts. Fall protection equipment shall be used by all employees climbing wood poles not containing step bolts except when they are climbing around obstructions, such as crossarms, pins, or braces.

(vi) When stopping or arresting a fall, fall arrest systems may not produce an arresting force on an employee of more than ten times the employee's weight or 1800 pounds (8kN), whichever is lower.

(vii) If vertical lifelines or droplines are used, not more than one employee may be attached to any one lifeline.

(viii) Snaphooks may not be connected to loops made in webbing-type lanyards.

(ix) Snaphooks may not be connected to each other.

(h) *Ladders, platforms, step bolts, and manhole steps.*—(1) *General.* Requirements for ladders contained in Subpart D of this part apply, except as specifically noted in paragraphs (h)(2) and (h)(5) of this section.

(2) *Special ladders and platforms.* Portable ladders and platforms used on structures or conductors in conjunction with overhead line work shall meet the following requirements in lieu of paragraphs (d)(2)(i) and (d)(2)(iii) of § 1910.25 and paragraph (c)(3)(iii) of § 1910.26:

(i) Ladders and platforms shall be secured to prevent their becoming accidentally dislodged.

(ii) Ladders and platforms may not be loaded in excess of the working loads for which they are intended.

(iii) Ladders and platforms shall be designed for the application for which they are used.

(iv) In the configurations that they are used, ladders and platforms shall be capable of supporting without failure at least four times the maximum intended load.

(3) *Conductive ladders.* Portable metal ladders and other portable conductive ladders may not be used near exposed energized lines or equipment. However, in specialized high-voltage work, conductive ladders shall be used where the employer demonstrates that nonconductive ladders would present a greater hazard than conductive ladders.

(4) *Step bolts and manhole steps.* (i) Step bolts and manhole steps shall be equipped with a ladder safety device meeting the requirements of § 1910.27 unless the step bolts and manhole steps are used only by qualified employees who meet the requirements of paragraph (h)(5) of this section.

(ii) Step bolts and manhole steps shall be spaced uniformly not less than 8 inches (20 cm) apart nor more than 18 inches (46 cm) apart. A 36-inch (91.4-cm) spacing between step bolts on one side of the supporting member, where there is an alternating pattern with the other side, meets this requirement.

(iii) The spacing between the first or last step bolt or manhole step and the entry or exit surface shall vary no more than 2 inches (5.1 cm) from the spacing between step bolts or manhole steps, and employees shall be made aware of any variation.

(iv) The minimum step width of step bolts shall be 4.5 inches (11.4 cm). The minimum clear step width of manhole steps shall be 10 inches (25.4 cm).

(v) For manhole steps, a minimum toe clearance of 4.5 inches (11.4 cm) from the point of embedment on the wall to the outside face of the step shall be provided.

(vi) For step bolts, the minimum toe clearance shall be 7 inches (17.8 cm). Where an obstruction cannot be avoided, the toe clearance may be reduced but shall be at least 4.5 inches (11.4 cm).

(vii) Step bolts and manhole steps shall be designed to prevent the employee's foot from slipping or sliding off the end of the step bolt or manhole step.

(viii) Manhole steps and step bolts installed after [6 months after the effective date of the rule] and used in corrosive environments shall be constructed of or coated with a material that will retard corrosion of the step or bolt.

(ix) Manhole steps installed after [6 months after the effective date of the rule] shall be provided with slip-resistant surfaces, such as corrugated, knurled, or dimpled surfaces.

(x) Each step bolt shall be capable of withstanding, without failure, at least four times the intended load calculated to be applied to the bolt.

(xi) If installed after [6 months after the effective date of the rule] a manhole step shall be capable of remaining solidly secured after being subjected to a separate application of a horizontal pullout load of 400 pounds (1780 N) and a vertical load of 800 pounds (3560 N). Any permanent set in the step resulting from this test may not exceed 0.375 inches (0.95 cm). No cracking or fracture of the step, no spalling of the concrete may be visible. The test loads shall be applied over a width of 3.5 inches (8.9 cm) centered on the step and applied at a uniform rate until the required load is reached.

(xii) Manhole steps installed before [6 months after the effective date of the rule] shall be capable of supporting their maximum intended loads.

(xiii) Step bolts and manhole steps shall be maintained in a safe condition and shall be visually inspected before each use.

(xiv) Step bolts which are bent greater than 15 degrees below the horizontal shall be removed and replaced with bolts that meet the requirements of paragraph (h) of this section. Manhole steps that are bent to such an extent as to reduce the step's projection from the wall to less than 4.5 inches (11.4 cm) shall be removed and replaced with steps meeting the requirements of paragraph (h) of this section or with another climbing device meeting the requirements of Subpart D of this part.

(5) *Qualified employees.* Ladders on triangulation, telecommunication, electrical power, and similar towers, and ladders on poles and structures, including stacks and chimneys, are exempt from the requirements in Subpart D of this part for ladder safety devices and cages if only qualified employees use these ladders. Such qualified employees shall meet the following requirements:

(i) Qualified employees shall have successfully completed a training or apprenticeship program that included hands-on training in the safe climbing of ladders, step bolts, or manhole steps.

(ii) Qualified employees shall have climbing duties as one of their routine work activities.

(iii) Qualified employees may not carry objects in their hands while the employees are in the act of climbing.

**Note.**—The provisions for appropriate fall protection in paragraph (g) of this section also apply. See specifically paragraph (g)(2)(v) regarding the use of fall arrest equipment, work positioning equipment, and travel restricting equipment.

(i) *Hand and portable power tools*—(1) *General.* Paragraph (i)(2) of this section applies to electric equipment connected by cord and plug. Paragraph (i)(3) of this section contains requirements for portable and vehicle-mounted generators used to supply cord- and plug-connected equipment. Paragraph (i)(4) of this section contains requirements for hydraulic and pneumatic tools.

(2) *Cord- and plug-connected equipment.* (i) Cord- and plug-connected equipment supplied by premises wiring is covered by Subpart S of this part.

(ii) Any cord- and plug-connected equipment supplied by other than premises wiring shall comply with one of the following in lieu of § 1910.243(a)(5):

(A) It shall be equipped with a cord containing an equipment grounding conductor connected to the tool frame and to a means for grounding the other end (however, this option may not be used where the introduction of the ground into the work environment increases the hazard to an employee);

(B) It shall be of the double-insulated type conforming to Subpart S of this part; or

(C) It shall be connected to the power supply through an isolating transformer with an ungrounded secondary.

(3) *Portable and vehicle-mounted generators.* Portable and vehicle-mounted generators used to supply cord- and plug-connected equipment shall meet the following requirements.

(i) The generator may only supply equipment located on the generator or the vehicle and cord- and plug-connected equipment through receptacles mounted on the generator or the vehicle.

(ii) The non-current-carrying metal parts of equipment and the equipment grounding conductor terminals of the receptacles shall be bonded to the generator frame.

(iii) In the case of vehicle-mounted generators, the frame of the generator shall be bonded to the vehicle frame.

(iv) Any neutral conductor shall be bonded to the generator frame.

(4) *Hydraulic and pneumatic tools.* (i) Safe operating pressures for hydraulic and pneumatic tools, hoses, valves, pipes, filters, and fittings may not be exceeded.

(ii) A hydraulic or pneumatic tool used where it may contact exposed live parts shall have a nonconductive hose.

(iii) A pneumatic tool used on energized electrical lines or equipment or used where it may contact exposed live parts shall have an accumulator to collect moisture.

(iv) Pressure shall be released before connections are broken, unless quick acting, self-closing connectors are used. Hoses may not be kinked.

(v) Employees may not use any part of their bodies to locate or attempt to stop a hydraulic leak.

(j) *Live-line tools*—(1) *Design of tools.* Live-line tool poles shall be designed and constructed to withstand the following minimum tests:

(i) 100,000 volts per foot (3281 volts per centimeter) of length for 5 minutes if the toll is made of fiberglass, or

(ii) 75,000 volts per foot (2461 volts per centimeter) of length for 3 minutes if the tool is made of wood, or

(iii) Other equivalent tests.

(2) *Condition of tools.* (i) Each live-line tool shall be visually inspected for defects before use each day.

(ii) If any defect or contamination that could adversely affect the insulating qualities of the live-line tool is present, the tool shall be removed from service.

(k) *Materials handling and storage.* Material handling and storage shall conform to the requirements of Subpart N of this part, except as modified in this paragraph.

(1) *Materials storage near energized lines or equipment.* (i) In areas not restricted to qualified persons only, materials or equipment may not be stored closer to energized lines or exposed energized parts of equipment than the following distances plus an amount providing for the maximum sag and side swing of all conductors and providing for the height and movement of material handling equipment:

(A) For lines and equipment energized at 50 kV or less, the distance is 10 feet (305 cm).

(B) For lines and equipment energized at more than 50 kV, the distance is 10 feet (305 cm) plus 4 inches (10 cm) for every 10 kV over 50 kV.

(ii) In areas restricted to qualified employees, material may not be stored within the working space about energized lines or equipment.

Note.—Requirements for the size of the working space are contained in paragraphs (u)(1) and (v)(3) of this section.

(2) *Material handling near energized lines or equipment.* Unqualified employees may not bring materials closer to energized lines or exposed energized parts of equipment than the distances given in paragraphs (k)(1)(i)(A) and (k)(1)(i)(B) of this section.

(l) *Working on or near exposed energized parts.* This paragraph applies to work on exposed live parts, or near enough to them, to expose the employee to any hazard they present.

(1) *General.* Only qualified employees and trainees working under the direct supervision of a qualified employee may work on or with exposed energized lines or parts of equipment. Only qualified employees and trainees working under the direct supervision of a qualified employee may work in areas containing unguarded, uninsulated energized lines or parts of equipment operating at 50 volts or more. Electric lines and equipment shall be considered and treated as energized unless the provisions of paragraph (d) or paragraph (m) of this section have been followed.

(2) *Clearances.* No employee may approach or take any conductive object without an insulating handle closer to exposed energized parts than set forth in Table R–6 or R–7, unless:

(i) The employee is insulated from the energized part (gloves rated for the voltage involved are considered insulation of the employee only with regard to the energized part upon which work is being performed), or

(ii) The energized part is insulated from the employee and any other conductive object at a different potential, or

(iii) The employee is insulated from any other conductive object, as during live-line bare-hand work.

(3) *Working position.* Employees may not work on equipment or lines in any position from which a shock or slip will tend to bring the body toward exposed parts which are at a potential different from the employee's body.

(4) *Making connections.* In connecting deenergized equipment or lines to an energized circuit by means of a conducting wire or device, employees shall first attach the wire to the deenergized part. When disconnecting, employees shall remove the source end first. Loose conductors shall be kept away from exposed energized parts.

(5) *Conductive apparel.* When work is performed in the vicinity of exposed energized parts of equipment, employees shall remove or render nonconductive all exposed conductive articles, such as key or watch chains, rings, or wrist watches or bands, if such articles increase the hazards associated with inadvertent contact with the energized parts.

(6) *Fuse handling.* When fuses must be installed or removed with one or both terminals energized at more than 300 volts, tools or gloves rated for the voltage shall be used. When installing expulsion-type fuses, employees shall wear safety glasses or safety goggles and shall stand clear of the exhaust path of the fuse barrel.

(7) *Covered (noninsulated) conductors.* The requirements of this section which pertain to the hazards of exposed live parts apply when work is performed in the proximity of covered (noninsulated) wires.

(8) *Ungrounded metal parts.* Ungrounded metal parts of equipment or devices, such as transformer cases and circuit breaker housings, shall be treated as energized at the highest voltage to which they are exposed, unless these parts are known by test to be free from voltage.

TABLE R–6.—AC MINIMUM CLEARANCE FROM LIVE PARTS

| Nominal voltage in kilovolts phase to phase | Distance phase to employee [1] | |
|---|---|---|
| | ft | (cm) |
| 1 or less | Avoid contact | |
| 1.1 to 15 | 2.00 | (61) |
| 15.1 to 35 | 2.33 | (71) |
| 35.1 to 46 | 2.50 | (76) |
| 46.1 to 72.5 | 3.00 | (91) |
| 72.6 to 121 | 3.33 | (102) |
| 138 to 145 | 3.50 | (107) |
| 161 to 169 | 3.67 | (112) |
| 230 to 242 | 5.00 | (152) |
| 345 to 362 [2] | 7.00 | (213) |
| 500 to 550 [2] | 11.00 | (335) |
| 700 to 765 [2] | 15.00 | (457) |

[1] This is the minimum air gap or live-line tool distance to be maintained. The clear live-line tool distance is the distance measured longitudinally along the live-line tool from the conductive device or the working end of the tool to the employee's hand.

[2] The minimum clearance distance may be reduced to the length of the line insulator, if a smaller clearance is needed to do the work.

TABLE R–7.—DC MINIMUM CLEARANCE FROM LIVE PARTS

| Maximum voltage conductor to ground kilovolts | Distance [1, 2] | |
|---|---|---|
| | ft | (cm) |
| 250 | 3.5 | (107) |
| 400 | 6.0 | (183) |
| 500 | 8.5 | (259) |
| 750 | 16.0 | (488) |

[1] This is the minimum air gap or clear live-line tool distance to be maintained. The clear live-line tool distance is the distance measured longitudinally along the live-line tool from the conductive device or the working end of the tool to the employee's hand.

[2] The minimum clearance distance may be reduced to the length of the line insulator, if a smaller distance is needed to do the work.

(m) *Deenergizing lines and equipment for employee protection*—(1) *Application.* Paragraph (m) of this section applies to the deenergization of transmission and distribution lines and equipment for the purpose of protecting employees. Control of hazardous energy sources used in the generation of electric energy is covered in paragraph (d) of this section. Conductors and parts of electric equipment that have been deenergized under procedures other than those required by paragraph (d) or (m) of this section, as applicable, shall be treated as energized.

(2) *General.* (i) If an employee must depend on others to operate switches to deenergize lines or equipment on which the employee is to work or if the employee must secure special authorization before operating such switches, all of the requirements of paragraph (m)(3) of this section shall be

observed, in the order given, before work is begun.

(ii) If an employee other than the system operator is in sole charge of the lines or equipment and of the means of disconnection, that employee shall also comply with all of the requirements of paragraph (m)(3) of this section, in the order given, taking the place of the system operator as necessary.

(iii) If an employee is working alone and the means of disconnection are accessible and visible to the employee, the requirements of paragraphs (m)(3)(ii), (m)(3)(v), (m)(3)(vi), (m)(3)(vii), and (m)(3)(xi) of this section shall be observed. However, tags required by these provisions need not be used.

(iv) Any disconnecting means that are accessible to persons outside the employer's control (for example, the general public) shall be rendered inoperable while they are open for the purpose of protecting employees.

(3) *Deenergizing lines and equipment.* (i) A designated employee shall make a request of the system operator to have the particular section of line or equipment deenergized. The designated employee becomes the employee in charge (as this term is used in paragraph (m)(3) of this section) and is responsible for the clearance.

(ii) All switches, disconnectors, jumpers, taps, and other means through which electric energy may be supplied to the particular lines and equipment to be energized shall be opened. Such means shall be rendered inoperable, as design permits, and appropriately tagged to indicate that employees are at work.

(iii) Automatically and remotely controlled switches that could cause the opened disconnection means to close shall also be tagged at the point of control and shall be rendered inoperable, if design permits.

(iv) Tags shall prohibit operation of the disconnecting means and shall indicate that employees are at work.

(v) After the applicable requirements in paragraphs (m)(3)(i) through (m)(3)(iv) of this section have been followed and the employee in charge of the work has been given a clearance by the system operator, the employee in charge shall verify by test that the lines and equipment to be worked are deenergized.

(v) Protective grounds shall be installed as required by paragraph (n) of this section.

(vii) After the applicable requirements of paragraphs (m)(3)(i) through (m)(3)(vi) of this section have been followed, the lines and equipment involved may be worked as deenergized.

(viii) If two or more independent crews will be working on the same lines or equipment, each crew shall independently comply with the requirements in paragraph (m)(3) of this section.

(ix) To transfer the clearance, the employee in charge (or, in case of forced absence, the employee's supervisor) shall inform the system operator; employees in the crew shall be informed of the transfer; and the new employee in charge shall be responsible for the clearance.

(x) To release a clearance, the employee in charge shall:

(A) Notify employees under his or her direction that the clearance is to be released;

(B) Determine that all employees in the crew are clear of the lines and equipment;

(C) Determine that all protective grounds installed by the crew have been removed; and

(D) Report this information to the system operator, thus releasing the clearance.

(xi) Only after all protective grounds have been removed, all protective tags have been removed from points of disconnection, all crews working on the lines or equipment have released their clearances, and all employees are clear of the lines and equipment, may action be initiated to reenergize the lines or equipment.

(xii) The identity of the person requesting tag removal shall be the same as that of the employee requesting placement, unless responsibility has been transferred under paragraph (m)(3)(ix) of this section.

(n) *Grounding for the protection of employees*—(1) *Application.* Paragraph (n) of this section applies to the grounding of transmission and distribution lines and equipment for the purpose of protecting employees. Paragraph (n)(4) of this section also applies to the protective grounding of other equipment as required elsewhere in this section.

(2) *General.* For the employee to work lines or equipment as deenergized, the lines or equipment shall be deenergized under the provisions of paragraph (m) of this section and shall be grounded as specified in paragraphs (n)(3) through (n)(9) of this section. However, if the installation of a ground is impracticable or if the conditions resulting from the installation of a ground would present greater hazards than working without grounds, the lines and equipment may be treated as deenergized provided all of the following conditions are met:

(i) The lines and equipment have been deenergized under the provisions of paragraph (m) of this section.

(ii) There is no possibility of contact with another energized source.

(iii) The hazard of induced voltage is not present.

(3) *Location.* Temporary protective grounds shall be placed at the work location. However, if the installation of temporary protective grounds at the work location is infeasible, grounds shall be installed on each side of the work location and as close to it as possible.

(4) *Protective grounding equipment.* (i) Protective grounding equipment shall be capable of conducting the maximum ground-fault current that could flow at the point of grounding for the time necessary to clear the fault. This equipment shall have an ampacity greater than or equal to that of No. 2 AWG copper.

(ii) Protective grounds shall have an impedance to ground low enough to permit prompt operation of protective devices in case of accidental energizing of the lines or equipment.

(5) *Testing.* Before any ground is installed, lines and equipment shall be tested and found absent of voltage, unless a previously installed ground is present.

(6) *Order of connection.* When grounds are to be attached to lines or equipment, the ground-end connection shall be attached first, and then the other end shall be attached by means of live-line tools or other insulated devices.

(7) *Order of removal.* When grounds are to be removed, the grounding device shall first be removed from the lines or equipment using live-line tools or other insulated devices.

(8) *Additional precautions.* When work is performed on a cable at a location remote from the cable terminal, the cable may not be grounded at the cable terminal if there is a possibility of hazardous transfer of potential should a fault occur.

(9) *Removal of grounds for test.* Grounds may be removed temporarily during tests. During the test procedure, the previously grounded lines and equipment shall be considered as energized.

(o) *Testing and test facilities*—(1) *Application.* Paragraph (o) of this section provides for safe work practices for high-voltage and high-power testing performed in laboratories, in shops, and in substations under the exclusive control of an electric utility, in the field, and on lines at sites accessible only to qualified personnel as part of the utility operation. It applies only to testing involving interim measurements utilizing high voltage, high power, or combinations of both, as opposed to

testing involving continuous measurements as in routine metering, relaying, and normal line work.

(2) *General requirements.* (i) The employer shall establish and enforce additional work practices for the protection of workers from the hazards of high-voltage or high-power testing at all test areas, temporary and permanent. Such work practices shall include, as a minimum, test area guarding, grounding, and the safe use of measuring and control circuits. A means providing for periodic safety checks of field test areas shall also be included. (See paragraph (o)(6) of this section.)

(ii) Employees shall be trained in safe work practices upon their initial assignment to the test area, with periodic reviews and updates provided on a continuing basis.

(3) *Guarding of test areas.* (i) Permanent test areas shall be guarded by walls, fences, or barriers.

(ii) In field testing, or at a temporary test site where permanent fences and gates are not provided, the test area shall be guarded by the use of distinctively colored safety tape which is supported approximately waist high and to which safety signs are attached, or the test area shall be guarded by one or more test observers stationed so that the entire area can be monitored. These barriers shall be removed when the protection they provide is no longer needed.

(iii) Guarding shall be provided within test areas to control access to test equipment or apparatus under test likely to become energized as part of the testing by either direct or inductive coupling, in order to prevent accidental employee contact with energized parts.

(4) *Grounding practices.* (i) The employer shall establish and implement safe grounding practices for the particular test facility. All conductive parts accessible to the test operator during the time the equipment is operating at high voltage shall be maintained at ground potential except for portions of the equipment that are isolated from the test operator by guarding. Wherever ungrounded terminals of test equipment or apparatus under test may be present, they shall be treated as energized until determined by tests to be deenergized.

(ii) Visible grounds shall be applied, either automatically or manually with properly insulated tools, to the high-voltage circuits after they are deenergized and before work is performed on the circuit or item or apparatus under test. Common ground connections shall be solidly connected to the test equipment and the apparatus under test.

(iii) If high currents are intentionally employed in the testing, an isolated ground-return conductor system shall be provided so that no intentional passage of current, with its attendant voltage rise, is permitted in the ground grid or in the earth.

(iv) In tests in which the grounding of test equipment by means of the equipment grounding conductor located in the equipment power cord cannot be used due to increased hazards to test personnel or the prevention of satisfactory measurements, an equivalent safety ground shall be provided and the condition clearly indicated in the test set-up.

(v) When the test area is entered after deenergization, a ground shall be placed on the high-voltage terminal and any other exposed terminals. High capacitance equipment or apparatus shall be discharged through a resistor rated for the available energy. A direct ground shall be applied to the exposed terminals, when the stored energy drops to a level at which it is safe to do so.

(vi) If test trailers or vans are used in field testing, the chassis shall be grounded. Protection against hazardous touch potentials with respect to the vehicle, instrument panels, and other conductive parts accessible to employees shall be provided by bonding, insulation, or isolation.

(5) *Control and measuring circuits.* (i) Control wiring, meter connections, test leads and cables may not be run from a test area unless they are contained in a grounded metallic sheath and terminated in a grounded metallic enclosure, or unless other precautions are taken to ensure equivalent safety.

(ii) Meters and other instruments with accessible terminals or parts shall be isolated from test personnel to protect against hazards arising from such terminals and parts inadvertently becoming energized during testing. Where this isolation is provided by test equipment being located in metal compartments with viewing windows, interlocks shall be provided to interrupt the power supply if the compartment cover is opened.

(iii) The routing and connections of temporary wiring shall be made secure against damage, accidental interruptions and other hazards. To the maximum extent possible, signal, control, ground, and power cables shall be kept separate.

(iv) If employees will be present in the test area during testing, a test observer who is capable of implementing the immediate deenergization of test circuits for safety purposes shall be present.

(6) *Safety check.* (i) Safety practices governing employee work at temporary or field test areas shall provide for a routine check of such test areas for safety at the beginning of each group of continuous tests.

(ii) The test operator in charge shall conduct routine safety checks of temporary or field test facilities before each group of continuous tests, to verify at least the following conditions:

(A) That barriers and guards are in workable condition and are properly placed to isolate hazardous areas;

(B) That system test status signals, if used, are in operable condition;

(C) That test power disconnects are clearly marked and readily available in emergency;

(D) That ground connections are clearly identifiable;

(E) That personal protective equipment is provided and used as required by Subpart I of this Part and by this section;

(F) That signal, ground, and power cables are properly separated.

(p) *Mechanical equipment*—(1) *General requirements.* (i) The critical safety components of mechanical elevating and rotating equipment shall be inspected on each shift on which such equipment is used.

(ii) No vehicular equipment having an obstructed view to the rear may be operated on off-highway jobsites where any employee is exposed to the hazards created by the moving vehicle, unless:

(A) The vehicle has a reverse signal alarm audible above the surrounding noise level, or

(B) The vehicle is backed up only when a designated employee signals that it is safe to do so.

(iii) The operator of an electric line truck may not leave his or her position at the controls while a load is suspended if doing so might endanger any employee.

(iv) Rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler-type tractors, crawler-type loaders, and motor graders, with or without attachments, shall have roll-over protective structures that meet the requirements of Subpart W of Part 1926 of this chapter.

(2) *Outriggers.* (i) Vehicular equipment, if provided with outriggers, shall be operated with the outriggers extended and firmly set as necessary for the stability of the specific configuration of the equipment. Outriggers may not be extended or retracted outside of clear view of the operator unless all employees are outside the range of possible equipment motion.

(ii) If the work area or the terrain precludes the use of outriggers, the equipment may be operated only within the maximum load ratings as specified by the manufacturer for the particular configuration of the equipment without outriggers.

(3) *Applied loads.* Lifting equipment shall be used within its maximum load rating for the conditions under which the work is being done.

(4) *Operations near energized lines or equipment.* (i) Mechanical equipment shall be operated so that the clearance distances of Tables R–6 and R–7 are maintained from exposed energized lines and equipment.

(ii) If it is difficult for the operator to accurately determine the distance between the equipment and the energized parts, another person shall observe the clearance and give timely warnings when the minimum clearance distance is approached.

(iii) If it is possible for the mechanical equipment or any attached load to be taken closer to exposed energized lines or equipment than the clearance specified in Table R–6 or R–7, the operation shall also comply with one of the following provisions:

(A) The equipment and attached load shall be treated as energized by employees on the ground. Employees on the ground may not contact the equipment or load unless they use electrical protective equipment.

(B) The equipment shall be insulated for the voltage involved. The equipment shall be positioned so that its uninsulated portions cannot approach the lines or equipment any closer than the clearance specified in Table R–6 or R–7.

(q) *Overhead lines.* This paragraph provides additional requirements for work performed on or near overhead lines and equipment.

(1) *General.* (i) Before elevated structures, such as poles or towers, are subjected to such stresses as climbing or the installation or removal of equipment may impose, the employer shall ascertain that the structures are capable of sustaining the additional or unbalanced stresses. If the pole or other structure cannot withstand the loads which will be imposed, it shall be braced or otherwise supported to prevent failure.

(ii) When poles are set, moved, or removed near overhead conductors, direct contact of the pole with the energized conductors shall be avoided. Employees shall wear electrical protective equipment or use insulated devices when handling poles, and the employees may not contact the poles with uninsulated parts of their bodies.

(iii) Pole holes shall be attended or physically guarded in areas where employees are working.

(2) *Installing and removing overhead lines.* The following provisions apply to the installation and removal of overhead conductors or cable.

(i) Precautions, such as the use of barriers or the tension stringing method, shall be taken to minimize the possibility that conductors and cables being installed or removed will contact energized lines or equipment.

(A) Conductors, cables, and pulling and tensioning equipment shall be considered as energized when the conductor or cable is being installed close enough to energized conductors that any of the following failures could energize the pulling or tensioning equipment or the wire or cable being installed:

(*1*) Failure of the pulling or tensioning equipment,

(*2*) Failure of the wire or cable being pulled, or

(*3*) Failure of the previously installed lines or equipment.

(B) Employees working on poles or structures or working in aerial lifts need not treat the installed conductors as energized if the conductors are grounded at the work locations.

(ii) If the conductors being installed or removed cross over energized conductors in excess of 600 volts, the automatic-reclosing feature for the energized lines shall be made inoperative.

(iii) Before lines are installed parallel to existing energized lines, the employer shall make a determination of the voltage to be induced in the new lines. If the lines being installed are subject to the induction of a hazardous voltage, the following requirements also apply:

(A) Each bare conductor shall be grounded in increments so that no point is more than 2 miles (3.22 km) from a ground.

(B) The grounds required in paragraph (q)(2)(iii)(A) of this section shall be left in place until the conductor installation is completed between dead ends.

(C) The grounds required in paragraph (q)(2)(iii)(A) of this section shall be removed as the last phase of aerial cleanup.

(D) If employees are working on bare conductors, grounds shall also be installed at each location where these employees are working, and grounds shall be installed at all open dead-end or catch-off points or the next adjacent structure.

(E) If two bare conductors are being spliced, the conductors to be spliced shall be bonded and grounded.

(F) When grounds are to be attached to lines or equipment, the ground-end connection shall be attached first, and then the other end shall be attached by means of live-line tools or other insulated devices, unless no induced voltage hazard is present.

(G) When grounds are to be removed, the grounding device shall first be removed from the lines or equipment using live-line tools or other insulated devices, unless the induced voltage hazard is no longer present.

(iv) Reel handling equipment, including pulling and tensioning devices, shall be in safe operating condition and shall be leveled and aligned.

(v) Load ratings of stringing lines, pulling lines, conductor grips, load-bearing hardware and accessories, rigging, and hoists may not be exceeded.

(vi) Pulling lines and accessories shall be repaired or replaced when defective.

(vii) Conductor grips may not be used on wire rope, unless the grip is specifically designed for this application.

(viii) Reliable communications between reel tender and pulling rig operator shall be maintained. The pulling rig may only be operated when it is safe to do so.

(ix) While the conductor or pulling line is being pulled (in motion) with a power-driven device, employees are not permitted directly under overhead operations or on the cross arm, except as necessary to guide the stringing sock or board over or through the stringing sheave.

(3) *Live-line bare-hand work.* In addition to other applicable provisions contained in this section, the following requirements apply to live-line bare-hand work:

(i) Before using or supervising the use of the live-line bare-hand technique on energized circuits, employees shall be trained in the technique and in the safety requirements of paragraph (q)(3) of this section. Employees shall receive refresher training as necessary.

(ii) Before any employee uses the live-line bare-hand technique on energized high-voltage conductors or parts, the following information shall be ascertained:

(A) The nominal voltage rating of the circuit on which the work is to be performed,

(B) The clearances to ground of lines and other energized parts on which work is to be performed, and

(C) The voltage limitations of equipment to be used.

(iii) The insulated equipment and tools used shall be designed, tested, and intended for live-line bare-hand work.

Tools and equipment shall be kept clean and dry.

(iv) The automatic-reclosing feature of circuit-interrupting devices protecting the lines shall be made inoperative.

(v) Work may not be performed when adverse weather conditions (for example, thunderstorms in the immediate vicinity or snow or ice storms) make the work unusually hazardous. Additionally, work may not be performed when winds reduce the phase-to-phase or phase-to-ground clearances at the work location below that specified in paragraph (q)(3)(xii) of this section, unless the grounded objects and other lines and equipment are covered by insulating guards.

(vi) A conductive bucket liner or other conductive device shall be provided for bonding the insulated aerial device to the energized line or equipment.

(A) The employee shall be connected to the bucket liner or other conductive device by use of conductive shoes, leg clips, or other means.

(B) Where necessary, electrostatic shielding designed for the voltage being worked shall be provided.

(vii) Before the employee contacts the energized part, the conductive bucket liner or other conductive device shall be bonded to the energized conductor by means of a positive connection. This connection shall remain attached to the energized conductor until the work on the energized circuit is completed.

(viii) Aerial lifts to be used for live-line bare-hand work shall have dual controls (lower and upper) as follows:

(A) The upper controls shall be within easy reach of the employee in the basket. On a two-basket-type lift, access to the controls shall be within easy reach from either basket.

(B) The lower set of controls shall be located near the base of the boom, and they shall be so designed that they can override operation of the equipment at any time.

(ix) Ground level lift controls may not be operated with an employee in the lift, except in case of emergency.

(x) Before employees are elevated into the work position, all controls (ground level and bucket) shall be checked to determine that they are in proper working condition.

(xi) Before the boom of an aerial lift is elevated, the body of the truck shall be grounded, or the body of the truck shall be barricaded and treated as energized.

(xii) A boom-current test shall be made before work is started each day, each time during the day when higher voltage is encountered, and when changed conditions indicate a need for an additional test. This test shall consist of placing the bucket in contact with an energized source equal to the voltage to be encountered for a minimum of 3 minutes. The leakage current may not exceed 1 microampere per kilovolt of nominal phase-to-ground voltage. Work operations shall be immediately suspended upon indication of a malfunction in the equipment.

(xiii) The minimum clearance distances specified in Table R–8 shall be maintained from all grounded objects and from lines and equipment at a potential different from that to which the live-line bare-hand equipment is bonded, unless such grounded objects and other lines and equipment are covered by insulating guards.

(xiv) While an employee approaches, leaves, or bonds to an energized circuit, the minimum distances in Table R–8 shall be maintained between the employee and any grounded parts, including the lower boom and portions of the truck.

(xv) While the bucket is positioned alongside an energized bushing or insulator string, the minimum phase-to-ground clearances of Table R–8 shall be maintained between all parts of the bucket and the grounded end of the bushing or insulator string.

(xvi) Hand lines may not be used between the bucket and the boom or between the bucket and the ground. However, non-conductive-type hand lines may be used from conductor to ground if not supported from the bucket. Ropes used for live-line bare-hand work may not be used for other purposes.

(xvii) Uninsulated equipment or material may not be passed between a pole or structure and an aerial lift while an employee working from the bucket is bonded to an energized part.

(xviii) A minimum clearance table reflecting the clearance distances listed in Table R–8 shall be printed on a plate of durable non-conductive material. This table shall be mounted so as to be visible to the operator of the boom.

(xix) A non-conductive measuring device shall be available to assist employees in maintaining the required clearance distance.

TABLE R–8.—AC MINIMUM CLEARANCE FOR LIVE-LINE BARE-HAND WORK

| Nominal voltage in kilovolts phase to phase | Distance | | | |
|---|---|---|---|---|
| | Phase to ground | | Phase to phase | |
| | feet | (cm) | feet | (cm) |
| 1.0 to 15.0 | 2.00 | (61) | 2.00 | (61) |
| 15.1 to 35.0 | 2.33 | (71) | 2.33 | (71) |
| 35.1 to 46.0 | 2.50 | (76) | 2.50 | (76) |
| 46.1 to 72.5 | 3.00 | (91) | 3.00 | (91) |
| 72.6 to 121 | 3.33 | (102) | 4.50 | (137) |
| 138 to 145 | 3.50 | (107) | 5.00 | (152) |
| 161 to 169 | 3.67 | (112) | 5.50 | (168) |
| 230 to 242 | 5.00 | (152) | 8.33 | (254) |
| 345 to 362 [1] | 7.00 | (213) | 13.33 | (610) |
| 500 to 552 [1] | 11.00 | (335) | 20.00 | (406) |
| 700 to 800 [1] | 15.00 | (457) | 31.00 | (945) |

[1] The minimum phase-to-ground clearance distance may be reduced to the length of the line insulator, if a smaller distance is needed to do the work. The minimum phase-to-phase clearance distance may be reduced to 1.73 times the length of the line insulator, if a smaller clearance is needed to do the work.

(4) *Towers and structures.* The following requirements apply to work performed on towers or other structures which support overhead lines.

(i) No employee may be under a tower or structure while work is in progress, except as necessary to assist employees working above.

(ii) Tag lines or other similar devices shall be used to maintain control of tower sections being raised or positioned, unless the use of such devices would create a greater hazard.

(iii) The loadline may not be detached from a member or section until the load is safely secured.

(iv) Except during emergency power restoration procedures, work shall be discontinued when adverse weather conditions (for example, thunderstorms in the immediate vicinity, high winds, or snow or ice storms) make the work unusually hazardous.

(r) *Line-clearance tree-trimming operations.* This paragraph provides additional requirements for line-clearance tree-trimming operations and for equipment used in these operations.

(1) *Electrical hazards.* This paragraph does not apply to qualified employees.

(i) Before any employee climbs, enters, or works around any tree, a close inspection shall be made to determine whether an electric conductor passes within 10 feet of the tree.

(ii) Employees other than line-clearance tree trimmers shall maintain the following minimum clearances from energized conductors and equipment:

(A) For lines and equipment energized at 50 kV or less, the minimum clearance distance is 10 feet (305 cm).

(B) For lines and equipment energized at more than 50 kV, the minimum clearance distance is 10 feet (305 cm) plus 4 inches (10 cm) for every 10 kV over 50 kV.

(iii) Only a line-clearance tree trimmer may perform the work if it is found that an electrical hazard exists or if parts of the trees are within 10 feet (305 cm) of exposed energized overhead conductors or equipment.

(iv) There shall be a second line-clearance tree trimmer within normal voice communication under any of the following conditions:

(A) If the line-clearance tree trimmer is to approach more closely than 10 feet (305 cm) any conductor or electrical apparatus energized at more than 750 volts, or

(B) If branches or limbs being removed are closer to lines energized at more than 750 volts than the distances listed in Tables R–6 and R–7 (excluding the notes to those tables), or

(C) If roping is necessary to remove branches or limbs from such conductors or apparatus.

(v) Line clearance tree trimmers shall maintain the clearances from energized conductors given in Tables R–6 and R–7, excluding the notes to those tables.

(vi) Branches that are contacting exposed energized conductors or equipment or that are within the distances specified in Table R–6 or R–7 (excluding the notes to those tables) may be removed only through the use of insulating equipment.

(vii) Ladders, platforms, and aerial devices may not be brought closer to an energized part than the distances listed in Tables R–6 and R–7 (excluding the notes to those tables).

(viii) Line-clearance tree-trimming operations may not be performed during storms or under emergency conditions.

(2) *Brush chippers.* (i) Brush chippers shall be equipped with a locking device in the ignition system.

(ii) Access panels for maintenance and adjustment of the chipper blades and associated drive train shall be in place and secure during operation of the equipment.

(iii) Brush chippers not equipped with a mechanical infeed system shall be equipped with an infeed hopper of length sufficient to prevent employees from contacting the blades or knives of the machine during operation.

(iv) Trailer chippers detached from trucks shall be chocked or otherwise secured.

(v) Employees in the immediate area of an operating chipper feed table shall wear eye and face protection meeting the requirements of Subpart I of this part.

(3) *Sprayers and related equipment.* (i) Walking and working surfaces of sprayers and related equipment shall be covered with slip-resistant material. If slippery conditions cannot be eliminated completely, slip-resistant footwear or handrails and stair rails meeting the requirements of Subpart D may be used instead of slip-resistant material.

(ii) Equipment on which employees stand to spray while the vehicle is in motion shall be equipped with guardrails around the working area. The guardrail shall be constructed in accordance with Subpart D of this part.

(4) *Stump cutters.* (i) Stump cutters shall be equipped with enclosures or guards to protect employees.

(ii) The stump cutter operator and others in the immediate area of stump grinding operations shall wear eye and face protection meeting the requirements of Subpart I of this part.

(5) *Gasoline-driven power saws.* Gasoline-driven power saw operations shall meet the requirements of § 1910.266(c)(5) and the following:

(i) Power saws weighing more than 15 pounds (6.8 kilograms, service weight) that are used in trees shall be supported by a separate line, except when work is performed from an aerial lift and except during topping or removing operations where no supporting limb will be available. Proper clearance distance from energized lines, as provided elsewhere in this section, shall be maintained at all times.

(ii) Power saws shall be equipped with a control that will return the saw to idling speed when released.

(iii) Power saws shall be equipped with a clutch and shall be so adjusted that the clutch will not engage the chain drive at idling speed.

(iv) The operator shall have secure footing when starting the saw. Drop starting of saws over 15 pounds (6.8 kg) is permitted outside of the bucket of an aerial lift only if the area below the lift is clear of personnel.

(v) Power saw engines may be started and operated only when all co-workers are clear of the saw.

(vi) Power saws may not be running when being carried up into a tree by an employee.

(vii) Power saw engines shall be stopped for all cleaning, refueling, adjustments, and repairs to the saw or motor, except as the manufacturer's servicing procedures require otherwise.

(6) *Backpack power units for use in pruning and clearing.* (i) While a backpack power unit is running, no one other than the operator may be within 10 feet (305 cm) of the cutting head of a brush saw.

(ii) A backpack power unit shall be equipped with a quick shutoff switch readily accessible to the operator.

(iii) Backpack power unit engines shall be stopped for all cleaning, refueling, adjustments, and repairs to the saw or motor, except as the manufacturer's procedures require otherwise.

(7) *Rope.* (i) Climbing ropes shall be used by employees working aloft in trees. These ropes shall have a minimum diameter of 0.5 inch (1.2 cm) with a minimum breaking strength of 2300 pounds (10.2 kN). Synthetic rope shall have elasticity of not more than 7 percent.

(ii) Rope made unsafe by damage or defect may not be used.

(iii) Rope shall be stored away from cutting edges and sharp tools. Rope contact with corrosive chemicals, gas, and oil shall be avoided.

(iv) When stored, rope shall be coiled and piled, or shall be suspended, so that air can circulate through the coils.

(v) Rope ends shall be secured to prevent their unraveling.

(vi) Climbing rope may not be spliced to effect repair.

(vii) If there is a possibility that rope may be taken closer to exposed energized lines than the clearance distance specified in Table R–6 or R–7, the rope shall be treated as energized by employees on the ground or in contact with ground.

(s) *Communication facilities*—(1) *Microwave transmission.* (i) Employees may not look into an open waveguide or antenna which is connected to an energized microwave source.

(ii) If the electromagnetic radiation level within an accessible area associated with microwave communications systems exceeds the radiation protection guide given in § 1910.97, the area shall be posted with the warning symbol described in § 1910.97(a)(3). The lower half of the warning symbol shall include the following or its equivalent:

"Radiation in this area may exceed hazardous limitations and special precautions are required. Obtain specific instruction before entering."

(iii) When an employee works in an area where the electromagnetic radiation could exceed the radiation protection guide, the employer shall institute measures that ensure that the employee's exposure is not greater than that permitted by that guide. Such measures may include administrative and engineering controls and personal protective equipment.

(2) *Power line carrier.* Power line carrier work, including work on equipment used for coupling carrier current to power line conductors, shall be performed in accordance with the requirements of this section pertaining to work on energized lines.

(t) *Underground electrical installations.* This paragraph provides additional requirements for work on underground electrical installations.

(1) *Access.* Ladders or other climbing devices shall be used to enter and exit manholes and subsurface vaults exceeding 4 feet (122 cm) in depth. Employees may not climb into or out of manholes or vaults by stepping on cables or hangers.

(2) *Lowering equipment into manholes.* Equipment used to lower materials and tools into manholes or vaults shall be capable of supporting the weight to be lowered and shall be checked for defects before use. Before hot solder or other hot compounds are lowered into the opening for a manhole or vault, employees working in the manhole or vault shall be clear of the area directly under the opening.

(3) *Attendants for manholes.* (i) While work is being performed in a manhole containing energized electric equipment, an employee shall be available on the surface in the immediate vicinity to render emergency assistance.

(ii) Occasionally, the employee on the surface may briefly enter a manhole to provide assistance, other than emergency.

(iii) For the purpose of inspection, housekeeping, taking readings, or similar work, an employee working alone may enter, for brief periods of time, a manhole where energized cables or equipment are in service, if such work can be performed safely.

(iv) Communications (visual, voice, or signal line) shall be maintained among all employees involved in the job.

(4) *Duct rods.* If duct rods are used, they shall be installed in the direction presenting the least hazard to employees. An employee shall be stationed at the far end of the duct line being rodded to ensure that the required clearance distances are maintained.

(5) *Moving cables.* Energized cables that are to be moved shall be carefully inspected for defects and moved only under the direct supervision of a qualified employee.

(6) *Multiple cables.* When multiple cables are present in a work area, the cable to be worked shall be identified by electrical means, unless its identity is obvious by reasons of distinctive appearance or location. Cables other than the one being worked shall be protected from damage.

(7) *Defective cables.* Where cables in manholes appear defective by the presence of abnormalities which could lead to or be an indication of an impending fault (such as oil or compound leaking from cable or joints, broken cable sheaths or joint sleeves, hot localized surface temperatures of cables or joints, or swollen joints whose circumference exceeds 3.5 times the standard sleeve size diameter), no employee may work in the manhole while the defective cable is energized. However, if the defective cable or splice cannot be deenergized due to service load conditions, employees may enter the manhole provided they are protected from the possible effects of a failure by shields or other devices that are capable of containing the adverse effects of a fault in the joint.

(8) *Sheath continuity.* When work is performed on buried cable or on cable in manholes, metallic sheath continuity shall be maintained.

(u) *Substations.* This paragraph provides additional requirements for substations and for work performed in them.

(1) *Access and working space.* Sufficient access and working space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment.

Note.—Guidelines for the dimensions of access and workspace about electric equipment in substations are contained in American National Standard—National Electrical Safety Code, ANSI C2–1987. Installations meeting the ANSI provisions comply with paragraph (u)(1) of this section.

(2) *Draw-out-type circuit breakers.* When draw-out-type circuit breakers are removed or inserted, the breaker shall be in the open position. The control circuit shall also be rendered inoperative, if the design of the equipment permits.

(3) *Substation fences.* (i) Conductive fences around substations shall be grounded. When a substation fence is expanded or a section is removed, fence grounding continuity shall be maintained, and bonding shall be used to prevent electrical discontinuity.

(ii) Gates to unattended substations shall be kept locked.

(4) *Guarding of energized parts.* (i) Rooms and spaces in which electric supply conductors or equipment are installed shall be so enclosed within fences, screens, partitions, or walls as to minimize the possibility that unqualified persons will enter. Entrances not under the observation of an attendant shall be kept locked. Signs warning unqualified persons to keep out shall be displayed at entrances.

(ii) Guards shall be provided around all live parts operating above 150 volts to ground without an insulating covering, unless the location of the live parts gives sufficient horizontal or vertical or a combination of these clearances to minimize the possibility of accidental employee contact.

Note.—Guidelines for the dimensions of clearance distances about electric equipment in substations are contained in American National Standard—National Electrical Safety Code, ANSI C2–1987. Installations meeting the ANSI provisions comply with paragraph (u)(4)(ii) of this section.

(iii) Except for fuse replacement or other necessary access by qualified persons, the guarding of energized parts within a compartment shall be maintained during operation and maintenance functions to prevent accidental contact with energized parts and to prevent tools or other equipment from being dropped on energized parts.

(iv) When guards are removed from energized equipment, barriers shall be installed around the work area to prevent employees who are not working on the equipment, but who are in the area, from contacting the exposed live parts.

(5) *Substation entry.* (i) Upon entering an attended substation, employees other than those regularly working in the station shall report their presence to the employee in charge in order to receive information on special system conditions affecting employee safety.

(ii) The job briefing required by paragraph (c) of this section shall cover such additional subjects as the location of energized equipment in or adjacent to the work area and the limits of any deenergized work area.

(v) *Power generation.* This paragraph provides additional requirements and related work practices for power generating plants.

(1) *Interlocks and other safety devices.* (i) Interlocks and other safety devices shall be maintained in a safe, operable condition.

(ii) No interlock or other safety device may be modified to defeat its function, except for test, repair, or adjustment of the device.

(2) *Changing brushes.* Before exciter or generator brushes are changed while the generator is in service, the exciter or generator field shall be checked to determine that a ground condition does not exist. If the equipment has ground protecting devices, the protective devices shall be disconnected and tagged before brushes are changed.

(3) *Access and working space.* Sufficient access and working space shall be provided and maintained about electric equipment to permit ready and safe operation and maintenance of such equipment.

Note.—Guidelines for the dimensions of access and workspace about electric equipment in generating stations are contained in American National Standard—National Electrical Safety Code, ANSI C2–1987. Installations meeting the ANSI provisions comply with paragraph (v)(3) of this section.

(4) *Guarding of energized parts.* (i) Rooms and spaces in which electric supply conductors or equipment are installed shall be so enclosed within fences, screens, partitions, or walls as to minimize the possibility that unqualified persons will enter. Entrances not under the observation of an attendant shall be kept locked. Signs warning unqualified persons to keep out shall be displayed at entrances.

(ii) Guards shall be provided around all live parts operating above 150 volts to ground without an insulating covering, unless the location of the live parts gives sufficient horizontal or vertical or a combination of these clearances to minimize the possibility of accidental employee contact.

Note.—Guidelines for the dimensions of clearance distances about electric equipment in generating stations are contained in American National Standard—National Electrical Safety Code, ANSI C2–1987. Installations meeting the ANSI provisions comply with paragraph (v)(4)(ii) of this section.

(iii) Except for fuse replacement or other necessary access by qualified persons, the guarding of energized parts within a compartment shall be maintained during operation and maintenance functions to prevent accidental contact with energized parts and to prevent tools or other equipment from being dropped on energized parts.

(iv) When guards are removed from energized equipment, barriers shall be installed around the work area to prevent employees who are not working on the equipment but who are in the area from contacting the exposed live parts.

(5) *Breaking pressure connections.* (i) Before a valve bonnet or stuffing box gland is moved or removed and before a flanged joint or other pressure connection is broken, if hazardous pressures or temperatures may exist, the line shall be isolated, drained, and locked out or tagged in accordance with paragraph (d) of this section.

(ii) The bolts, nuts, or other fasteners shall then be loosened; and, before they are removed, special care shall be exercised to ensure that the connection is not under pressure.

(6) *Water or steam spaces.* (i) A designated employee shall inspect conditions before work is permitted and after its completion. Eye protection shall be worn at all times when condenser, heater or boiler tubes are being cleaned.

(ii) Where it is necessary for employees to work near tube ends during cleaning, shielding shall be installed.

(7) *Chemical cleaning of boilers and pressure vessels.* The following requirements apply to chemical cleaning of boilers and pressure vessels:

(i) Areas where chemical cleaning is in progress shall be cordoned off to restrict access during cleaning. Additionally, the area shall be posted with signs restricting entry and warning of the hazard to health and the hazards of fire and explosion. Smoking, welding, and other possible ignition sources are prohibited in these restricted areas.

(ii) The number of personnel in the restricted area shall be limited to those necesary to accomplish the task safely.

(iii) There shall be ready access to clean water or temporary emergency showers for emergency use.

(iv) Employees in restricted areas shall wear protective equipment meeting the requirements of Subpart I of this part and including, but not limited to, protective clothing, boots, googles, and gloves.

(8) *Chlorine systems.* (i) Chlorine system enclosures shall be posted with signs restricting entry and warning of the hazard to health and the hazards of fire and explosion.

(ii) Only designated employees may enter the restricted area. Additionally, the number of personnel shall be limited to those necessary to safely accomplish the task.

(iii) Emergency repair kits shall be available near the shelter or enclosure to allow for the prompt repair of leaks in chlorine lines, equipment or containers.

(iv) Before normal repair procedures are started, chlorine tanks, pipes, and equipment shall be purged with dry air and isolated from other sources of chlorine.

(v) The employer shall ensure that precautions are taken to prevent the accidental mixing of chlorine with materials which would react with the chlorine in a dangerously exothermic or other hazardous manner.

(9) *Boilers.* (i) Before internal furnace or ash hopper repair work is started, overhead areas shall be inspected for possible falling objects. If the hazard of falling objects exists, overhead protection such as planking or nets shall be provided.

(ii) When opening an operating boiler door, employees shall stand clear of the opening of the door to avoid the heat blast and gases which may escape from the boiler.

(10) *Turbine generators.* (i) Smoking and other ignition sources are prohibited near the hydrogen or hydrogen sealing systems, and signs warning of the danger of explosion and fire shall be posted.

(ii) Excessive hydrogen makeup or abnormal loss of pressure shall be considered as an emergency and shall be corrected.

(iii) A sufficient quantity of inert gas shall be available to purge the hydrogen from the largest generator.

(11) *Coal and ash handling.* (i) Only designated persons may operate railroad equipment.

(ii) Before a locomotive or locomotive crane is moved, a warning shall be given to employees in the area.

(iii) Employees engaged in switching or dumping cars may not use their feet to line up drawheads.

(iv) Drawheads and knuckles may not be shifted while locomotives or cars are in motion.

(v) When a car is stopped for unloading, the car shall be held in place by blocks.

(vi) An emergency means of stopping dump operations shall be provided at railcar dumps.

(vii) Employees who work in coal- or ash-handling conveyor areas shall be trained and knowledgeable in conveyor

operation and in the requirements of paragraphs (v)(11)(viii) through (v)(11)(xi) of this section.

(viii) Employees may not ride a coal- or ash-handling conveyor belt at any time. Employees may not cross over the conveyor belt, except at walkways, unless the conveyor's energy source has been deenergized and has been locked out or tagged in accordance with paragraph (d) of this section.

(ix) A conveyor that could cause injury when started may not be started until personnel in the area are alerted by a signal or by a designated person that the conveyor is about to start.

(A) If a conveyor that could cause injury when started is automatically controlled or is controlled from a remote location, an audible device shall be provided that can be clearly heard at all points along the conveyor where personnel may be present. The warning device shall be actuated by the device starting the conveyor and shall continue for a period of time before the conveyor starts that is long enough to allow employees to move clear of the conveyor system. A visual warning may be used in place of the audible device if it would provide an equally effective warning in particular circumstances.

(B) If the system's function would be seriously hindered by the required time delay, or if the intent of the warning could be misinterpreted, warning signs shall be provided in place of the audible warning device. The warning signs shall be clear, concise, and legible and shall indicate that conveyors and allied equipment may be started at any time, that danger exists, and that personnel must keep clear. These warning signs shall be provided along the conveyor at areas not guarded by position or location.

(x) Remotely and automatically controlled conveyors, and conveyors that have operating stations which are not manned or which are beyond voice and visual contact from drive areas, loading areas, transfer points, and other locations on the conveyor path not guarded by location, position, or guards shall be furnished with emergency stop buttons, pull cords, limit switches, or similar emergency stop devices. However, if the design, function, and operation of the conveyor is not hazardous to personnel, an emergency stop device is not required.

(A) Emergency stop devices shall be easily identifiable in the immediate vicinity of such locations.

(B) An emergency stop device shall act directly on the control of the conveyor involved and may not depend on the stopping of any other equipment. Emergency stop devices shall be installed so that they cannot be overridden from other locations.

(xi) Where coal-handling operations may produce a combustible atmosphere from fuel sources or from flammable gases or dust, sources of ignition shall be eliminated or safely controlled to prevent ignition of the combustible atmosphere.

(xii) Employees may not work on or beneath overhanging coal in coal bunkers, coal silos, or coal storage areas.

(xiii) Employees entering a bunker or silo to dislodge the contents shall wear a safety harness with lifeline attached. The lifeline shall be secured to a fixed support outside the bunker and shall be attended at all times by an employee located outside the bunker or facility.

(12) *Walking and working surfaces.* (i) The walking and working surface requirements of Subpart D of this part apply, except as noted in paragraphs (h) and (v)(12) of this section.

(ii) A floor hole presenting a falling hazard of 4 feet (122 cm) or more to a lower level shall be guarded by a fall protection system in accordance with Subpart D of this part to prevent employees from falling into the opening. A floor hole which is more than 2 inches (5.1 cm) and less than 12 inches (30.5 cm) in its least dimension and which is provided solely for passage of machinery, piping, or other equipment that may expand and contract, vibrate or move in a similar manner shall be guarded by a toeboard or equivalent means to prevent employees' feet from entering the hole and to prevent tools from falling through the opening and onto employees below.

(13) *Hydroplants and equipment.* Employees working on or close to water gates, valves, intakes, forebays, flumes, or other locations where increased or decreased water flow or levels may pose a significant hazard shall be warned before water flow changes are made.

(w) *Special conditions*—(1) *Capacitors.* The following additional requirements apply to work on capacitors and on lines connected to capacitors.

(i) Before employees work on capacitors, the capacitors shall be disconnected from the energize source and short-circuited.

(ii) Before the units are handled, each unit in series-parallel capacitor banks shall be short-circuited between all terminals and the capacitor case or its rack. If the cases of capacitors are on ungrounded substation racks, the racks shall be bonded to ground.

(iii) Any line to which capacitors are connected shall be short-circuited before it is considered deenergized.

(2) *Current transformer secondaries.* The secondary of a current transformer may not be opened while the transformer is energized. If the primary of the current transformer cannot be deenergized before work is performed on an instrument, a relay, or other section of a current transformer secondary circuit, the circuit shall be bridged so that the current transformer secondary will not be opened.

(3) *Series streetlighting.* If the open-circuit voltage exceeds 600 volts, the series streetlighting circuit shall be worked in accordance with paragraph (q) or (t) of this section, as appropriate. A series loop may only be opened after the streetlighting transformer has been deenergized and isolated from the source of supply or after the loop is bridged to avoid an open-circuit condition.

(4) *Illumination.* Whenever natural light is insufficient to illuminate the worksite, sufficient artificial illumination shall be provided to enable the employee to perform the work safely.

(5) *Protection against drowning.* (i) Whenever employees are engaged in work where they may be pulled or pushed or may fall into water and where the danger of drowning exists, they shall be provided with and shall use U.S. Coast Guard approved personal flotation devices.

(ii) Personal flotation devices shall be maintained in safe condition and shall be inspected on a regularly scheduled basis for rot, mildew, water saturation, and other conditions which could render the device unsuitable for use.

(iii) Employees may cross streams or other bodies of water only if a safe means of passage is provided.

(6) *Employee protection in public work areas.* (i) Before work is begun in the vicinity of vehicular or pedestrian traffic which may endanger employees, warning signs or flags and other traffic control devices shall be placed in conspicuous locations to alert and channel approaching traffic.

(ii) Where additional employee protection is necessary, barricades shall be used.

(iii) Excavated areas shall be protected with barricades.

(iv) At night, warning lights shall be prominently displayed.

(7) *Backfeed.* If there is a possibility of voltage backfeed from sources of cogeneration or from the secondary system (for example, backfeed from more than one energized phase feeding

a common load), the requirements of paragraph (1) of this section apply if the lines or equipment are to be worked as energized, and the requirements of paragraphs (m) and (n) of this section apply if the lines or equipment are to be worked as deenergized.

(8) *Lasers.* Laser equipment shall be installed, adjusted, and operated in accordance with § 1926.54 of this chapter.

(9) *Hydraulic fluids.* Hydraulic fluids used for the insulated sections of equipment shall provide insulation for the voltage involved.

(x) *Definitions.*

*Affected employee.* An employee whose job includes activities such as erecting, installing, constructing, repairing, adjusting, inspecting, operating, or maintaining the equipment or process.

*Attendant.* An employee assigned to remain immediately outside the entrance to an enclosed or other space to render assistance as needed to employees inside the space.

*Authorized employee.* An employee to whom the authority and responsibility to perform a specific assignment has been given by the employer, who can demonstrate by experience or training the ability to recognize potentially hazardous energy and its potential impact on workplace conditions, and who has the knowledge to implement adequate methods and means for the control and isolation of such energy.

*Automatic circuit recloser.* A self-controlled device for interrupting and reclosing an alternating current circuit with a predetermined sequence of opening and reclosing followed by resetting, hold-closed, or lockout operation.

*Barricade.* A physical obstruction such as tapes, cones, or A-frame type wood or metal structures intended to provide a warning about and to limit access to a hazardous area.

*Barrier.* A physical obstruction which is intended to prevent contact with energized lines or equipment or to prevent unauthorized access to a work area.

*Bond.* The electrical interconnection of conductive parts designed to maintain a common electrical potential.

*Bus.* A conductor or a group of conductors that serve as a common connection for two or more circuits.

*Bushing.* An insulating structure, including a through conductor or providing a passageway for such a conductor, with provision for mounting on a barrier, conducting or otherwise, for the purposes of insulating the conductor from the barrier and conducting current from one side of the barrier to the other.

*Cable.* A conductor with insulation, or a stranded conductor with or without insulation and other coverings (single-conductor cable), or a combination of conductors insulated from one another (multiple-conductor cable).

*Cable sheath.* A conductive protective covering applied to cables.

**Note.**—A cable sheath may consist of multiple layers of which one or more is conductive.

*Circuit.* A conductor or system of conductors through which an electric current is intended to flow.

*Clearance (for work).* Authorization to perform specified work or permission to enter a restricted area.

*Clearance (from hazard).* Separation from energized lines or equipment.

*Communication lines.* (See *Lines, communication.*)

*Conductor.* A material, usually in the form of a wire, cable, or bus bar, suitable for carrying an electric current.

*Covered conductor.* A conductor covered with a dielectric having no rated insulating strength or having a rated insulating strength less than the voltage of the circuit in which the conductor is used.

*Current-carrying part.* A conducting part intended to be connected in an electric circuit to a source of voltage. Non-current-carrying parts are those not intended to be so connected.

*Deenergized.* Free from any electrical connection to a source of potential difference and from electric charge; not having a potential different from that of the earth.

**Note.**—The term is used only with reference to current-carrying parts, which are sometimes energized (alive).

*Designated employee (designated person).* An employee (or person) who is designated by the employer to perform specific duties under the terms of this section and who is knowledgeable in the construction and operation of the equipment and the hazards involved.

*Electric line truck.* A truck used to transport personnel, tools, and material for electric supply line work.

*Electric supply lines.* (See *Lines, electric supply.*)

*Electric utility.* An organization responsible for the installation, operation, or maintenance of an electric supply system.

*Enclosed space.* A working space, such as a manhole, vault, tunnel, or shaft, that has a limited means of egress or entry, that is designed for periodic employee entry under normal operating conditions, and that under normal conditions does not contain a hazardous atmosphere, but that may contain a hazardous atmosphere under abnormal conditions.

**Note.**—Spaces that are enclosed but not designed for employee entry under normal operating conditions are not considered to be enclosed spaces for the purposes of this section. Similarly, spaces that are enclosed and that are expected to contain a hazardous atmosphere are not considered to be enclosed spaces for the purposes of this section.

*Energized (alive, live).* Electrically connected to a source of potential difference, or electrically charged so as to have a potential significantly different from that of earth in the vicinity.

*Energy isolating device.* A physical device that prevents the transmission or release of energy, including, but not limited to, the following: A manually operated electrical circuit breaker, a disconnect switch, a manually operated switch, a slide gate, a slip blind, a line valve, blocks, and any similar device with a visible indication of the position of the device. (Push buttons, selector switches, and other control-circuit-type devices are not energy isolating devices.)

*Energy source.* Any electrical, mechanical, hydraulic, pneumatic, chemical, nuclear, thermal, or other energy source that could cause injury to personnel.

*Equipment (electrical).* A general term including material, fittings, devices, appliances, fixtures, apparatus, and the like used as part of or in connection with an electrical installation.

*Exposed.* Not isolated or guarded.

*Ground.* A conducting connection, whether intentional or accidental, between an electric circuit or equipment and the earth, or to some conducting body that serves in place of the earth.

*Grounded.* Connected to earth or to some conducting body that serves in place of the earth.

*Guarded.* Covered, fenced, enclosed, or otherwise protected, by means of suitable covers or casings, barrier rails or screens, mats, or platforms, designed to minimize the possibility, under normal conditions, of dangerous approach or accidental contact by persons or objects.

**Note.**—Wires which are insolated, but not otherwise protected, are not considered as guarded.

*Hazardous atmosphere.* An atmosphere presenting a potential for death, disablement, injury, or acute illness from one or more of the following causes:

(1) A concentration of flammable gas, vapor, or mist in excess of 10 percent of its lower flammable limit;

(2) A concentration of airborne combustible dust that obscures vision at a distance of 5 feet (152 cm) or less;

(3) A concentration of oxygen less than 19.5 percent or more than 23.5 percent;

(4) A concentration of any substance listed in Subpart Z of this part that exceeds the listed permissible exposure limit (PEL);

(5) A concentration of a substance above the numerical limit in the Material Safety Data Sheet provided by the manufacturer to employers in conformance with § 1910.1200(g)(2)(vi), or that is otherwise known to the employer to present a safety or acute health hazard; or

(6) Any other condition immediately dangerous to life or health.

*High-power tests.* Tests in which fault currents, load currents, magnetizing currents, and line-dropping currents are used to test equipment, either at the equipment's rated voltage or at lower voltages.

*High-voltage tests.* Tests in which voltages of approxmiately 1000 volts are used as a practical minimum and in which the voltage has sufficient energy to cause injury.

*Immediately dangerous to life or health (IDLH).* Any condition that poses an immediate threat to life or that is likely to result in acute or immediate severe health effects.

*Insulated.* Separated from other conducting surfaces by a dielectric (including air space) offering a high resistance to the passage of current.

Note.—When any object is said to be insulated, it is understood to be insulated for the conditions to which it is normally subjected. Otherwise, it is, within the purpose of this section, uninsulated.

*Insulation (cable).* That which is relied upon to insulate the conductor from other conductors or conducting parts or from ground.

*Line-clearance tree trimming.* The pruning, trimming, repairing, maintaining, removing, or clearing trees or cutting brush that is within 10 feet (305 cm) of electric supply lines and equipment.

*Line-clearance tree trimmer.* An employee who, through related training or on-the-job experience or both, is familiar with the special techniques and hazards involved in line clearance. An employee who is regularly assigned to a line-clearance tree-trimming crew and who is undergoing on-the-job training and who, in the course of such training, has demonstrated an ability to perform duties safely at his or her level of training and who is under the direct supervision of a line-clearance tree trimmer is considered to be a line-clearance tree trimmer.

*Lines*—(1) *Communication lines.* The conductors and their supporting or containing structures which are used for public or private signal or communication service, and which operate at potentials not exceeding 400 volts to ground or 750 volts between any two points of the circuit, and the transmitted power of which does not exceed 150 watts. If the lines are operating at less than 150 volts, no limit is placed on the transmitted power of the system. Under certain conditions, communication cables may include communication circuits exceeding these limitations where such circuits are also used to supply power solely to communication equipment.

Note.—Telephone, telegraph, railroad signal, data, clock, fire, police alarm, cable television, and other systems conforming with this definition are included. Lines used for signaling purposes, but not included under this definition, are considered as electric supply lines of the same voltage.

(2) *Electric supply lines.* Conductors used to transmit electric energy and their necessary supporting or containing structures. Signal lines of more than 400 volts are always supply lines within this section, and those of less than 400 volts are considered as supply lines, if so run and operated throughout.

*Manhole.* A subsurface enclosure which personnel may enter and which is used for the purpose of installing, operating, and maintaining submersible equipment or cable.

*Manhole steps.* A series of steps individually attached to or set into the walls of a manhole structure.

*Qualified employee (qualified person).* One knowledgeable in the construction and operation of electric power generation, transmission, and distribution equipment and the hazards involved.

*Rubber.* A generic term that includes elastomers and elastomer compounds, regardless of origin.

*Step bolt.* A bolt or rung attached at intervals along a structural member and used for foot placement during climbing or standing.

*Switch.* A device for opening and closing or for changing the connection of a circuit. In this section, a switch is understood to be manually operable, unless otherwide stated.

*System operator.* A qualified person designated to operate the system or its parts.

*Vault.* An enclosure, above or below ground, which personnel may enter and which is used for the purpose of installing, operating, or maintaining equipment or cable.

*Vented vault.* A vault that has provision for air changes using exhaust flue stacks and low level air intakes operating on differentials of pressure and temperature providing for airflow which precludes a hazardous atmosphere from developing.

*Voltage.* The effective (rms) potential difference between any two conductors or between a conductor and ground. Voltages are expressed in nominal values unless otherwise indicated. The nominal voltage of a system or circuit is the value assigned to a system or circuit of a given voltage class for the purpose of convenient designation. The operating voltage of the system may vary above or below this value.

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Part IV

# Department of Education

34 CFR Part 73
Standards of Conduct; Final Regulations

## DEPARTMENT OF EDUCATION

### 34 CFR Part 73

### Standards of Conduct

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary revises the regulations governing the Standards of Conduct of the Department of Education. The regulations implement the Department's ethics program for current and former employees, in accordance with Office of Personnel Management (OPM) and Office of Government Ethics (OGE) requirements and guidance. The revisions update the regulations to implement the Ethics in Government Act of 1978 as amended and regulations thereunder, and delete nonregulatory information contained in the previous regulations.

**EFFECTIVE DATE:** These regulations take effect on March 2, 1989.

**FOR FURTHER INFORMATION CONTACT:** Steven Y. Winnick, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4087, FOB–6, Washington, DC 20202–6177. Telephone: 732–2605.

**SUPPLEMENTARY INFORMATION:** Under the Ethics in Government Act, as amended, Executive Order 11222 of May 8, 1965, and OPM and OGE implementing regulations, agencies are required to establish an ethics program and issue regulations governing standards of conduct for their employees. These regulations are issued to fulfill that mandate. The guiding principle behind the standards is that Department employees must be persons of unquestioned integrity and maintain ethical standards of the highest order. The regulations provide guidance and restrictions for employees to ensure that certain personal or outside activities or interests do not create an actual or apparent conflict of interest with their official duties. In addition, they identify how employees are informed and may obtain guidance about the standards, and how disciplinary action may be taken for violations of the standards. The regulations include procedures for confidential reporting of employment and financial information; however, these provisions will be modified, as appropriate, after OGE issues its final regulations on confidential reporting requirements.

Employees who, in the course of their duties, come to know of criminal violations or violations of the standard of conduct regulations committed by other employees or another person or organization should report the violations to their supervisor, the Office of Inspector General, or the Designated Agency Ethics Official. Reports to the Office of Inspector General may be made through its "hot-line."

The major changes in these regulations are:

- The sections are reworded and their ordering rearranged to simplify and clarify the existing regulations. The regulations delete provisions that provided specific examples or merely paraphrased statutory requirements.
- The definition of "employee" is revised to include members of federal advisory committees, consistent with existing practice and interpretation, and to include "special Government employees," rather than having a separate subpart devoted only to these employees.
- Provision for acceptance of reimbursable travel for an employee is made in the section on "Gifts, entertainment, and favors."
- The provisions on outside employment have been simplified.
- New provisions require employees to comply with Department procedures concerning release of official information to the press, Congress, or the public.
- A new section on conduct relating to drugs has been added as part of the Department's program to achieve a drug-free workplace, in accordance with Executive Order 12564.

### Rulemaking procedure

Since these regulations relate to agency management and personnel, they are exempt from notice and comment requirements under 5 U.S.C. 553(a).

### Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

### List of Subjects in 34 CFR Part 73

Conflict of interest, Education Department, Government employees, Standards of conduct.

Dated: January 12, 1989.

(Catalog of Federal Domestic Assistance Number does not apply.)

**Lauro F. Cavazos,**

*Secretary of Education.*

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 73 to read as follows:

## PART 73—STANDARDS OF CONDUCT

### Subpart A—General Provisions

Sec.



### Subpart B—Conduct and Responsibilities



### Subpart C—Gifts, Travel, and Outside Activity



### Subpart D—Specific Prohibitions



### Subpart E—Confidential Reporting Requirements—Employment and Financial Interests



### Subpart F—Post—Employment Conflicts of Interests



### Appendix—Code of Ethics for Government Service

**Authority:** 5 U.S.C. Appendix 4, 5; 18 U.S.C. 201–209; 28 U.S.C. 535; E.O. 11222 of May 8, 1965, 3 CFR, 1964–1965 Comp., p. 306; 5 CFR 735.104; 5 CFR 735.201(a); 5 CFR 737.27; 5 CFR 738.103, unless otherwise noted.

### Subpart A—General Provisions

#### § 73.1 Standards of conduct.

(a) The Secretary finds that—

(1) The maintenance of high standards of honesty, integrity, impartiality, and conduct by employees is essential to assure the proper performance of Government business and the maintenance of confidence by citizens in their Government; and

(2) The avoidance of misconduct and conflicts of interest on the part of employees through informed judgment is

indispensable to the maintenance of these standards.

(b) The regulations in this part implement the findings in paragraph (a) of this section by—

(1) Establishing standards of conduct to which each employee must adhere; and

(2) Describing actions the Secretary may take if an employee violates a particular standard.

(Authority: E. O. No. 11222, May 8, 1965, as amended; 5 CFR 735.101, 5 CFR 735.104)

**§ 73.2 Definitions.**

The following definitions apply to this part:

"Act" means the Ethics in Government Act, as amended.

"Counselor" means—

(a) The person designated by the Secretary to provide interpretation of the standards of conduct and advisory services to Department employees under § 73.4; or

(b) Any deputy counselor designated by the Secretary.

"Day" means calendar day.

"Department" means the United States Department of Education.

"Designated Agency Ethics Official" or "DAEO" means—

(a) The person appointed by the Secretary and charged with—

(1) Ensuring departmental compliance with the requirements of the Ethics in Government Act of 1978, as amended;

(2) Coordinating and managing the Department's ethics program, as described in 5 CFR 738.203; and

(3) Serving as liaison to the Office of Government Ethics with regard to all aspects of the Department's ethics program.

(b) An alternate DAEO designated by the Secretary.

"Employee."

(a) This term means—

(1) Any officer or employee of the Department or of an advisory committee to the Department; or

(2) A special Government employee, unless specifically provided otherwise.

(b) The term does not mean an independent contractor under a personal services contract.

"Foreign government" means—

(a) Any unit of foreign governmental authority, including any foreign national, State, local, or municipal government;

(b) Any international or multinational organization whose membership is composed of any unit of foreign government described in paragraph (a) of this definition; or

(c) A person acting as agent or representative of any unit or organization described in paragraph (a) or (b) of this definition.

(Authority: 5 U.S.C. 7342)

"Member of the employee's immediate household" means a resident of the employee's household who is related to the employee by blood or law.

"Nominal" means $25.00 or less, unless the Counselor, in a given case, approves a higher amount.

"Person" means an individual, corporation, company, association, firm, partnership, society, joint stock company, or any other organization or institution.

"Principal officer" means an individual who heads a principal operating component or an official of the principal operating component acting for the principal officer under a delegation of authority.

"Principal operating component" means an office in the Department headed by an Assistant Secretary, a Deputy Under Secretary, or an equivalent departmental officer who reports directly to the Secretary.

"Secretary" means the Secretary of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

"Senior employee" means—

(a) An employee compensated at a rate of pay specified for Executive Schedule positions under 5 U.S.C., chapter 53, subchapter II or at a comparable or greater rate of pay under other authority; or

(b) An employee in a position designated by the Director of the Office of Government Ethics as involving significant decision-making or supervisory responsibility, in accordance with 18 U.S.C. 207(d)(1)(C).

"Special Government employee."

(a) This term means an employee who is retained, designated, appointed, or employed by the Department to perform temporary duties—

(1) On a full-time or intermittent basis;

(2) With or without compensation; and

(3) For not more than 130 days during any period of 365 consecutive days.

(b) The term includes a consultant, expert, or member of a Department advisory committee who meets the conditions of paragraph (a) of this definition.

"Tax-exempt organization" means an organization exempt from taxes under section 501(c)(3) of the Internal Revenue Code, relating to non-profit educational, religious, charitable, and other specified organizations that may not engage in propaganda or legislative lobbying as a substantial part of their activities or participate in political campaigns.

(Authority: 5 CFR 735.104; 18 U.S.C. 202; 26 U.S.C. 501(c)(3))

**§ 73.3 Employee notification.**

(a) The Secretary provides a copy of this part to each employee.

(b) The Secretary makes available for inspection by Department employees copies of Executive orders, regulations, and statutes referred to in this part, together with related explanatory materials.

(Authority: 5 CFR 735.104)

**§ 73.4 Interpretation, advisory services, and counseling.**

(a) An employee shall become familiar with the provisions of this part.

(b) In any case of doubt as to the proper application or interpretation of a provision of this part, the employee may consult with the Counselor.

(c) On an annual basis or, in the case of a new employee, at the time of entrance on duty, the Secretary notifies employees of the availability of counseling services.

(d) The Secretary, as appropriate, issues notices—

(1) Containing more specific guidance on practices and procedures to carry out this part; and

(2) Serving to remind employees of their responsibilities and of particular prohibitions under this part.

(Authority: 5 CFR 735.105)

**§ 73.5 Disciplinary and other remedial action.**

(a) A violation of any provision of this part by an employee may be cause for appropriate disciplinary action, which may be in addition to any penalties prescribed by law.

(b) If, after considering the employee's explanation for any conflict or apparent conflict of interest, or any other violation of this part, the Secretary decides that remedial action is required, the Counselor ensures that the employee and his or her principal officer take immediate action to end the conflict or apparent conflict of interest or other violation.

(c)(1) Whether disciplinary or otherwise, the remedial action must be in accordance with any applicable laws, Executive orders, and regulations.

(2) Remedial action may include, but is not limited to—

(i) Changes in assigned duties;

(ii) Divestment by the employee of his or her conflicting interest;

(iii) Disciplinary action, including possible removal from the Federal service; or

(iv) Disqualification of the employee for a particular assignment.

(Authority: 5 CFR 735.107)

## Subpart B—Conduct and Responsibilities

### § 73.10 General standards of conduct.

(a) In all circumstances an employee shall conduct himself or herself so as to exemplify the highest standards of integrity.

(b) The employee may not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(c) The employee shall avoid any action, whether or not specifically prohibited by this part, that might result in, or create the appearance of—

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a decision on behalf of the Government outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(d) The employee shall comply with the "Code of Ethics for Government Service" (House Concurrent Resolution 175, 85th Congress, 2nd Sess. 312), which is attached as an Appendix to this part.

(Authority: 5 CFR 735.201(a))

### § 73.11 Financial interests.

(a) An employee may not—

(1) Have a direct or indirect financial interest that conflicts, or appears to conflict, substantially with the employee's official duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained as a Federal employee.

(b) This section does not preclude the employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Federal Government so long as the interest or transaction is not prohibited by law, Executive order, or regulations.

(c) Financial interests of a spouse, minor child, or member of the employee's immediate household are regarded, for purposes of this section, as financial interests of the employee.

(Authority: 5 CFR 735.204, 735.407)

## Subpart C—Gifts, Travel, and Outside Activity

### § 73.20 Gifts, entertainment, and favors.

(a) *General Prohibitions.* (1) Except as provided in paragraph (b) of this section and in § 73.21, an employee may not solicit or accept from a prohibited source—directly or indirectly on his or her own behalf or on behalf of the Department—any gift, gratuity, favor, entertainment, loan, or other thing of monetary value.

(2) For purposes of this section, a "prohibited source" means a person who—

(i) Has, or is seeking to obtain, contractual, grant, or other business or financial relations with the Department;

(ii) Conducts business or financial operations or activities that are regulated by the Department; or

(iii) Has business or financial interests that may be substantially affected by the performance or nonperformance of the employee's official duties.

(b) *Exceptions.* Notwithstanding paragraph (a) of this section, the employee may—

(1) Accept a gift, gratuity, favor, entertainment, loan, or other thing of monetary value from a friend, parent, spouse, child, or other close relative if it is clear that the family or personal relationship involved is the motivating factor;

(2)(i) Accept food or refreshments of nominal value on infrequent occasions—

(A) In the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour at which the employee may properly be in attendance; or

(B) At a widely attended gathering of mutual interest to the Government and industry—such as a reception, seminar, conference, or training session—if attendance at the gathering is approved in advance by the employee's supervisor on the basis that—

(*1*) It is in the Department's interest that the employee attend; and

(*2*) The timing or reasons for the event do not create an appearance of impropriety;

(ii) A meeting under paragraph (b)(2)(i)(A) of this section may include a large group meeting at which the employee is the guest speaker or a working meeting at which food is brought in to facilitate continuance of the work and is not itself the focus of the meeting but does not include a meeting between a small number of individuals at a restaurant or private club at which business may be discussed;

(3) Accept a loan from a bank or other financial institution on customary terms to finance a proper or usual activity of the employee, such as a home mortgage loan; and

(4) Accept unsolicited advertising or promotional material of nominal value, such as a pen, pencil, note pad, or calendar.

(c) *Gifts between employees.* (1)(i) An employee may not solicit contributions from another employee for a gift to a supervisory employee.

(ii) An employee may not accept a gift from an employee who receives less pay than he or she receives.

(iii) An employee may not make a donation as a gift to a supervisory employee.

(2) As used in paragraph (c) of this section, "supervisory employee" means an employee who directly or indirectly supervises or has authority over the soliciting or contributing employee.

(3) Nothing in paragraph (c) of this section prohibits a voluntary gift of nominal value or donation in a nominal amount on a special occasion such as marriage, illness, or retirement.

(d) *Foreign governments.* (1) Except as provided in paragraph (d)(2) of this section, an employee—

(i) May not accept from a foreign government any emolument, office, or title; and

(ii) Shall submit to the DAEO for transmittal to the General Services Administration, for use and disposal as property of the United States, any present, decoration, or other gift that the employee is unable to refuse from a foreign government.

(2) An employee may accept from a foreign government—

(i) Certain gifts of minimal value, as established by regulation (41 CFR Part 101–49);

(ii) Specified military decorations; or

(iii) Payment for travel expenses, to the extent permitted in § 73.21 of this part.

(Authority: U.S. Constitution, Art. 1, sec. 9, para. 8; 5 U.S.C. 7342, 7351; 5 CFR 735.202)

### § 73.21 Acceptance of travel expenses and awards.

(a) *Official travel.* (1) Except as provided in paragraph (a)(2) of this section, an employee may not accept from any source other than the Government payment for travel or expenses incident to travel on official business.

(2) The employee may accept the type of payment referred to in paragraph (a)(1) of this section if—

(i) Acceptance is approved in advance in accordance with Department procedures; and

(ii) The payment is from—

(A) A tax-exempt organization for expenses incident to training or attendance at meetings, subject to the provisions of 5 U.S.C. 4111 and 5 CFR 410.702;

(B) A donor whose donation is accepted under section 421 of the

Department of Education Organization Act, which contains the Secretary's gift acceptance authority; or

(C) A foreign government for travel taking place entirely outside the United States, subject to the restrictions of 5 U.S.C. 7342.

(3) The employee may accept payment in cash only if it is the type of payment referred to in paragraph (a)(2)(ii)(A) or (a)(2)(ii)(C) of this section.

(b) *Non-official travel.* (1) An employee may accept payment in cash or kind for travel or expenses incident to travel of a non-official nature if acceptance is compatible with the other standards contained in this part, including, for example, the provisions on accepting gifts in § 73.20(a).

(2)(i) The employee should refer to his or her supervisor any question as to whether the employee's travel is of an official or non-official nature.

(ii) In determining whether the employee's travel is of an official or non-official nature, the supervisor considers such factors as the relationship of the trip's purpose to the employee's official duties, the Department's interest in the employee's participation in the activity for which travel is taken, and the employee's independent interest in the activity or relationship to the sponsor of the trip.

(3)(i) Unless it raises a question under paragraph (b) (1) or (2) of this section, the employee's acceptance of payment for non-official travel is not subject to approval procedures referenced in paragraph (a) of this section.

(ii) However, the non-official travel may be subject to prior approval as an outside activity under § 73.22.

(c) *Awards.* An employee may accept an award for a meritorious public contribution or achievement from a charitable, religious, professional, social, fraternal, non-profit educational, recreational, public service, or civic organization if acceptance of the award is compatible with the other standards in this part.

(Authority: 5 U.S.C. 4111; 5 CFR 735.203)

**§ 73.22 Outside employment and other activities.**

(a) *General.* (1) An employee may not engage in outside employment or other outside activity incompatible with the full and proper discharge of the duties and responsibilities of his or her Government employment.

(2) Incompatible activities include, but are not limited to—

(i) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance would—

(A) Result in, or create the appearance of, a conflict of interest; or

(B) Otherwise violate the standards in this part;

(ii) Outside employment or other outside activity that tends to impair the employee's mental or physical capacity to perform assigned Government duties in an acceptable manner; or

(iii) Outside activity that—

(A) Conflicts with the interests of the Government; or

(B) Could reasonably be construed by the public to be official acts of the Government.

(b) *Prior approval.* (1) Except as provided in paragraph (b)(2) of this section, an employee who intends to engage in outside employment or in other outside activity shall obtain prior approval from his or her principal officer in accordance with procedures of the Department.

(2) Prior approval is not required if the outside activity will not—

(i) Be performed during the employee's regular work hours;

(ii) Aggregate 10 or more hours a week;

(iii) Involve public writing or speaking;

(iv) Involve services for a prohibited source, as defined in § 73.20(a)(2), or services that relate to any matters funded by or regulated by another Federal agency; and

(v) Reasonably raise questions under the standards in this part.

(3) The principal officer files in his or her immediate office a record of each approval under this paragraph.

(4) The Secretary issues guidelines giving specific examples of outside activities that are incompatible with Government duties.

(5) The requirement of paragraph (b)(1) of this section does not apply to a special Government employee.

(c) *Disclaimer*—(1) *General.* (i) In engaging in an outside activity—including speaking, teaching, or writing—an employee may not use his or her official title or affiliation with the Department except as provided in paragraph (c)(1)(ii) of this section.

(ii) An employee may mention his or her official title or affiliation with the Department to identify the employee's background or experience in a manner that does not suggest or convey official endorsement of the activity.

(2) *Outside activity related to official duties.* If the employee engages in any outside activity related to his or her official duties or to programs of the Department and if the employee's title and affiliation are used or known by the audience, the employee shall include a disclaimer stating that—

(i) The activity was undertaken by the employee in his or her private capacity; and

(ii) No official support or endorsement by the Department is intended or should be inferred.

(d) *Speaking, teaching, or writing.* (1) Either for or without compensation, the employee may not engage in making speeches, teaching, or writing that is dependent on information obtained as a result of his or her Government employment, unless—

(i) The Government has made the information available to the general public or will make it available on request; or

(ii) The employee receives written approval from an authorized Department official for the use of the information on the basis that the use is in the public interest.

(2) The prohibition in paragraph (d)(1) of this section includes lecturing or writing for the purpose of special preparation of a person or class of persons for an examination of the Office of Personnel Management or the Board of Examiners for the Foreign Service.

(e) *Certain Presidential appointees.* An employee who is a Presidential appointee covered by section 401(a) of E.O. 11222 may not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance if the subject of this activity—

(1) Is devoted substantially to the responsibilities, programs, or operations of the Department; or

(2) Draws substantially on official data or ideas that have not become public information.

(f) *Monetary limitations.* (1)(i) An employee may not accept an honorarium in excess of $2,000 for any appearance, speech, or article.

(ii) The maximum amount permissible under paragraph (f)(1)(i) of this section does not include amounts the employee may accept for actual travel and subsistence expenses for the employee and his or her spouse or aide.

(iii) Any honorarium, or any part thereof, paid by or on behalf of the employee to a charitable organization is deemed not to be accepted for purposes of paragraph (f)(1)(i) of this section.

(2)(i) An employee compensated at a pay grade of GS–16 or above who occupies a full-time PAS position, as defined in paragraph (f)(2)(ii) of this section, may not in any calendar year have outside earned income attributable to that calendar year in excess of 15 percent of the employee's salary.

(ii) As used in paragraph (f)(2)(i) of this section, "PAS position" means a

position that is required to be filled by Presidential appointment by and with the advice and consent of the Senate.

(g) *Updates.* If an employee wishes to renew approval of outside employment or other outside activity, the employee must file an annual update for approval by the principal officer in accordance with applicable procedures of the Department.

(Authority: 2 U.S.C. 441i, 5 CFR 735.203, 734.501)

## Subpart D—Specific Prohibitions

### § 73.30 Criminal conflict of interest prohibitions.

An employee who violates any of the following prohibitions contained in the Federal criminal code is subject to punishment by fine, imprisonment, or both and to penalties for violating the standards in this section:

(a) *Compensation in matters affecting the Government.* (1) Except as provided by law for the proper discharge of official duties, an employee may not receive or agree to receive directly or indirectly compensation for any service rendered or to be rendered by the employee or another person in relation to any proceeding in which the Government is a party or has a direct and substantial interest.

(2) As used in paragraph (a)(1) of this section—

(i) The word "receive" also means to ask, demand, solicit, or seek; and

(ii) The word "proceeding" also means application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter before any department, agency, court-martial, or officer or any civil, military, or naval commission.

(Authority: 18 U.S.C. 203)

(b) *Claims against or matters affecting the Government.* (1) Except as provided by law for the proper discharge of official duties, an employee may not—

(i) Act as an agent or attorney for prosecuting any claim against the United States; or

(ii) Act as an agent or attorney for anyone before any department, agency, court, court-martial, officer, or any civil, military, or naval commission in connection with any proceeding in which the United States is a party or has a direct and substantial interest.

(2) As used in paragraph (b)(1) of this section—

(i) The words "prosecuting any claim" also mean receiving any gratuity—or any share of or interest—in a claim for assisting in its prosecution; and

(ii) The word "proceeding" also means application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter.

(Authority: 18 U.S.C. 205)

(c) *Special Government employee.* (1) A special Government employee is subject to the prohibitions in paragraphs (a) and (b) of this section only in relation to a particular matter involving a specific party or parties—

(i) In which the employee has at any time participated personally and substantially as a Government employee or as a special Government employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(ii) That is pending in the Department.

(2) Paragraph (c)(1)(ii) of this section does not apply to a special Government employee who has served in the Department no more than 60 days during the immediately preceding period of 365 consecutive days.

(Authority: 18 U.S.C. 203, 205)

(d) *Permissible activities.* Notwithstanding the prohibitions in paragraphs (a)–(c) of this section, an employee may—

(1) If not inconsistent with the faithful discharge of the employee's duties, act without compensation as agent or attorney for any person who is the subject of a disciplinary, loyalty, or other personnel administration proceeding—including an equal employment opportunity complaint—in connection with that proceeding;

(2) With the approval of the Government official responsible for the employee's appointment to his or her position, act, with or without compensation, as agent or attorney for the employee's parents, spouse, child, or any person for whom, or for any estate for which, the employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters—

(i) In which the employee has participated personally and substantially as a Government employee through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise; or

(ii) That are the subject of the employee's official responsibility.

(3) Give testimony under oath or make statements required to be made under penalty for perjury or contempt; and

(4) In the case of a special Government employee, act as agent or attorney for another person in the performance of work under a grant by or a contract with, or for the benefit of, the Government, if the head of the agency concerned with the grant or contract certifies in the **Federal Register** that the national interest requires this.

(Authority: 18 U.S.C. 203, 205)

(e) *Disqualification of former employees.* (1)(i)(A) A former employee may not represent any other person before the Government with respect to a particular matter involving a specific party or parties in which the employee was personally and substantially involved in his or her Government service.

(B) The prohibition in paragraph (e)(1)(i)(A) of this section is a permanent bar for the former employee.

(ii)(A) A former employee may not represent any other person before the Government on a particular matter involving a specific party or parties that was actually pending under the employee's official area of responsibility during the last year of that responsibility.

(B) The prohibition in paragraph (e)(1)(ii)(A) of this section applies for two years after leaving the responsibility described therein.

(2) Subject to the exemptions in 18 U.S.C. 207, a former senior employee—for one year after leaving the senior employee position—may not appear before or communicate to the Department on behalf of anyone in an attempt to influence a particular matter pending before the Department or in which the Department has a direct and substantial interest.

(3)(i) A former senior employee may not assist by personal presence in representing any other person in connection with a particular matter—

(A) Involving a specific party or parties;

(B) In which the United States has a direct or substantial interest; and

(C) In which the senior employee participated personally and substantially.

(ii) The prohibition in paragraph (e)(3)(i) of this section applies for two years after leaving the senior employee position.

(4) These restrictions are further defined by regulation (5 CFR Part 737).

(Authority: 18 U.S.C. 207)

(f) *Acts affecting a personal financial interest.* (1) An employee may not participate personally and substantially in a particular matter in which—to the employee's knowledge—the employee, the employee's spouse, minor child, or partner, or a profit or non-profit

enterprise in which the employee is serving as an officer, director, trustee, partner, or employee—or any person or enterprise with which the employee is negotiating or has an arrangement concerning prospective employment—has a financial interest.

(2) If a financial interest arises from ownership by the employee—or other person or enterprise referred to in paragraph (f)(1) of this section—of stock in a widely diversified mutual fund or other regulated investment company that in turn owns stock in another enterprise, that financial interest is exempt from the prohibition in paragraph (f)(1) of this section.

(3) The Secretary may grant an exemption to the prohibition in paragraph (f)(1) of this section in other cases if the financial interest is not so substantial as to affect the integrity of the employee's services.

(Authority: 18 U.S.C. 208)

(g) *Supplementation of salary.* Except for payments made under the authority in 5 U.S.C. 4111, an employee other than a special Government employee may not receive any contribution to or supplementation of his or her salary for services rendered for the Government.

(Authority: 18 U.S.C. 209)

**§ 73.31 Political activity.**

(a) *General prohibitions.* (1) An employee may not use official authority or influence to interfere with or affect the result of an election.

(2)(i) A covered employee may not take an active part in partisan political management or in partisan political campaigns, except as provided in paragraph (d) of this section.

(ii) For purposes of this section, the term "covered employee" includes every employee—including competitive and excepted service and Schedule C employees—except an employee who—

(A) Is appointed by the President by and with the advice and consent of the Senate; and

(B) Determines policies to be pursued by the United States in the nationwide administration of Federal laws.

(iii) A special Government employee is subject to the restriction in paragraph (a)(2)(i) of this section only when the employee is in active duty status and for the entire 24 hours of any day when in that status.

(3) The penalties for violation of this section include suspension without pay for a minimum of 30 days and removal.

(b) *Prohibited activities.* Types of activities prohibited by paragraph (a)(2)(i) of this section include, but are not restricted to, the following:

(1)(i) Being a candidate or campaigning for or against a candidate in a partisan election.

(ii) As used in this section, "partisan election" means an election for public office in which any candidate is running as a representative of a political party whose candidate for President of the United States received electoral votes in the last Presidential election.

(2) Making a campaign speech or engaging in a campaign activity in a partisan election.

(3) Collecting contributions for a political party or candidate or selling tickets to political fund-raising functions.

(4) Holding office in political clubs.

(c) *Permissible activities.* Types of activities not prohibited by paragraph (a)(2)(i) of this section include, but are not restricted to, the following:

(1) Registering and voting—including voting in a party primary or caucus—and signing nominating petitions.

(2) Expressing opinions about candidates and issues.

(3) Attending political rallies and meetings or political fund-raising functions.

(4) Contributing money to political organizations.

(5) Participating in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization.

(6) Being a member of a political party or other political organization.

(7) Taking an active part as a candidate or in support of a candidate in a nonpartisan election.

(d) *Partial exemption in designated communities.* An employee living in a community designated by OPM may participate—as, or on behalf of, an independent candidate—in political management and political campaigns in a partisan election involving that community, so long as that participation does not result in neglect of or interference with the performance of the employee's duties or create a conflict, or apparent conflict, of interests.

(Authority: 5 U.S.C. Chapter 73; 5 CFR Part 733)

**§ 73.32 Conduct related to drugs.**

(a) An employee may not use an illegal drug or participate in illegal drug activities.

(b)(1) As used in this section, the term "illegal drug" means a controlled substance—

(i) Defined by 21 U.S.C. 802(6) and included in Schedule I or II of 21 U.S.C. Chapter 13, Subchapter I, Part B; and

(ii) The possession of which is unlawful under chapter 13 of title 21.

(2) The term does not include a controlled substance used—

(i) According to a valid prescription; or

(ii) For another purpose authorized by law.

(c) As used in this section, the term "illegal drug activity" includes, but is not limited to, possession, distribution, or sale of an illegal drug.

(Authority: E.O. 12564)

**§ 73.33 Use of Government property.**

(a)(1) An employee may not directly or indirectly use, or allow the use of, Government property of any kind—including property leased to the Government—for other than an officially approved activity.

(2) The employee shall follow departmental directives prohibiting the unauthorized use of Government property for personal purposes.

(b) The employee shall protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to the employee.

(c) As used in this section, property includes, but is not restricted to, telephones, office supplies, copying machines and other office equipment, official identification and credit cards, official stationery and envelopes, secretarial support, and vehicles.

(Authority: 5 CFR 735.205)

**§ 73.34 Gambling, betting, and lotteries.**

(a) While on Government-owned or Government-leased property or while on duty for the Government, an employee may not participate in any gambling activity.

(b) As used in paragraph (a) of this section, gambling activity includes, but is not restricted to, operating a gambling device, conducting a lottery or pool, participating in a game for money or property, and selling or purchasing a numbers slip or ticket.

(Authority: 5 CFR 735.208)

**§ 73.35 Misuse of information.**

(a) For the purpose of furthering a private interest, an employee may not use or allow the use of official information that the employee has obtained through or in connection with his or her Government employment, unless the Government has made the information available to the general public or will make it available on request.

(b) Subject to 5 CFR 1250.3 (protecting particular "whistleblowing" activities) and 5 U.S.C. 7211, the employee shall comply with the Department's

established procedures governing the release of official information to the press, the Congress, or the public, including referral of requests for documents or other materials to the Department's Freedom of Information Act Officer under 34 CFR Part 5.

(Authority: 5 CFR 735.206)

**§ 73.36 Indebtedness.**

(a)(1) An employee's indebtedness is primarily a matter of the employee's own concern.

(2) The Secretary does not determine the validity or amount of an employee's contested debts or act as a collection agent for those debts.

(b) In the absence of good reason, an employee is responsible, in a proper and timely manner, for—

(1) Honoring debts acknowledged by him or her to be valid or reduced to judgment by a court; and

(2) Making and adhering to satisfactory arrangements for the settlement of those debts.

(c) An employee shall meet his or her responsibilities for paying Federal, State, and local taxes and debts.

(Authority: 5 CFR 735.207)

**§ 73.37 Miscellaneous statutory prohibitions.**

An employee shall comply with each statute that relates to conduct as an employee, including prohibitions against the following activities: (a) Bribery, graft, and conflict of interest (18 U.S.C. chapter 11).

(b) Lobbying with appropriated funds (18 U.S.C. 1913).

(c) Disloyalty and striking (5 U.S.C. 7311 and 18 U.S.C. 1918).

(d) The disclosure of—

(1) Classified information (18 U.S.C. 798 and 50 U.S.C. 783); and

(2) Confidential information (18 U.S.C. 1905).

(e) The habitual use of intoxicating beverages to excess (5 U.S.C. 7352).

(f) The misuse of a Government vehicle (31 U.S.C. 1349).

(g) The misuse of penalty mail or the franking privilege (18 U.S.C. 1719).

(h) The use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(i) Fraud or false statements in a Government matter (18 U.S.C. 1001–1030).

(j) Mutilating or destroying a public record (18 U.S.C. 2071).

(k) Counterfeiting or forging transportation requests (18 U.S.C. 508).

(l)(1) Embezzlement of Government money or property (18 U.S.C. 641);

(2) Failing to account for public money (18 U.S.C. 643); and

(3) Embezzlement of another person's money or property in the possession of an employee by reason of his or her employment (18 U.S.C. 654).

(m) Unauthorized use of documents relating to claims by or against the Government (18 U.S.C. 285).

(n) Proscribed political activities (Subchapter III of Chapter 73, 5 U.S.C. and 18 U.S.C. 602, 603, and 607).

(o) Acting as the agent of a foreign principal under the Foreign Agents Registration Act (18 U.S.C. 219).

(p) Engaging in riots and civil disorders (5 U.S.C. 7313).

(q) Arbitrarily or capriciously withholding information requested under the Freedom of Information Act (5 U.S.C. 552(a)(4)(F)).

(r) Willfully violating the Privacy Act of 1974 (5 U.S.C. 552a(i)).

(s) Discrimination on the basis of race, color, national origin, sex, religion, age, or handicapping condition (42 U.S.C. 2000d–2000d–4; 42 U.S.C. 6101; 20 U.S.C. 1681; 29 U.S.C. 791, 793, 794; 42 U.S.C. 2000e).

(Authority: 5 CFR 735.104, 735.306)

## Subpart E—Confidential Reporting Requirements—Employment and Financial Interests

**§ 73.40 Confidential reporting of employment and financial interests—regular Government employees.**

(a)(1) Except as provided in paragraphs (e), (h), and (k) of this section, not later than 30 days after entering duty in a position described in paragraph (a)(2) of this section, an employee shall submit in a sealed envelope to the appropriate principal officer a report—

(i) On a form made available by the Department; and

(ii) Containing the information specified in this section.

(2) As determined by the principal officer of the principal operating component in which the position is located, positions that are subject to reporting under this section include a position classified as GS–13 or above—or at a comparable pay level under other authority—

(i) That requires the incumbent to exercise judgment in making a Government decision or in taking Government action with regard to—

(A) Procurement activities;

(B) Administering or monitoring grants or subsidies;

(C) Regulating or auditing private or other non-Federal enterprise; or

(D) Other activities if the decision or action has an economic impact on the interest of any person outside the Government; or

(ii) That presents possible conflict-of-interest problems.

(b) The report shall include—

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions with or in which the employee, spouse, minor child, or other member of the employee's immediate household has—

(i) Any connection as an employee, officer, owner, director, member, trustee, partner, adviser, or consultant;

(ii) Any continuing financial interest, through a pension or retirement plan, shared income, or other arrangement as a result of any current or prior employment or business or professional association; or

(iii) (A) Any financial interest—except for those financial interests exempted elsewhere in this part—through the ownership of stock, stock options, bonds, securities, or other arrangements including trusts.

(B) The employee need not report shares in savings and loan associations that are in the nature of savings deposits;

(2) A list of the names of the creditors of the employee, spouse, minor child, or other member of the employee's immediate household, other than those creditors to whom they may be indebted by reason of a mortgage on property which they occupy as a personal residence or to whom they may be indebted for current and ordinary household and living expenses such as those incurred for household furnishings, an automobile, education, or vacations; and

(3) A list of the employee's interests and those of the employee's spouse, minor child, or other member of the employee's immediate household in real property or rights in lands, other than property that he or she occupies as a personal residence.

(c) By such date as the Secretary prescribes, the employee shall annually file a new report meeting the requirements of paragraph (b) of this section with information current through June 30 of that year.

(d) If the employee does not know, but another person does know, any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, the employee shall request the other person to submit the information on the employee's behalf.

(e)(1) Paragraph (a) of this section does not require an employee to submit any information relating to a connection

with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise.

(2) For the purpose of this section, the term "business enterprise" includes an educational or other institution doing research and development or related work involving a grant of money from or contract with the Government.

(f) The principal officer of the principal operating component in which the employee works—

(1)(i) Maintains each statement of employment and financial interests in confidence according to the filing, recording, notification, and other requirements of the Privacy Act of 1974 (Pub. L. 93–579);

(ii) Reviews each report and coordinates resolution of any conflict of interest or appearance of conflict of interest; and

(iii) May seek the advice and guidance of the DAEO.

(2) The principal officer and the DAEO do not disclose information from a statement except as the Office of Government Ethics or the DAEO may determine for good cause shown.

(g) The employee's submission of a statement of employment and financial interests and supplementary statements is—

(1) In addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation; and

(2) Does not permit anyone to participate in a matter if participation is prohibited by law, order, or regulation.

(h) This section does not apply to special Government employees, who are subject to the provisions of § 73.41.

(i) The Counselor may exclude from the reporting requirement an employee in a position that meets the criteria in paragraph (a) of this section if—

(1) The employee submits a written request for exclusion to the Counselor through the principal officer; and

(2) The Counselor determines that—

(i) The duties of the position make it unlikely that the employee would be involved in a conflict-of-interest situation; or

(ii) A statement of employment and financial interests is unnecessary because of—

(A) The degree of supervision and review over the incumbent; or

(B) The inconsequential effect of any potential conflict-of-interest on the integrity of the Government, given the employee's level of responsibility.

(j) If an employee believes that his or her position has been improperly included under paragraph (a) of this section, the employee may file a grievance under the Department's grievance procedure.

(k) An employee who is required to file a Public Financial Disclosure Report under Title II of the Ethics in Government Act is not required to file a report under this section.

(Authority: 5 U.S.C. App. 4, E.O. 12565)

**§ 73.41 Confidential reporting of employment and financial interests—special Government employees.**

(a) At the time of entering Government employment, a special Government employee shall submit in a sealed envelope to the appropriate principal officer on a form supplied by the Department a statement of employment and financial interests that discloses—

(1) All current Government employment;

(2) The names of all corporations, companies, firms, or other business enterprises, research organizations, and educational or other institutions in or for which he or she is an employee, officer, member, owner, trustee, director, adviser, or consultant, with or without compensation;

(3) The names of all corporations in which he or she holds stocks or bonds; and

(4) The names of all partnerships in which he or she is engaged.

(b) By such date as the Secretary prescribes, the special Government employee shall annually file a new report meeting the requirements of paragraph (a) of this section with information current through June 30 of that year.

(Authority: 5 U.S.C. App. 4, E.O. 12565)

**§ 73.42 Reviewing statements of financial interests.**

(a) The principal officer reviews the statements of employees in his or her principal operating component required by §§ 73.40 and 73.41 to determine whether there is a conflict, or appearance of conflict, between the interests of each employee and the performance of the employee's service for the Government.

(b) If the possibility of a conflict or appearance of conflict exists, the principal officer provides the employee with an opportunity to explain the conflict or appearance of conflict.

(c) If remedial action is indicated, the principal officer consults with the Counselor and an appropriate management official of the Department.

(d) The principal officer directs whatever appropriate remedial action he or she deems necessary (see § 73.5) after—

(1) The review referred to in paragraph (a) of this section;

(2) Consideration of the employee's explanation; and

(3) Any investigation the principal officer considers appropriate.

(Authority: 5 U.S.C. App. 4, E.O. 12565)

## Subpart F—Post-Employment Conflicts of Interest

**§ 75.50 Disciplinary proceedings for post-employment conflicts of interest.**

(a) *Transmittal of allegations.* (1) An employee who initiates or receives an allegation that a former employee has violated 18 U.S.C. 207 (a), (b), or (c) or any regulations of the Office of Government Ethics or the Department implementing these statutory provisions shall submit the allegation and any supporting evidence to the Counselor.

(2) If the former employee was a member of the Counselor's office, the Secretary designates another employee, not connected with the Counselor's office, to perform the functions of the Counselor under this subpart.

(b) *Privacy.* Until the Counselor determines there is sufficient cause to initiate an administrative disciplinary proceeding, the Counselor safeguards the allegation and evidence in order to protect the privacy of the former employee.

(c) *Involvement of Department of Justice and Office of Government Ethics.* (1) If the information concerning a possible violation does not appear to be frivolous, the Counselor expeditiously provides all relevant evidence, any appropriate comments, and copies of applicable agency regulations to the Director, Office of Government Ethics, and to the Criminal Division, Department of Justice.

(2) Unless the Department of Justice informs the Counselor that it does not intend to initiate criminal prosecution, the Counselor coordinates any investigation or administrative action with the Department of Justice in order to avoid prejudicing criminal proceedings.

(d) *Initiation of disciplinary proceedings.* If the Counselor determines after appropriate review that there is reasonable cause to believe that the former employee has committed a violation, the Counselor may—

(1) Initiate an administrative disciplinary proceeding; and

(2) Designate an individual to represent the Department in the proceeding.

(e) *Notice.* (1) The Counselor or an individual designated under paragraph (d)(2) of this section provides the former employee with written notice of the Department's intention to institute a proceeding and of the former employee's opportunity for a hearing.

(2) The notice includes the following:

(i) A statement of allegations, and the basis for the allegations, in sufficient detail to enable the former employee to prepare an adequate defense.

(ii) Notification of the former employee's right to a hearing and to submit an answer within 30 days of receipt of the notice.

(iii) An explanation of the method by which a hearing may be requested.

(iv) A notification that if the former employee fails to submit an answer within 30 days of receipt of the notice, the presiding official may render a decision by default against the former employee.

(f) *Hearing.* The former employee may obtain a hearing by submitting a written request to the Counselor within 30 days of receipt of the notice.

(g) *Examiner.* The Secretary designates as the presiding official at the proceedings a hearing examiner who—

(1) Is impartial;

(2) Did not participate in the decision to initiate the proceedings; and

(3) Is authorized by the Secretary to make an initial decision.

(h) *Time, Date, and Place.* (1) The hearing examiner conducts the hearing at a reasonable time, date, and place.

(2) In setting the date, the hearing examiner considers the former employee's need for—

(i) Adequate time to properly prepare a defense; and

(ii) An expeditious resolution of allegations that may be damaging to the former employee's reputation.

(i) *Hearing rights.* The hearing includes, as a minimum, the right of each party to—

(1) Represent himself or herself or be represented by counsel;

(2) Introduce and examine witnesses and submit physical evidence;

(3) Confront and cross-examine adverse witnesses;

(4) Present oral argument; and

(5) On request, have a transcript or recording of the proceedings.

(j) *Burden of Proof.* The Department has the burden of proof and must establish substantial evidence of a violation.

(k) *Decision.* The hearing examiner—

(1) Makes a decision based exclusively on the record of the proceedings; and

(2) Discloses all findings of fact and conclusions of law relevant to the decision.

(l) *Appeal within the Department.* (1) Within 30 days of the date of the hearing examiner's decision, either party may appeal the decision to the Secretary.

(2) The Secretary makes a decision on the appeal based solely on the record of the proceedings or on those portions of the record agreed to by the parties to limit the issues.

(3) If the Secretary modifies or reverses the hearing examiner's decision, the Secretary specifies the findings of fact and conclusions of law that are different from those of the hearing examiner.

(m) *Administrative Sanctions.* (1) The Secretary may take administrative sanctions if—

(i) The former employee fails to answer or request a hearing after receipt of adequate notice; or

(ii) The hearing examiner or the Secretary has made a final administrative determination that the former employee had violated 18 U.S.C. 207 (a), (b), or (c) or regulations of the Office of Government Ethics or the Department under these statutory provisions.

(2) If the former employee does not file an answer within 30 days of receipt of the notice, the Counselor may render a decision by default against the former employee.

(3) The Secretary may—

(i) Prohibit the former Government employee from appearing before or communicating with the Department on behalf of any other person for a period that does not exceed five years; or

(ii) Take other appropriate disciplinary action.

(n) *Judicial Review.* If the Department's administrative decision finds that the former employee participated in a violation of 18 U.S.C. 207 (a), (b), or (c) or regulations of the Office of Government Ethics or the Department issued under these statutory provisions, the former employee may seek judicial review of the administrative decision.

(Authority: 18 U.S.C. 207)

## Appendix—Code of Ethics for Government Service

Any person in Government service should:

Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

Uphold the Constitution, laws, and regulations of the United States and all governments therein and never be a party to their evasion.

Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

Seek to find and employ more efficient and economical ways of getting tasks accomplished.

Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances that might be construed by reasonable persons as influencing the performance of his governmental duties.

Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

Engage in no business with the Government, either directly or indirectly, that is inconsistent with the conscientious performance of his governmental duties.

Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

Expose corruption wherever discovered.

Uphold these principles, ever conscious that public office is a public trust.

(This Code of Ethics was agreed to by the House of Representatives and the Senate as House Concurrent Resolution 175 in the Second Session of the 85th Congress. The Code applies to all Government employees.)

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Part V

# Department of Transportation

## Federal Highway Administration

49 CFR Parts 383 and 391
Commercial Driver's License Standards; Disqualifications; Proposed Rule

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**49 CFR Parts 383 and 391**

**[FHWA Docket No. MC-88-14]**

**RIN 2125-AC19**

## Commercial Driver's License Standards; Disqualifications

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The FHWA is proposing to amend Parts 383 and 391 of the Federal Motor Carrier Safety Regulations (FMCSRs) to address certain questions that were posed in the final rule [Docket MC-125; Notice No. 87-06] published in the **Federal Register** on June 1, 1987. Specifically, in this document, the FHWA proposes to define "excessive speeding," "reckless driving" and "other serious traffic violations," and proposes to clarify certain other issues pertaining to the disqualification of commercial motor vehicle (CMV) drivers.

**DATE:** Written comments must be received on or before April 3, 1989.

**ADDRESS:** All written comments must be signed, refer to the docket number that appears at the top of this document, and be submitted to Room 4232, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., ET, Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jill L. Hochman, Chief, Standards Review Division, Office of Motor Carrier Standards, (202) 366-4001, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

**SUPPLEMENTARY INFORMATION:**

### Background

On October 27, 1986, the Commercial Motor Vehicle Safety Act of 1986, Title XII of Pub. L. 99-570, (the Act) was signed into law by the President. As a first step in implementing the requirements of the Act, a final rule and request for comments on "Commercial Driver Licensing Standards; Requirements and Penalties" was published in the **Federal Register** on June 1, 1987, implementing certain provisions of the Act required to be effective on July 1, 1987.

The FHWA received a total of 260 comments in response to the June 1, 1987 request for comments (Docket MC-125, Notice Number 87-06), which included:

171 from farmers and relatives of farmers;
21 from agricultural firms and farmer organizations;
18 from State agencies;
11 from private industry and trade associations (4 of which represented motor carriers of either property or passengers);
6 from individual truck drivers;
4 from public interest groups;
4 from motor carriers of property;
4 from Federal agencies and/or their advisory committees;
3 from labor unions;
2 from owner-operator driver associations;
2 from truck renting and leasing companies;
2 from safety/regulatory compliance consultants;
2 from the insurance industry;
1 from a foreign government;
1 from a church organization;
1 from an individual bus driver;
1 from a member of the U.S. House of Representatives; and
1 from a city transit agency.

It should be noted that there were five organizations who submitted multiple responses. Each of these five organizations had more than one representative or official submit their own individual comments; hence the above listing totals only 255 rather than 260. Also, a major portion of the commenters requested exemptions from the Commercial Driver's License (CDL) requirements instead of addressing the questions which were posed.

Although the final rule requested comments on a number of issues, this notice would amend 49 CFR Parts 383, Commercial Driver Licensing Standards; Requirements and Penalties, and 391, Qualifications of Drivers, to clarify the definitions of excessive speeding, reckless driving and other serious traffic violations found in § 383.5, Definitions. It would amend § 383.31 to clarify certain notification requirements, especially how such requirements would apply to casual, intermittent, or occasional drivers. Section 383.51, Disqualification of Drivers, would be modified to allow reduction of lifetime disqualification under certain circumstances. Finally, a conforming amendment is proposed for § 391.15, Disqualification of Drivers. No changes are proposed for those sections of 49 CFR Part 383 that define the gross vehicle weight rating (GVWR) at which a vehicle would be a CMV, that require notification of previous employment, that state the applicability of Part 383 as it relates to drivers of vehicles which carry hazardous materials, or that address drivers who are domiciled in foreign countries.

Each of these proposals is discussed in the following sections along with the nature of the responses to the various questions that were asked in the docket and the FHWA's proposed rulemaking action for each of the issues.

Some of the regulatory changes included in this Notice of Proposed Rulemaking (NPRM) were addressed in a separate final rulemaking, Blood Alcohol Concentration Level for Commercial Motor Vehicle Drivers, published on October 4, 1988 (53 FR 39044). The proposed changes of this NPRM follow the changes made in that final rule. Both changes are included in the appropriate places in the proposed regulatory text, in order to make it easier to follow the changes proposed in this notice as well as the regulatory changes of the Blood Alcohol Concentration final rule.

*Discussion of responses to the questions*

Background

*Question Area 1.* Drivers Domiciled in Contiguous Foreign Countries:

The FHWA is reviewing the licensing standards of foreign jurisdictions to determine if they are consistent with United States' standards. If their standards are not consistent, section 12009(a)(12) of the Act would allow States to issue commercial drivers' licenses to foreign motor vehicle drivers who are not domiciled in a State. Canadian licensing standards were determined to be consistent with United States standards so that a Canadian classified license will be accepted. Effective July 1, 1987, and until the FHWA review is completed, a Mexican commercial driver's license is accepted as a single commercial vehicle driver's license within the meaning of the Act.

To assist in the review of the ways in which foreign jurisdictions test and license CMV drivers and the methods by which the FHWA can include foreign CMV drivers in the CDL program, the FHWA requested comments to the following questions:

*Question 1(a).* How do Canadian and Mexican licensing standards compare to United States' standards?

The overwhelming majority of the docket respondents did not comment on this question; those who did were unable to furnish any detailed comparisons. The commenters suggested that the FHWA make a detailed study of Canadian and Mexican CMV driver testing and licensing standards.

*Question 1(b).* What process should be used for a State to issue a

commercial driver's license to foreign drivers?

Again, very few respondents addressed this question; and those that did, were mainly concerned about issues of reciprocity both in the areas of license acceptance and reporting of violations committed while in the host country. It was generally stated that if the FHWA determined that foreign licensing practices were at least equal to those envisioned by the Act, then the FHWA should accept those licenses as adequate for operating CMVs in this country; but, with the proviso that such foreign drivers be issued some form of a "certificate" by a port-of-entry State's licensing agency. This certificate would provide the means by which to establish a unique identifier for each such driver to be entered into the Commercial Driver License Information System (CDLIS), thus providing a means for tracking all traffic violation convictions of these foreign drivers.

If the foreign licensing jurisdiction's regulations were not up to the standards that will eventually be promulgated under the Act, the commenters stated that those drivers should be tested and licensed (if qualified) by a port-of-entry State that is a participant in the CDL system, with that driver's data entered into the CDLIS.

*Question 1(c).* If foreign drivers retain their foreign licenses, how should they be included in the information systems to enforce the single record concept?

The few comments received in response to this question, for the most part, suggested two possible methods. Some respondents suggested that the foreign drivers be tested and issued a CDL by a port-of-entry State and the driver's data entered into the CDLIS by that State. Other respondents suggested that if the foreign country's standards were found to be equivalent of those of the CDL system in the United States, then a unique identifier should be established for the driver, which would also identify him/her as a "foreign driver" and a CDL certificate would then be issued to the driver. This certificate would enable the issuing State to enter each such driver into the Commercial Driver License Information System (CDLIS), thus providing a means for tracking all of their traffic violation convictions. Another concern was the related issue of full reporting of all foreign convictions of U.S. drivers to the CDLIS.

**Proposed Rulemaking Action**

The related Final Commercial Driver Testing and Licensing Standards issued on July 15, 1988 (53 FR 27628), included a method by which foreign drivers could be licensed according to Federal standards. In the docket related to that final rule (Docket No. 87–18), the FHWA received comments which indicated that issuance of a "nonresident license" to drivers from foreign jurisdictions which do not test and license consistent with the Federal standard would resolve this issue. The FHWA incorporated this suggestion which is more fully explained in the Preamble to that final rule.

Background

*Question Area 2.* Vehicles with a GVWR under 26,001 pounds:

"Commercial motor vehicle" is defined in § 383.5 as a vehicle with a gross vehicle weight rating of 26,001 or more pounds, or one designed to transport more than 15 passengers (including the driver), or any vehicle which is transporting hazardous materials in an amount that requires it to be placarded under the Hazardous Materials Transportation Act.

In the preamble to the final rule published on June 1, 1987 (52 FR 20574), the FHWA estimated that this definition will result in approximately 5.5 million drivers being required to be licensed under these requirements. This definition (1) targets regulation of those drivers that pose the greatest hazard to the public, (2) enhances the States' ability to implement and enforce the commercial motor vehicle driver's license program within the mandated timeframe, and (3) limits the economic impact and compliance burden on drivers, motor carriers, and States.

The definition of a commercial motor vehicle was specified in the Act as a vehicle with a GVWR of 26,001 pounds or more. However, in section 12019(6)(A) of the Act, Congress authorized the Secretary to lower the threshold to 10,001 pounds, if safety warrants. The Act further requires that inclusion of any vehicles below the 26,001 pounds threshold be handled by regulation. Therefore, the FHWA requested comments on the following questions pertaining to these issues:

*Question 2(a).* Is a GVWR of 26,001 pounds an appropriate threshold for applicability of this rule?

Approximately one-fifth of the respondents addressed the question directly; the majority of these were against a lowering of the weight threshold. The National Transportation Safety Board (NTSB), 22 percent of the State agencies who responded and about half of the comments from truck drivers expressed a desire to lower the threshold to 10,001 pounds, or some intermediate level. On the other hand, farmers, farm organizations, some motor carrier industry associations, and truck renting and leasing companies and their trade organizations expressed opposition to lowering the threshold.

*Question 2(b).* What are the potential safety benefits and economic implications of using a 10,001 pound GVWR or an intermediate GVWR threshold?

Only a few (about 10 percent) of the respondents commented directly upon this question, generally stating that there would be few safety benefits and considerable adverse economic impact if the threshold were lowered to 10,001 pounds GVWR. Offsetting this was the argument made by some respondents that not lowering the GVWR threshold for the CDL system to match the threshold used for other parts of the Federal Motor Carrier Regulations (FMCSRs), generally 10,000 pounds, could result in confusion for enforcement personnel as well as drivers and motor carriers.

*Question 2(c).* What current data should the FHWA consider in its analysis of the respective risk profiles of vehicles in the 10,001 to 26,001 pounds GVWR range as compared to the safety performance of vehicles above 26,000 pounds GVWR?

Again, very few respondents (about 9 percent) addressed this question. Generally, the comments suggested that: (1) The FHWA undertake some detailed accident studies, with some States offering to make available their own accident record system for analysis; or (2) they quoted data generated by the National Highway Traffic Administration's Fatal Accident Reporting System.

*Question 2(d).* How many additional vehicles would be subject to the rule at 10,001 pounds GVWR?

This question was addressed by only a few (about 7 percent) respondents, most of whom quoted the Bureau of Census 1982 Truck Inventory and Use Survey, which estimates that there are 2 million trucks in the 10,000 to 26,000 GVWR range.

*Question 2(e).* For vehicles below 26,001 pounds GVWR, should the number of articulation points be a determinant for inclusion as a commercial motor vehicle? Should "hot shot" vehicles below 26,001 pounds GVWR, be defined as a commercial motor vehicle?

Very few respondents commented on this two-part question and of those who commented only a small minority were in favor of using articulation points as a determinant for including a vehicle in the definition. On the other hand, several respondents thought that "Hot Shot" type vehicles should be included

as a commercial motor vehicle. An owner-operator organization stated:

> . . . These hot shot vehicles are very similar in their physical dimensions and handling characteristics to traditional Class 7 and 8 trucks. Therefore, the association believes that the drivers of these vehicles should be subject to the same requirements as drivers of vehicles in these classes. While detailed data is not available, Association members report that drivers of these vehicles are frequently less experienced in handling large vehicles than other over-the-road drivers.

*Question 2(f).* Should the number and kind of axles be a consideration?

Although very few respondents addressed this question, those that did were overwhelmingly against using the number and/or kind of axles as a determining factor and suggested keeping the classification simple.

*Question 2(g).* Should a combination of items—GVWR, axles, and articulation points be considered?

With very few comments received, the negative responses were more than twice the number of comments favoring such a scheme. Generally, these commenters argued that the classification be kept simple.

**Proposed Rulemaking Action**

The FHWA does not propose to change the present definition of a commercial motor vehicle, as set forth in § 383.5. The data available to the FHWA do not support extending the CDL program to vehicles in the 10,000 to 26,000 pound weight range, including "hot shot" vehicles. Moreover, the FHWA has practical concerns that, at least during the "start up" period of the CDL program, lowering the threshold below 26,001 pounds GVWR could overload the States' driver licensing agencies beyond their capacity.

Using the existing definition of a CMV, the FHWA originally estimated that 5.5 million drivers would be affected by the CDL requirements. Until all States have implemented their own programs, however, an accurate count of affected drivers will not be available. Such a count would decline if States decide to grant waivers to firefighters and certain farmers, but would increase if States decide to include drivers not covered under the minimum Federal standards. For example, Michigan has included any vehicle towing another vehicle over 10,000 pounds in its Class A vehicle group, regardless of the gross combination weight rating. This is a more expansive definition for a group or class A than that included in the final commercial driver testing and licensing published on July 21, 1988 (53 FR 27628). Regardless of the State-by-State decisions on waivers and CMV definitions, the number of drivers which States must include by April 1, 1992, in their new programs and in the related information system will be a significant challenge to licensing officials.

In addition, the accident statistics available to the FHWA show a much more serious safety problem for drivers of vehicles above 26,001 pounds GVWR. These drivers, compared to statistics for drivers of vehicles in the 10,000 to 26,001 pound GVWR category, cause several times as many fatalities per driver and are involved in significantly more fatal accidents per vehicle mile traveled. These statistics imply that we can expect a greater increase in the lifesaving benefits from applying the CDL requirements to the drivers of vehicles above 26,001 pounds GVWR. Extending the CDL requirements to drivers of vehicles in the 10,000 to 26,001 pound GVWR category would have substantially less lifesaving potential per driver. Indeed it appears from these data that drivers of vehicles in the 10,000 to 26,001 pound GVWR range are even less likely than drivers of passenger vehicles to be involved in fatal accidents. However, as required by the Act and because of the special potential hazards involved, the FHWA has required States to include drivers of vehicles transporting 16 or more persons or drivers of vehicles with placarded quantities of hazardous materials (HM) to be included in their CDL programs regardless of vehicle weight.

Meanwhile, the FHWA will continue to monitor the vehicle weight threshold issue closely, to determine whether safety or programmatic reasons, such as easier compliance with other Federal motor carrier regulations or consistency with CDL programs implemented by the States, warrant a change in the weight threshold. Both independent assessments and consultations with the various State agencies about the progress of implementation and enforcement of the CDL requirements will be used to determine whether the weight threshold should be lowered. Also, the FHWA will continue to investigate and enforce noncompliance with the parts 390 to 399 of the FMCSRs for vehicles which are subject to those regulations but not to Part 383—i.e., vehicles with GVWRs between 10,000 and 26,000 pounds.

Background

*Question Area 3.* Vehicles Transporting Hazardous Materials:

The Act defines a commercial motor vehicle, in part, as any vehicle, regardless of size, that transports most types of hazardous materials. Congress exempted vehicles transporting certain hazardous materials of limited quantity, consumer commodity (ORM–D), and certain hazardous substances (ORM–E). These exemptions are limited, however, and the Act applies to millions of drivers who operate vehicles that are less than the 26,001 pounds GVWR threshold. If the broad definition of hazardous materials under the Act is used, the FHWA estimated in the June 1, 1987, final rule that the total number of drivers subject to the requirements would increase from 5.5 million to 11.0 million drivers.

Since enactment, the FHWA has received comments about the coverage of drivers of vehicles transporting hazardous materials. At its public session on February 4, 1987, the National Motor Carrier Advisory Committee (NMCAC), Subcommittee on Safety, proposed a limitation to include only those vehicles requiring placarding. The full NMCAC endorsed this proposal in a formal vote of its members.

Similar suggestions were made by the State representatives at the January 22, 1987, public workshop. State officials indicated that if all vehicles transporting any nonexcluded hazardous materials were covered by the requirements, State and local law enforcement agencies would have difficulty in distinguishing between vehicles carrying the exempted hazardous material from those which were not. Moreover, enforcement agencies would have no way of distinguishing those non-placarded vehicles below 26,001 pounds GVWR that are carrying non-exempted hazardous materials from other vehicles below 26,001 pounds GVWR. The State representatives indicated that it would be impractical to enforce against anything except placarded vehicles.

After due consideration of these comments and the facts available to it, the FHWA determined that the regulation should be applied to vehicles below a GVWR of 26,001 pounds only if the vehicle is transporting hazardous materials in an amount which would require it to be placarded in accordance with the hazardous material regulations. Thus, § 383.5 defines a commercial motor vehicle transporting hazardous materials as any vehicle, regardless of its size, which is transporting hazardous materials in an amount requiring it to be placarded under the Hazardous Materials Transportation Act and related regulations (49 CFR Parts 100 through 199). Vehicles larger than 26,001 pounds GVWR transporting hazardous materials (regardless of placarding requirements) are subject to the regulations due to their GVWR. However, because of differences

between the Act's definition and the definition § 383.5, the FHWA requested comment on the following questions in order to elicit additional information on the best means of administering and enforcing the Act's provision for hazardous materials laden vehicles:

*Question 3(a).* How many additional individuals will be subject to the provisions of the rule if all vehicles, regardless of size, which are transporting hazardous materials, exclusive of limited quantities, ORM–D and ORM–E, are included?

Only 3 percent of the respondents attempted to quantify the number of drivers that would be affected, with several estimates running as high as 2.3 million drivers for just those vehicles involved in agricultural activities. California's response was: "the State of California is estimating that 300,000 Class 3 drivers may have to obtain CDL's since they haul placarded materials." Some other States estimated very large increases in their own CDL driver population if the threshold were to be lowered. There were no overall estimates given by any respondent.

Question 3(b). What is the reasonable break distinguishing point between vehicles requiring placarding and vehicles with smaller amounts of hazardous materials being transported? Should it conform to some current criteria which excludes non-bulk shipments of 100 gallons or less? Should United Nations' packaging limits which could exclude hazardous materials quantities in packages of 450 liters (118.88 gallons) or 400 kilograms (881.84 pounds) or less be considered? Should there be an intermediate cutoff such as 50 pounds or 10 gallons?

Only 12 percent of the respondents commented on this question, the majority of whom believed that trying to deal with anything less than placarded vehicles, under the present regulations (49 CFR Parts 100 through 199), would become a difficult, if not impossible task, especially as far as enforcement is concerned.

*Question 3(c).* Are there entire hazardous materials classes or chemicals within classes that, because of accident experience or potential hazard in transportation, should be included or excluded from the requirements of the Act?

Only 7 percent of the respondents directly addressed this question, and of those, very few had any suggestions pertaining to the inclusion and/or reduction of the amount of a chemical that they felt should require placarding. Also, no supporting evidence was offered for any suggested changes.

*Question 3(d).* What accident and incident information is available that would make it necessary to include some smaller quantities of certain hazardous materials that will not be covered by this rulemaking (placarded amounts)?

Less than 4 percent of the respondents offered information on this, but they did not offer any statistical evidence. However, a national organization representing motorists stated:

> A recent study (U.S. Congress, Office of Technology Assessment, *Transportation of Hazardous Material*, OTA–SET–304) found that as a general matter, the dividing line between non-bulk (small) and bulk (large) containers is 100 gallons or 1,000 pounds. According to the study, non-bulk containers make up about half of the highway traffic, but comprise about 80 percent of the containers cited by the United States DOT's Hazardous Materials Information System as being involved in highway releases. The study further states: releases from non-bulk packages of hazardous materials, while numerous, generally do not have serious consequences because of the small amounts of materials in the packages.

This same respondent also stated that it concurs

> * * * with the FHWA that the regulations should apply to vehicles below a GVWR of 26,001 pounds *transporting hazardous materials requiring placarding.* We suggest, however, that the FHWA conduct a study to see the extent of driver contribution to accidents involving non-placarded hazardous materials transportation. Until we can be sure that there is a problem and know the extent of that problem, [we believe] that including those millions of drivers in the [CDL] system may be unnecessary and therefore burdensome (Emphasis added.)

*Question 3(e).* What accident data are available which indicates deaths, injuries, or property damage accidents during the transportation of certain hazardous materials? Are these data sufficiently comprehensive and valid to be considered in any future rule?

The few responses to this question can best be summarized by the comments from two respondents. The first was from a State, which stated that no reliable data was available. The second, from a large public interest group, stated:

> In 1984 there were more than 4,000 truck involved fatal accidents. Only four deaths resulted from the release of hazardous materials. We believe that most of the fear concerning qualifications of drivers transporting hazardous materials will be reduced once we are assured that all commercial drivers have one license, one record, are qualified to drive a truck, and pass a knowledge exam on hazardous materials.

*Question 3(f).* How can the provisions of the Act be enforced for hazardous material laden vehicles below 26,001 gross vehicle weight rating, other than placarded vehicles? Would enforcement be practicable if all vehicles above a certain weight rating, such as 10,000 pounds, were included?

All the respondents who addressed this question (8 percent), said the only practical way to enforce the hazardous materials provisions of the Act, for vehicles under 26,000 pounds GVWR, was by limiting it to those vehicles whose lading required the use of placards. Only 2 of the 255 docket respondents suggested lowering the quantities of hazardous materials currently required to be placarded. One nationwide motor carrier (with a fleet of trucks under 26,000 pounds) stated: "We believe that inclusion of vehicles carrying placardable quantities is the only practical definitional criteria that can be used." Several other respondents made similar comments. As mentioned previously, for example, a national organization representing motorists stated that it:

> concurs with FHWA that the regulations should apply to vehicles below 26,001 pounds transporting hazardous materials requiring placarding. We suggest, however, that the FHWA conduct a study to see the extent of driver contribution to accidents involving non-placarded hazardous materials transportation. Until we can be sure that there is a problem and know the extent of that problem, [we believe] that including those millions of drivers in the [CDL] system may be unnecessary and therefore burdensome.

Related Issues

*(1) Administrative Problems*

The FHWA estimated that as many as eleven million drivers would be affected by this rule if a broader definition of "commercial vehicle" is used. Prior to, during and subsequent to the writing of the June 1, 1987, regulations, there was considerable contact with representatives of State agencies involved in this activity. Almost without exception, State agencies expressed considerable concern about administering the CDL program if too many drivers were included. They believe that the processing time for testing and licensing CMV drivers would become excessive. Many State officials believe that they will be better able to assess their capacity to serve more CDL applicants after a phase-in period. The comments to the docket reflect these concerns.

The FHWA understands these concerns. The Act requires the

establishment of an electronic information system which is referred to as a clearinghouse. This system will be designed to allow States, the Secretary and potential employers access to CMV driver's records from all participating licensing jurisdictions. Not only will each State need to gather and store similar CMV driver record information, but such data will need to be reported in a timely manner. Thus, the administrative burden on the States is large.

*(2) Enforcement Problems*

With the inclusion of an estimated 5.5 million drivers in the testing/enforcement progam, the current level of staffing at both the Federal and State level will be under extreme pressure. The CDL regulations impose new and stringent penalties on errant drivers. For example, a driver who is convicted of operating a CMV while under the influence of alcohol or drugs will be suspended from operating a CMV for a year for the first violation and for life for a subsequent conviction. There are also disqualification provisions for lesser violations. If the FHWA, based on experience with the CDL program, were to broaden the definition of a commercial vehicle, it was estimated in the Final Rule issued on June 1, 1987, that the numbers of drivers that would be subject to the requirement could increase from 5.5 million to 11 million. Considering the resources currently available to licensing the enforcement agencies to implement the CDL program, the task could very quickly overwhelm the States' abilities to implement the CDL program.

*(3) Accident Information*

A prime consideration in the decision to limit the applicability of the commercial motor vehicle definition for drivers transporting hazardous materials was available accident data. Motor vehicle accident and HM incident reports received by the Department for the years 1983, 1984, and 1985 show that an average of seven fatalities per year were a *direct* result of HM transportation. It is important to note here the caveat, "a direct result of HM transportation." Had these accidents occurred during the transportation of nonhazardous materials, the fatalities may not have occurred. Considering the fact that there are hundreds of thousands of HM shipments made daily, which account for over four billion tons of HM material moved annually, this is an enviable safety statistic. Although even seven deaths are tragic, the number is very small when considered against the tens of thousands of fatalities caused by all drivers involved in accidents while under the influence of alcohol.

Another important factor to be considered is that *all* of these reported accidents occurred during the transportation of *bulk* HM. When looking at the overall picture and realizing that eighty-five percent of all HM shipments are "small" (non-bulk) shipments, a practical limitation to the definition of commercial vehicles appears justified.

**Proposed Rulemaking Action**

After consideration of all of the comments and data currently available, the FHWA is proposing that the definition of a commercial motor vehicle, as presently set forth in § 383.5, remain unchanged for the immediate future. The FHWA believes that broadening the definition of commercial vehicle to include "all vehicles transporting any amount of hazardous materials, exclusive of limited quantities, ORM–D and ORM–E," would add several million more drivers to the CDL system than would otherwise occur.

The addition of these drivers could overload the States' driver licensing agencies far beyond their current, and for the foreseeable future, capacity to deal with CDL applicants. This could result in large numbers of unqualified drivers being able to continue to operate their vehicles to the endangerment of all.

Background

*Question Area 4.* Definition of Conviction and Serious Traffic Violations:

Section 383.5 defines "Conviction" as meaning

an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

Section 383.5 also defines a "Serious traffic violation" as meaning

a conviction, when operating a commercial motor vehicle, of:

(a) Excessive speeding;

(b) Reckless driving, as defined under State or local law; or

(c) A violation of a State or local law relating to motor vehicle traffic control (other than a parking violation) and arising in connection with a fatal accident.

(Serious traffic violations exclude vehicle weight and vehicle defect violations.)

The FHWA requested comment on the following questions in order to elicit additional information on how to best clarify the meaning of these terms, and to facilitate uniform methods for administering and enforcing the CDL driver penalties as stipulated in the Act:

*Question Area 4.* Definition of Conviction and Serious Traffic Violations:

Convictions

The FHWA asked two questions related to the definition of Conviction and used the comments received as part of the change to the definition that was proposed in the notice of proposed rulemaking entitled Blood Alcohol Concentration Level for Commercial Motor Vehicle Drivers, published on May 10, 1988 (53 FR 16656). Further discussion of this definition is included in that document and the final rule published on October 4, 1988 (53 FR 39044).

Excessive Speeding

*Question (a).* Should the FHWA define excessive speed as any speed in excess of a posted speed limit?

The majority of the respondents addressing this question (11.7 percent) held that a lack of any tolerance for the posted speed limits, considering the severity of the penalties involved, would be far too harsh and/or unreasonable. However, several other respondents commented that "any speed in excess of the limit" should be considered as excessive speeding. The National Transportation Safety Board (NTSB) summed-up these viewpoints in stating:

Given the longer distances required to stop trucks, it is especially important that truck drivers adhere to the posted speed limit. Thus, no regulation should create any implication that any speed in excess of the posted is acceptable. However, some States do create a second, more severe speeding offense for drivers who exceed the posted limit by a specified amount. This second, "excessive speeding" violation is treated more harshly with penalties often akin to reckless driving. The use of such a system creates the risk of leaving an impression with drivers that some measure of speeding is acceptable thereby aggravating the existing practice among much of the driving public, of exceeding the posted limit by 5 to 7 miles per hour because they know that there is little enforcement against these violations. However, it does enable FHWA to more precisely define the nature of speeding violation charged against a commercial driver. For example, with this offense, it would be possible to identify those who commit the most egregious speeding

violations and disqualify them after a single offense. The creation of an excessive speeding offense would be acceptable to the Safety Board if it were done in such a way as to minimize the perception that speeds above the posted limit but not considered "excessive" are acceptable.

*Question (b).* Should FHWA define excessive speed as a certain speed above the speed limit? 10 m.p.h.? 15 m.p.h.? 20 m.p.h.?

Of those commenters who directly addressed this question, there was no consensus on the level at which to set "excessive" speeding. For example, about one-third suggested defining excessive speed as 10 m.p.h. over the limit; almost half suggested 15 m.p.h.; about 10 percent favored either something under 10 or over 15 m.p.h.; and the remaining respondents held that *any* speed above the limit should be deemed to be excessive speeding.

*Question (c).* Should the definition be adjusted for different types of highway facilities or adjacent land use development, i.e., Interstate System or freeways with a national posted speed limit as opposed to travel in a town or near a school?

Only a few of the respondents commented on this, and all of them, except for one State, felt that there should be no adjustment made. The majority of the comments against the use of an adjustment, cited the fact that the speed limits had been established by taking into account all of the necessary mitigating factors such as adjacent land use. Additionally, many of them observed the difficulty this would pose for uniform CDL enforcement and/or application of penalties.

*Question (d).* What limits should be written into the rule which address speeding under adverse driving conditions? Should anything above a designated speed, such as 70 m.p.h., be considered excessive speeding?

There was great diversity of opinion among the few (about 10 percent) respondents who addressed this issue. Regarding adverse conditions, the majority of the responses indicated that it would be extremely difficult, if not impossible, to write a rule that could properly and adequately address such an infinite variety of different situations, as may be covered in the term "adverse conditions". Most of the commenters who opposed the idea mentioned that only the arresting officer at the scene could make a qualified judgment as to whether or not the offender's speed was "too fast for conditions" at the time. The NTSB commented: "* * * any speed, even of below the posted speed limit, which is unsafe for the conditions at that time, should be considered excessive." The NTSB went on to suggest that the FHWA incorporate the language used in the *Uniform Vehicle Code and Model Traffic Ordinance* (UVCMTO), 1987 Edition, published by the National Committee on Uniform Traffic Laws and Ordinances, which states in Chapter 11, Rules of the Road, at § 11–801 that: "No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having rgard to the actual and potential hazards then existing * * *."

In response to the issue of designating a specific speed, as constituting excessive speed by definition, there were suggestions ranging from a low of 70 m.p.h. to a high of 86 m.p.h. The majority, however, were in favor of keeping the rule simple by merely stating that, "any speed of 10 or 15) m.p.h. over the posted limit" should be the sole definition of excessive speed.

Reckless Driving

*Question (a).* Should reckless driving constitute any driving violation which is contrary to State or local law?

Again, relatively few comments (12.9 percent) responded to this question, of which a minority advocated a different definition from that in current State laws. Instead, the majority wanted to retain the State definitions of this offense. Seven respondents made a direct plea for the FHWA to define reckless driving as set forth in the UVCMTO. The 1987 Edition of the UVCMTO, published by the National Committee on Uniform Traffic Laws and Ordinances, in Chapter 11, Rules of the Road, at § 11–901 Reckless Driving (a) states that: "Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving." Several commenters emphasized the potential problems created by the lack of a definition of what constitutes reckless driving. These were well summarized by the comments of a truck driver who claimed 31 years of driving experience, who stated: "Reckless driving should be defined * * * because some places you could get a ticket just for changing lanes without a signal light. Some places that is reckless driving." Several other respondents stated that even though they did not favor any definition that differed from State laws, they felt that a "Federal definition" (of reckless driving) would be necessary to facilitate the exchange of data within the CDLIS because of the differences in State laws.

*Question (b).* Should reckless driving mean only those violations which result in injury or death?

Of the few (10.5 percent) of the respondents who directly addressed this question, only one thought that reckless driving should mean only those violations which result in injury or death. The majority expressed comments similar to those of a major trucking association, which state that:

> Most state laws define reckless driving as violations which are excessive enough to be a high potential for a serious accident, regardless of whether injury or death results. Federal regulation should not require injury or death to be part of the criteria. The decision should be left to the states.

*Question (c).* Should reckless driving include endangerment of the public which does not result in injury or death but only property damage?

Of the relatively few (10.1 percent) respondents who directly addressed this question, the majority thought that reckless driving should include endangerment, not resulting in injury or death but only in property damage, and the rest thought it should not. One State expressed its opposition by stating:

> Endangerment is the key concept here, not the damage, injury, or death possibly resulting from it. It follows that reckless driving should include cases where, fortuitously, no damage resulted.

*Question (d).* Should reckless driving be determined by the State or local jurisdiction in which the violation occurred?

Most respondents favored using the State's definitions of reckless driving, but at the same time expressed apprehension about the differences between those laws. An insurance industry association reflected these concerns, when it stated:

> * * * the *Uniform Vehicle Code* defines reckless driving as driving "any vehicle in willful or wanton disregard for the safety of persons or property." This concept, if not the exact language, is present in virtually all the state laws. However, the FHWA should be aware that there are states that have additional language in reckless driving provisions that describes less serious violations than those contemplated by the Act. Furthermore, it is common practice for those charged with alcohol-related driving offenses to plead guilty to reckless driving. Rather than attempting to analyze all violations to identify those that should be classed as reckless driving, the FHWA should follow state law on the matter and identify those states that include less serious behavior within the definition of reckless driving. Drivers who are subject to disqualification due to reckless driving convictions from those states should be allowed an opportunity to demonstrate that the behavior resulting in the conviction did not constitute a serious violation as contemplated by the Act. Finally, all drivers convicted of reckless driving should be

required to notify the FHWA of the original charge giving rise to the conviction. Otherwise, drivers will be able to shield alcohol-related offenses from the agency by pleading guilty to reckless driving.

Other Violations

*Question.* What other violations should be considered serious traffic violations?

A total of 18 respondents addressed this question directly. Three of these representing truck and bus drivers or owner-operators, requested that nothing be added to the present rule. The other 15 (7 of which were State agencies) requested one or more of the following types of violations be added:

—Driving while operating privilege is suspended or revoked;
—Improper/erratic lane changes;
—Unsafe passing;
—Illegal transportation of alcohol;
—Following too closely;
—Willful violation of out-of-service orders;
—Failing to stop for a blue light;
—Passing on a hill or a curve;
—Using a motor vehicle as a deadly weapon;
—Speeding in a school zone;
—Passing a stopped school bus with flashing red lights;
—Racing or drag racing on public highways;
—Fleeing and/or attempting to elude a police officer;
—Improper passing; and
—Operating a commercial vehicle while suspended, revoked, canceled, or without a commercial class license;

Some of the respondents supported their requests with the argument that the violation(s) which have serious accident potential, and which are dangerous enough to make them (the suggested violation) equivalent to excessive speeding, should be included.

**Proposed Rulemaking Action**

The FHWA believes that Congress intended that the definition for "excessive speeding" be used to identify and penalize the most severe cases of speeding violations because the offense is included in the Act in the same category as "reckless driving". Therefore, the proposed definition is based on a specified value which separates the more serious speeding violations which would warrant penalties commensurate to those assigned to violations of reckless driving from other speeding violations. The FHWA proposes that excessive speeding violations would occur at any speed of 15 miles per hour or more above the posted speed limit.

While developing the proposed definition of excessive speeding, the FHWA considered whether to include in the definition repeated speeding at amounts below this specified value. Although the FHWA believes that driving too fast, regardless of the number of miles over the speed limit, is a violation that should not be taken lightly, current State systems penalize habitual speeders. Thus, a dual-part definition is not proposed as part of the Federal minimum standard.

The need to place importance on speeding violations of all kinds and to impose more stringent penalties on the drivers that are convicted of these violations is currently recognized by most jurisdictions. A review of the States' existing "safety point systems" shows that States already distinguish between speeding violations that occur at lower speeds and those that occur at levels that far exceed the speed limit. For example, in Maine, a driver convicted of speeding between 1–10 miles per hour over the speed limit is assessed 2 penalty points. That same driver would be assessed 6 penalty points for a conviction of 15 miles per hour over the limit. An FHWA analysis of the point systems used by 20 different States shows that violations for speeds of 15 miles per hour or more above the posted limits receive a greater number of points—i.e. are treated as a more serious offense—than violations for lower speeds. The proposed definition for excessive speeding would create a needed uniform national penalty for the more serious speeding violation. The States would retain, however, responsibility for penalties associated with speeding violations below the 15 miles per hour threshold.

The FHWA notes that the CDL telecommunication system (AAMVAnet) is now operational. States will be required to use the system to check commercial driver's licenses and to transmit traffic violation convictions, including all convictions for speeding, to the driver's home State. These requirements should resolve the current problem of drivers not being penalized for traffic infractions, particularly speeding violations, which occur in other jurisdictions. The FHWA believes that these systems in conjunction with a State's point system for lower level speeding violations, will adequately control the problems associated with repeated speeding at amounts below the specified value (15 miles per hour above the posted speed limit).

The FHWA believes that the proposed definition meets the intent of the Commercial Motor Vehicle Safety Act. The proposed definition would subject drivers to disqualification for "excessive" speeding, as the Act requires. While several commenters advocated penalizing all drivers who exceed the speed limit, the FHWA believes that Congress did not intend the disqualification provisions to apply for all speeding convictions, but only for those that involve particularly serious offenses. We invite comments on this issue and on the following specific questions:

Is the standard of 15 MPH or more above the speed limit appropriate for the entire range of speeds of concern? Should a conviction of driving 15 MPH over the posted limit in a 20 MPH school zone be treated the same as a conviction of driving 15 MPH over the 65 MPH limit of a rural interstate? What other standard could be adopted that would recognize the varying hazards, yet be simple enough for all parties to readily understand? Would it be appropriate to propose a more stringent value, such as 10 miles over posted limits per hour instead of 15 miles per hour, that would constitute a disqualifying violation?

Regarding the definition of "Reckless Driving", Section 12019 of the Act states that: "reckless driving shall be as defined under State or local law." To promote uniformity and because a majority of the States are already using the UVCMTO definition, the FHWA proposes to amend the definition of reckless driving to incorporate the language used in the UVCMTO, 1987 Edition, published by the National Committee on Uniform Traffic Laws and Ordinances. Such language states that (in Chapter 11, Rules of the Road, at § 11–901—Reckless Driving (a)) "Any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving." The FHWA also proposes to amend the definition of reckless driving to clarify that it would include two additional traffic offenses, both of which are frequently associated with excessive speeding and/or reckless driving. These two additional offenses, also based on definitions in the UVCMTO, are:

1. Improper/erratic lane changes (UVCMTO § 11–304 through § 11–306); and

2. Following the vehicle ahead too closely (UVCMTO § 11–310).

The FHWA is also proposing to amend "Driver Disqualifications" as defined in § 383.51 (c)(2) to conform with the changes pertaining to "excessive speed" and "reckless driving".

The FHWA seeks comments on whether these two infractions should be listed as "other serious traffic violations" instead of including them under "reckless driving".

Background

*Question Area 5.* Notification of Convictions for Driver Violations:

Section 383.31, as mandated by the Act, requires a CMV operator to report all convictions of disqualifiying offenses committed in another State to his/her employer and to the State which issued the CMV operator's license. The driver must notify the employer and the State within 30 days of the date of his/her conviction.

One purpose of the driver notification requirements to the State is to alert a State of violations which, when considered with other violation convictions, warrant the suspension or revocation of a driver's license. When State-to-State reporting of traffic violations, required by Section 12009(a) of the Act, is fully operational, a comprehensive system to ensure complete single license records would exist. However, it should be noted that several State representatives indicated that a license cannot be suspended or revoked based upon a driver's notification. States require direct and official notification from other States regarding convictions for traffic violations before the State can suspend a license. In order to accommodate this concern, it was suggested to the FHWA that the driver notification requirements to the State be waived if a State belongs to the Driver License Compact (DLC). Presently, 35 States and the District of Columbia belong to the DLC. However, because 15 States do not belong to the DLC and because many States in the DLC do not fully comply with its major provisions, the FHWA specifically requested comments on the following questions concerning its use:

*Question 5(a).* Can the DLC adequately serve the purpose of the driver notification requirements to the State?

A majority of the direct respondents to this question did not believe that the DLC could adequately serve this purpose. However, of the 13 States that directly commented there was no clear consensus—6 of them said "yes" and 7 said "no." The concerns of several respondents were reflected in the comments of the National Transportation Safety Board which wrote:

> As for the DLC, the Safety Board views it as an important means of preventing driver abuse of the license privilege, but it cannot serve as a substitute for the notification provision of the current rule. Not only is State participation in the Compact insufficient for such substitution, but so is the amount of information exchanged under the program. Many types of violations are not transmitted under the DLC, because of lack of uniformity in the way indivudal States categorize those violations. For example, States such as Nevada have had a 55-m.p.h speed limit, but if a driver there is stopped for traveling between 55- and 70-m.p.h, that offense is given a designation other than speeding. Therefore, when reporting speeding violations to another State, those occurrences would not be included.

*Question 5(b).* What level of State participation in the DLC and what level of State compliance with the terms of the DLC should be met, before the DLC is considered as an alternative to the notification requirements?

There was a nearly equally divided response between various States and other organizations who directly addressed this question. Generally, the comments were that the DLC could not be considered as a viable alternative, unless all States were forced to join the DLC, and forced to report all moving violations, without making any modifications to the nature of the violations being reported.

**Proposed Rulemaking Action**

It is clear both from the FHWA's own investigation and the comments to the docket, that the Driver License Compact does not currently serve the purpose of the driver notifications of the Act. Therefore, the FHWA does not propose to consider it as an option at this time.

Background

*Question Area 6.* Notification of Employment History:

The Act allows the FHWA to establish the length of the employment history period, which CMV operators must provide to prospective employers, by regulation. The Congress directed that this period shall not be less than a 10-year period ending on the date of application. The Act places the burden on the job applicant to provide the employment history. It also requires that employers request the information from all applicants seeking employment as a CMV operator. The FHWA realizes that it may be impossible for a potential employer to comply with the requirement without assistance from the applicant. Accordingly, § 383.35 of the rule, requires an applicant for a job as a CMV driver to inform the prospective employer of any previous employment as an "operator of a commercial motor vehicle," if any, for the 10-year period before the application date. The applicant must include the name(s) of his/her previous employer(s), dates of employment, and the reason for leaving the job(s).

*Question 6(a).* Should the FHWA require an applicant for employment as a commercial motor vehicle operator to provide the employer information on all jobs, not just jobs as a commercial driver, he/she had for the 10-year period prior to the date of application?

A minority (40 percent) of the respondents who directly addressed this question were in favor of a complete 10-year history and the rest were against it. One trucking industry association suggested that it be all inclusive; but for a period of 5-years, instead of 10 years. A major bus industry association stated:

> (it) believes that operator applicants should be required to provide information on all jobs, not just jobs as a commercial driver, for the ten year period prior to the application date. Such information could quite often be relevant to overall qualifications for a driver position.

An insurance industry association commented that:

> It is essential that the employer have a complete record of a driver's license history that includes violations occurring during personal and commercial driving as well as a full employment history. Without a complete record, the employer will not have an adequate basis upon which to make decisions about a driver's safety performance. Furthermore, it would be inappropriate to require that drivers only report employment history as commercial drivers because former employers are a valuable source of information on matters that bear on safety performance and reliability even if the prior employment is unrelated to commercial driving. For example, employers often identify possible substance abuse problems before they result in convictions or incidents that appear on official records.

*Question 6(b).* Should the FHWA require the applicant's employment history for a period longer than 10 years?

Most of the respondents who directly responded to this question were opposed to increasing the period beyond 10 years because of current record-keeping practices and the possible administrative burdens that would result.

*Question 6(c).* Should the FHWA require an applicant for employment as a commercial motor vehicle operator to provide the employer with information about his/her driving license status and details on past license suspensions, revocations, etc.?

The majority of the responses to this question agreed that the applicant should provide such information. Two of the respondents were opposed, one a bus driver and the other an organization representing owner-operators.

**Proposed Rulemaking Action**

Based on the FHWA's own investigation and its review of the comments to the docket, the FHWA believes that § 383.35 as presently written, will adequately serve the purposes intended by the Act. The FHWA notes that employers and

prospective employers will have access to the information contained in the CDL information system and information on the driver's record through the State of licensure. This should enhance the employer's/prospective employers' ability to check on an employee's or an applicant's past driving history. From the information in the docket, the FHWA believes that a 10-year history of commercial driving experience is sufficient. Therefore, the FHWA does not consider any further rulemaking action necessary.

Background

*Question Area 7.* Disqualification of Drivers:

Section 383.51 prescribes minimum driver disqualification provisions, as included in the Act. It specifies that drivers can not operate a CMV if disqualified, and that employers shall not knowingly allow or require drivers to operate a CMV, if they are disqualified.

The Act also provides that the FHWA may issue regulations which establish guidelines (including conditions) under which a lifetime disqualification may be reduced to a period of not less than 10 years. In order to assist the FHWA in determining whether the lifetime disqualification should be reduced, and whether the disqualifying offenses should be changed, the FHWA asked for comments on the following questions:

*Question 7(a).* Should the disqualification offense, leaving the scene of an accident, be limited only to accidents which involve an injury or death?

Of the docket comments which directly addressed this question, a majority were against limiting "leaving the scene" to only those accidents involving injury or death. About one-fourth thought that it should be limited to just those kinds of accidents. The majority of the States who commented upon this queston thought that leaving the scene of any accident was serious enough to be considered as a disqualifying offense. However, concerns about applying the same penalty for leaving the scene of a minor property damage accident, as would be applied for leaving an accident involving either an injury or a fatal injury were expressed. Both an owner-operator organization and a motor carrier association reflected the views of many respondents when they stated that the results of the accident (whether property damage only or injury/death) should *not* be the governing criteria, rather it should be whether or not the driver had *knowingly* and *willfully* left the scene of an accident.

*Question 7(b).* Is there a simple way to differentiate minor from serious incidents of leaving the scene of an accident?

Of the few respondents to this question (10.9 percent), there was an almost equal split between those who stated that there was a way to do so, those who said there was not and those who did not know or were unsure of a way to do so. One State suggested that a way to accomplish this would be to copy its law, which stipulates that leaving the scene of an accident involving injury or death is a felony, whereas leaving the scene of an accident involving property damage only, is classified as a misdemeanor. However, the majority of State respondents who felt there was a way to differentiate, suggested different dollar amount thresholds. Several respondents referred back to the previous question (7a) stating that the driver should be subjected to the penalty only if he/she knowingly and deliberately had left the scene, regardless of the accident results. Several respondents pointed out that it was entirely possible for the operator of a large commercial motor vehicle to be involved in a minor property damage accident of which he/she was genuinely unaware. Considering the severity of the penalty involved, many respondents felt it would be unfair to exact such a penalty upon a driver who had not intentionally left the scene.

*Question 7(c).* Should the FHWA reduce the lifetime disqualification for second offenders of any combination of (1) driving under the influence, (2) leaving the scene of an accident, or (3) the use of a commercial motor vehicle in the commission of a felony?

Most of the respondents who addressed this question directly were in opposition to a reduction for each item. The viewpoints expressed, however, did not follow any pattern within the respondent groups represented. For example, the comments of the State respondents were evenly divided on this issue. Also some motor carrier groups thought the penalties too severe; while some driver groups did not. Several respondents thought a "progressive" type of penalty system should be used. For example, a first offense meriting a 5-year disqualification, the second infraction a 10-year penalty, and the third offense would be a lifetime disqualification. Furthermore, several respondents suggested that drunk driving penalties should be treated somewhat more leniently than leaving the scene of an accident or the commission of a felony. Some respondents (including several States) suggested that the drunk driving penalty period should be a period of 10 or 15 years for the second offense, with a lifetime disqualification only applied to the third offense. Another State opposed this concept when it wrote: ". . . These are very serious offenses. This is the 'teeth' of the law. Giving the driver a third chance to operate a commercial motor vehicle would be hard to defend after two previous DWI convictions." A State driver licensing agency raised a very important question regarding sanctions, when it commented: "First of all, we would like to comment that leaving the scene could be considered less severe than D.U.I. or commission of a felony. Secondly, some consideration should be given to counting "incidents" instead of just violations because of certain circumstances. For instance, a D.U.I. operator could leave the scene of an accident. *Would this be considered for two penalty sanctions or would they serve concurrently?"* (Emphasis added.) The respondent then went on to a recommend that:

> the lifetime disqualification provision be reduced to a time definite period, i.e., 10 years. Otherwise, there is no incentive for the operator to comply with any future requirements. By providing a potential reward (future reinstatement) we are encouraging the operator to comply with the imposed sanctions.

Many of the comments made in opposition to any reduction can be reflected by the NTSB comment that:

> Each of these offenses cited represents an extremely serious violation deserving of a serious penalty. A second infraction indicates a fundamental disregard for the law, and merits a lifetime disqualification.
> * * * Indeed, the probability of a drunk driver being arrested is so small that an individual must drive drunk many times in order to be arrested and convicted twice. Thus, any repeat offender drunk driver should be subject to extensive rehabilitation and a lengthy disqualification period prior to any consideration of reinstatement. Certainly, no reinstatement should be considered unless there is clear evidence that the driver's alcohol problem has been completely overcome.

*Question 7(d).* What types of guidelines or conditions, such as successful completion of a rehabilitation program, should be established in order to reduce the lifetime disqualification?

Very few respondents addressed this question directly. Most of the direct responses were in favor of some form of rehabilitation, with many methods suggested for reduction of the lifetime disqualification. The other 40 percent were against attempting rehabilitation because the current sanctions already allow the driver two infractions, prior to the imposition of a lifetime

disqualification. Three trucking associations wanted some form of rehabilitation to reduce the lifetime penalty, while a bus industry association and a driver association were against reducing the penalty. The majority of those favoring rehabilitation generally advocated that the driver undergo a 10-year disqualification period, during which time he/she would have a clean arrest/driving record, and submit some form of evidence that they had undergone successful treatment for their alcohol/controlled substances, if that had caused the disqualification. There was a conspicuous absence of recommendations for the rehabilitation of drivers convicted of leaving the scene of an accident or the commission of a felony using a commercial motor vehicle. A national public interest group suggested the following:

> * * * 1. For a second violation occurring *within* 5 years of the first violation, driving under the influence of alcohol or a controlled substance, or leaving the scene of an accident should result in disqualification for life. 2. For second violations occurring *after* 5 years from the conviction for the first violation, the Secretary should establish guidelines under which the penalty could be [reduced].

*Question 7(e).* Should a commercial motor vehicle operator who is convicted of the transportation, possession, or unlawful use of a Schedule I controlled substance (in contrast to being under the influence or distributing such substances) be disqualified from operation of such vehicle? Should the offense also cover Schedule II through V controlled substances? What should be the period of disqualification for such offenses? Should the period be more severe for offenses involving hazardous materials laden vehicles?

This question was directly addressed by only a few (10.1 percent) respondents. Of these, most thought that Schedule I controlled substances felony offenders should be disqualified. The question about whether or not Schedule II–V controlled substances should also be included, most believed that they should be included as a disqualifying offense. Only about half of the respondents directly answered the question about the length of the disqualification period. Suggestions ranged from 1-year to lifetime disqualification, with most advocating a lifetime penalty. The question regarding offenses involving vehicles transporting hazardous materials was addressed by most of the group, with no clear consensus.

The exact position of some respondents on these issues was often difficult to assess, as some answered by repeating the question in total, and then simply responding with a "yes" or a "no" to cover all four of the questions. Other respondents addressed all, or nearly all, four of the questions, but, stated both that any driver convicted of the transportation, possession, or unlawful use of a Schedule I controlled substance (in contrast to being under the influence or distributing such substances) should be disqualified for life, and that a lifetime penalty was too severe and that FHWA should reduce the penalty via required rehabilitation. It is unclear whether these respondents suggested rehabilitation for drug users or were also recommending it for drug dealers and/or distributors.

*Question 7(f).* Should the 1-year or 3-year disqualification requirements be reduced for successful completion of a rehabilitation program? If so, what sort of rehabilitation or evidence should be provided?

The majority of the respondents who directly addressed this issue opposed any reduction in the lifetime penalty and the others favored some form of reduction based upon rehabilitation. Of the States that commented, 10 were in favor and 4 were opposed to a reduction of the penalty. A national trucking organization reflected the comments of many other respondents when it stated:

> It is clearly the intent of Congress to provide these disqualifications as a deterrent to committing the associated violations and to protect the public. [We support] these provisions and feel that disqualified drivers who seek rehabilitation need the disqualification period to prove that they can safely return to commercial driving.

An organization representing owner-operator drivers felt that there should be provision made for "probationary release" from the sanctions after having completed a rehabiliation program.

*Question* 7(g). Consistent with our questions regarding requirements for vehicles carrying hazardous materials, how can the minimum 3-year disqualification be applied to vehicles transporting hazardous materials that are not placarded?

There was nearly unanimous agreement that trying to enforce the program would be extremely difficult, if not impossible, unless it involved only placarded vehicles. Most believed that the rule should apply only to placarded vehicles, while some suggested expanded the placarding rules to cover all vehicles carrying any amount of hazardous materials. A few also had other suggestions such as, "checking waybills during roadside checks of commercial motor vehicles," "showing hazardous materials on all traffic summons issued to commercial vehicles drivers," etc.

*Question 7(h).* Should there be a mechanism to lift lifetime or 10-year suspensions for disqualifications violations listed under § 383.37 (cite should have read § 383.51)?

About two-thirds of the respondents to this question favored some form of reduction, while one-third were against any reduction of the penalties. Among the 12 State respondents directly addressing this question, 8 favored some type of reduction, and 4 opposed it. One State's driver licensing agency stated:

> No, the basis for the Act was to remove problem drivers from the road. Any modifying of the disqualifications would deter from the goal of the Act.

A national organization representing motor carriers of passengers also voiced opposition by stating:

> Does not believe that FHWA should attempt at this time to establish regulations for reducing lifetime disqualifications. The statue already provides that drivers get a second chance after committing one of these very serious violations and we do not see any basis for an administrative determination that further chances should be given.

Respondents who favored some form of penalty reduction generally suggested that the FHWA consider rehabilitation programs to enable lifetime sanctions to be reduced, but not to reduce the penalty to less than 10 years. Those same respondents favoring a reduction of the lifetime penalty also expressed concerns about how it would be accomplished. For example, a State commented:

> Yes, but only after a minimum of 10 years has expired on a lifetime revocation or 2 years on a 10-year revocation and then only after having been processed through a State administration hearing (by Department) for possible reinstatement on a restricted basis.

*Question 7(i).* If a State expunges convictions as part of a rehabilitation program, for example, after successfully completing an alcohol rehabilitation program, should FHWA lift a long term suspension because there is no longer a "conviction?"

One-third of the respondents to this question favored lifting a long term suspension, and two-thirds were opposed. There were 14 States which directly addressed this issue, of which 4 favored lifting the sanctions and 10 were opposed. One State voiced its opposition by stating:

> It is frequent practice for a court to order the expungement of a conviction for an individual who has completed a rehabilitation program. Regardless of the expungement, the individual was convicted in a court of law and therefore the FHWA should not lift a long term suspension

because of the expungement and the record should stand.

The National Transportation Safety Board reflected the position of other dissenters by stating:

No. The disqualification is triggered by the conviction. It is the Safety's Board's understanding that there is nothing in the Act which allows the elimination of this requirement.

The only respondents who favored the lifting of sanctions were 5 driver organizations, 1 driver leasing company and 4 States. One State expressed its desire to lift sanctions as follows:

The rehabilitation program should be a condition of the dismissal. The conviction should not become a part of the driver's record unless he fails to complete an approved rehabilitation program.

**Proposed Rulemaking Action**

The FHWA agrees with the respondents that it is not appropriate to eliminate accidents which involve only property damage rather than personal injury or death from the definition of disqualifying offenses. Thus, the FHWA has not proposed to amend the list of disqualifying offenses to exclude property damage only accidents. Also, there is no precise way to differentiate so called "minor" from "serious" incidents of leaving the scene of an accident. Any driver who intentionally leaves the scene of any accident, regardless of the outcome of that particular event, should be punished for his/her failure to comply the with law. Conversely, the FHWA recognizes that under certain (usually rare) circumstances, it may be possible for the driver of a large commercial motor vehicle to be involved in a minor accident of which he/she may be genuinely unaware, and that under such circumstances a driver should not be penalized. Therefore, the FHWA proposes to amend § 383.51(b)(2)(iii) *Disqualifying Offenses*, to include "knowlingly and willfully leaving the scene of an accident while operating a commericial motor vehicle." To remain consistent with this proposed change, § 391.15(c)(2)(iv) would similarly be changed.

With respect to the issue of reducing the lifetime disqualifications, the FHWA proposes to amend § 383.51(b)(3), by allowing States the option of providing an opportunity for sanctioned drivers to apply for a reduction of their *lifetime penalties only* after they serve a minimum disqualification period of ten years, and only after they successfully complete a requisite rehabilitation program, as determined by their State's driver licensing agency. Second, the FHWA suggests that the States form a committee to develop appropriate CMV driver rehabilitation programs and standards along with standardized procedures for monitoring the performance of reinstated drivers. Once these programs are operational, those CDL drivers who enroll in and successfully complete a rehabilitation program that meets standardized procedures could qualify for a reduction in their lifetime sanctions after they serve a minimum disqualification period of 10 years. Third, to remain consistent with the intent of the Act, the lifetime disqualification would not be expunged from the driver's record for any reason even after successful rehabilitation and reinstatement. Accordingly, the FHWA proposes that any commercial driver's convictions of disqualifying offenses, as set forth in § 383.51, would be permanently retained in the driver's CDL record, regardless of whether the State expunges its driver records. This proposal would require that a CMV driver who completes a rehabilitation program after being disqualified for life continues to be subject to the penalities included in this Act.

Therefore, any such reinstated driver who may be convicted of another disqualifying offense, would be permanently disqualified for life.

Congress specifically distinguished between the duration of disqualification for CMV drivers which use their vehicles in the commission of a controlled substance felony and for CMV drivers which are convicted of other types of offenses in section 12008(b) of the Act. Accordingly, the FHWA has not proposed to allow CMV drivers to use their vehicles in commission of controlled substance felonies to get a reduction of a lifetime disqualification.

With regard to disqualification for convictions for the transportation, possession, or use of controlled substances, section 12008(a) of the Commercial Motor Vehicle Safety Act of 1986 requires a one year disqualification for a person "who uses a commercial motor vehicle in the commission of a felony (other than a felony described in subsection (b))." A second conviction for an offense of this type requires a lifetime disqualification. Felony drug convictions for transportation, possession, or use of controlled substances would be covered by this provision, which was codified in the June 1, 1987, final rule.

*Discussion of Other Issues*

Item 1. Proposed clarification of how to apply sanctions when more than one disqualifying offense occurs simultaneously:

Several commenters have asked how sanctions should be applied when two (or more) disqualifying offenses occur simultaneously, or as part of a single incident, such as leaving the scene of an accident during the commission of a felony with a commercial motor vehicle. Although the FHWA did not raise any specific questions on this issue in the final rule published on June 1, 1987, the issue is addressed with respect to disqualification for life by the Model CDL Law Subcommittee of the American Association of Motor Vehicles Administrators (AAMVA) in their most recent (sixth) draft of the "Model Uniform Commercial Driver License Act" (section 12). The approach taken in the model law is to disqualify for life a person who is convicted of two or more violations of the nature which result in a lifetime disqualification only where the convictions arise from two or more separate incidents. The FHWA believes that this approach is consistent with the intent of Congress because the Act mandates a series of increasingly stringent periods of disqualification for second and subsequent offenses. The FHWA believes that these increasingly stringent periods of disqualifications were intended to address subsequent, separate offenses rather than multiple offenses arising out of a single incident. Thus, the FHWA proposes to clarify that the driver be disqualified for life if he or she is convicted for offenses which arise from two or more separate incidents. This clarification is included in § 383.51(b)(3)(iv). Similar language is included in § 383.51(c)(2) (i) and (ii) dealing with serious traffic violations.

Item 2. Proposal to amend § 383.1 (b)(2) and (b)(5) to clarify reporting requirements:

As currently written, § 383.1(b) specifies the requirement to report "certain violations and suspensions" and penalties for various "violations." It fails to identify the specific types of "violations" being addressed and that the requirement is limited to the reporting of *convictions* of certain criminal offenses, serious traffic violations (with the exception of parking violations, vehicle weight and equipment defects), and any suspensions, revocations, or cancellations of certain driving privileges. The FHWA proposes, therefore, to amend § 383.1(b)(2) to clarify that a driver is required to notify both his/her employer and his/her State of domicile of *all convictions* of certain criminal offenses, serious traffic violations, and any suspensions,

revocations, or cancellations of certain driving privileges. The FHWA also proposes to amend § 383.1(b)(5) to clarify that the penalties pertain to *convictions* of certain criminal offenses, serious traffic violations, and any suspensions, revocations, or cancellations of certain driving privileges. Additionally, FHWA proposes to amend § 383.31 (a) and (b) to clarify that such notification must be given within 30 days after the person is convicted.

Item 3. Proposal to clarify the requirements for casual, intermittent or occasional type driver employees under Part 383:

Due to the fact that a casual, intermittent or occasional type of driver has no "regular employer" per se, the present regulations are unclear as to whom such casual, intermittent or occasional drivers should report their convictions of disqualifying offenses, as set forth in § 383.51. Therefore, the FHWA proposes to amend § 383.5 definition of *"Employee"* to include all casual, intermittent or occasional type drivers. It is also proposed to amend §§ 383.1(b) and 383.31(b) to clarify that drivers must notify their current employer and State of licensure of any such convictions. If the driver is not currently employed, he/she must still notify the State of licensure.

Item 4. Proposal to impose penalties for falsification of required information under Part 383:

All States currently have laws which deal with falsification of information on license documents. These laws, however, are not consistent. As part of the minimum standards for licensing and testing CMV operators, the FHWA included a requirement that States must impose a penalty on a CDL applicant who is discovered by the State to have falsified information required for the CDL. The FHWA believes that a minimum level for such penalties needs to be established to ensure similar treatment of CMV operators across the country. Such penalties would also help deter an applicant from attempting to get a second license or a new CDL during the time he/she is disqualified. Therefore, the FHWA is proposing to amend § 383.53 to provide minimum penalties of at least a 60-day license suspension, revocation or cancellation for States to apply to those persons who knowingly falsify or evade submitting required information when applying for an initial CDL, a CDL renewal or a CDL from a new State of domicile.

Item 5. Proposal to clarify when the period of disqualification should begin:

Several questions have been raised to the FHWA about whether the period of time for which a driver may be disqualified is to begin on the date of the violation or the date of conviction. Because the Act requires that drivers be disqualified when they are "found to have committed" certain offenses, the FHWA believes that the disqualification period should begin at the time when the driver is convicted of the disqualifying offense. Thus, the FHWA proposes to amend both § 383.51 (b)(1) and (c)(1) to clarify, in the general rule statement, that the driver would be disqualified at the time he/she is convicted.

**Regulatory Impact**

This notice is based on comments made on the procedures promulgated June 1, 1987, to implement the statutory provisions of the Commercial Motor Vehicle Safety Act of 1986. At that time, the FHWA determined that these actions did not constitute a major rule under Executive Order 12291. The amendments to the final rule that would result from this notice are not expected to result in an annual effect on the economy of $100 million or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. Because of the public interest in the issue of commercial motor vehicle safety and the expected benefits of improved transportation safety, however, this notice is considered significant under the regulatory policies and procedures of the DOT. For this reason and pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions.

The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. For this reason, a full regulatory evaluation is not required. However, since an analysis of impacts, including economic factors, is necessarily involved in the preparation of related motor vehicle safety regulations, a regulatory evaluation was prepared for the rulemaking actions needed to implement the Act. This evaluation addresses the provisions contained in this notice, has been placed in the public docket and is available for inspection in the Headquarters office of the FHWA, 400 Seventh Street, SW., Washington, DC 20590.

A significant part of the motor carrier industry and other employers covered by the Act are made up of small firms, from one-person, one-truck operations of some owner-operators, to the thousands of small fleet operators throughout the country. For this reason, the benefit and cost considerations described in the regulatory evaluation/regulatory flexibility analysis as applicable to employers and the motor carrier industry in general, are equally applicable to the small entity component of the industry. Small entities have been represented at public meetings held to discuss the Act and small entities have had the opportunity to submit comments to the public docket established in conjunction with FHWA's August 1, 1986, ANPRM as well as the several other rulemaking notices required by the Act. The FHWA is fully committed to doing all that it can to ensure that no undue burdens are placed on small entities as a result of this notice.

**Federalism Impact**

The FHWA has reviewed the proposed changes to the Commercial Driver Licensing Standards in light of the purposes of the Act and the President's Executive Order on Federalism (Executive Order 12612, October 26, 1987). In enacting the Commercial Motor Vehicle Safety Act of 1986, the Congress found that it is in the public interest to enhance commercial motor vehicle safety. Congress identified commercial motor vehicle safety as a matter of national importance and included requirements for a single license and driver disqualifications as part of the mandates in the Act.

In his Executive Order on Federalism, the President ordered Executive Departments and agencies to be guided by certain fundamental federalism principles in formulating and implementing policies that have federalism implications. These policies have been taken fully into account in the development of the proposal. This proposal would limit the policy making discretion of the States only in narrow ways, and does so only to achieve the national purposes of the act. For example, States would continue to have sole discretion as to whether or not to license any CMW operator and what specific procedures, tests, fees or penalty applications are applicable. Thus, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order, and accord fully with the letter and spirit of the President's Federalism initiative.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified agenda.

For the foregoing reasons and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that, if promulgated, this action will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

The collection of information required by the final rule published on June 1, 1987, to implement the single license and certain reporting and notification requirements has been approved by the Office of Management and Budget (OMB No. 2125–0542). No additional burdens are expected to result from this rulemaking.

**List of Subjects in 49 CFR Parts 383**

Commercial driver's license standards requirements and penalties, Highways and roads, Motor carriers' Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety.)

Issued on: January 24, 1989.

**Robert E. Farris,**

*Federal Highway Administrator.*

In consideration of the foregoing, the FHWA hereby proposes to amend Title 49, Code of Federal Regulations, Subtitle B, Chapter III, as set forth below:

## PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

1. The authority citation for 49 CFR Part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99–570, 100 Stat. 3207–170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48

2. Sections 383.1(b) (2) and (5) are revised as follows:

**§ 383.1 Purpose and scope.**

* * * * *

(b) * * *

(2) Requires a driver to notify the driver's current employer and the driver's State of domicile of certain convictions;

* * * * *

(5) Establishes periods of disqualification and penalties for those persons convicted of certain criminal offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges;

* * * * *

3. Section 383.5 is amended by adding one definition entitled "UVCMTO" and revising five definitions, and placing them in alphabetical order as follows:

**§ 383.5 Definitions.**

* * * * *

*"Controlled substance"* has the meaning such term has under section 102(6), of the Controlled substances Act (21 U.S.C. 802(6)) and includes all substances listed on Schedules I through V of 21 CFR Part 1308, as they may be revised from time to time. Schedule I substances are identified in Appendix D of this subchapter and Schedules II through V are identified in Appendix E of this subchapter.

* * * * *

*"Driver's license"* means a license issued by a State or other jurisdiction, to an individual which authorizes the individual to operate a motor vehicle on the highways.

* * * * *

*"Employee"* means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to an employer.

* * * * *

*"Serious traffic violation"* means convictions, when operating a commercial motor vehicle, of:

(a) Excessive speeding, involving any single charge for any speed of 15 miles per hour or more, above the posted speed limit.

(b) Reckless driving, as defined by State or local law or regulation, including charges for the offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property (UVCMTO, § 11–901), improper or erratic traffic lane changes (UVCMTO, § 11–304 and 306) or following the vehicle ahead too closely (UVCMTO, § 11–310); or

(c) A violation of State or local law relating to motor vehicle traffic control (other than a parking violation) and arising in connection with a fatal accident. (Serious traffic violations exclude vehicle weight and defect violations.)

* * * * *

*"UVCMTO"* means the Uniform Vehicle Code and Model Traffic Ordinance, 1987 Edition published by the National Committee on Uniform Traffic laws and Ordinances, as it may be amended from time to time.

4. Section 383.31 is amended by revising paragraphs (a), (b) and (c)(4) as follows:

**§ 383.31 Notification of convictions for driver violations.**

(a) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of a State or local law relating to motor vehicle traffic control (other than a parking violation) in a State or jurisdiction, other than the one which issued his/her license, shall notify an official designated by the State or jurisdiction which issued such license, of such conviction. The notification must be made within 30 days after the date that the person has been convicted.

(b) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of a State or local law relating to motor vehicle traffic control (other than a parking violation), shall notify his/her current employer of such conviction. The notification must be made within 30 days after the date that the person has been convicted. If the driver is not currently employed, he/she must notify the State or jurisdiction which issued the license according to § 383.31(a).

(c) * * *

(4) The specific criminal offenses and serious traffic violations for which the person was convicted and any suspension, revocation, or cancellation of certain driving privileges which resulted from such conviction(s);

* * * * *

5. Section 383.51 is amended by revising paragraph (b) and (c) to read as follows:

**§ 383.51 Disqualification of drivers.**

* * * * *

(b) *Disqualification for driving while under the influence, leaving the scene of an accident, or commission of a felony*—(1) *General rule.* A driver who is convicted of a disqualifying offense specified in paragraph (b)(2) of this section, is disqualified at the time of such conviction for the time specified in paragraph (b)(3) of this section, if the offense was committed while operating a commercial motor vehicle.

(2) *Disqualifying offenses.* The following offenses are disqualifying offenses:

(i) Driving a commercial motor vehicle while under the influence of alcohol. This shall include:

(A) Driving a commercial motor vehicle while the person's alcohol concentration is 0.04 percent or more; or

(B) Driving under the influence of alcohol, as prescribed by State law; or

(C) Refusal to undergo such testing as its required by any State or jurisdiction in the enforcement of § 383.51(b)(2)(i) (A) or (B), or § 392.5(a)(2);

(ii) Driving a commercial motor vehicle while under the influence of a controlled substance;

(iii) Knowingly and willfully leaving the scene of an accident involving a commercial motor vehicle;

(iv) A felony involving the use of a commercial motor vehicle, other than a felony described in paragraph (b)(2)(v) of this section; or

(v) The use of a commercial motor vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance.

(3) *Duration of disqualification for driving while under the influence, leaving the scene of an accident, or commission of a felony.* (i) First offenders. A driver is disqualified for 1 year after the date the driver is found to have committed an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, provided the vehicle was not transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1813).

(ii) First offenders transporting hazardous materials. A driver is disqualified for 3 years after the date the driver is found to have committed an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, if the vehicle was transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1813).

(iii) First offenders of controlled substance felonies. A driver is disqualified for life after the driver is found to have committed an offense described in paragraph (b)(2)(v) of this section.

(iv) Subsequent offenders. A driver is disqualified for life after the date the driver is found to have committed an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, if the driver had been found to have committed once before in a separate incident any offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(v) Any driver disqualified for life under § 383.51(b)(3)(iv) of this paragraph, who has both voluntarily enrolled in and successfully completed, an appropriate rehabilitation program which meets the standards of his/her State's driver licensing agency, may apply to the licensing agency for reinstatement of his/her commercial driver's license. Such applicants shall not be eligible for reinstatement from the State unless and until such time as he/she has first served a minimum disqualification period of 10 years and has fully met his/her State's standards for reinstatement of commercial motor vehicle driving privileges. Should a reinstated driver be subsequently convicted of another disqualifying offense, as specified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, he/she shall be permanently disqualified for life, and shall be ineligible to again apply for a reduction of the lifetime disqualification.

(c) *Disqualification for serious traffic violations*—(1) *General rule.* A driver who is convicted of a serious traffic violation is disqualified at the time of such conviction for the applicable period of time specified in paragraph (c)(2) of this section.

(2) *Duration of disqualification for serious traffic violations*—(i) *Second violation.* A driver is disqualified for 60 days if, during any 3-year period, the driver commits two serious traffic violations in separate incidents for which he/she is subsequently convicted.

(ii) *Third violation.* A driver is disqualified for 120 days if, during any 3-year period, the driver commits three serious traffic violations in separate incidents for which he/she is subsequently convicted.

* * * * *

6. Section 383.53 is amended to add penalties for falsification of information and is revised to read as follows:

**§ 383.53 Penalties.**

(a) *General.* Any person who violates the rules set forth in Subparts B and C of this part may be subject to civil or criminal penalties as provided for in 49 U.S.C. 521(b), as amended by section 12012 of Pub. L. 99–570.

(b) *Disqualification for falsification of information.* Any person who knowingly falsifies information or certifications required to be provided to a State in Subpart E is subject to the penalties associated with such falsification in that State. At a minimum, such penalty will be the suspension, revocation, or cancellation of his/her CDL or a disqualification from operating a commercial motor vehicle for a period of at least 60 consecutive days.

## PART 391—QUALIFICATIONS OF DRIVERS

7. Section 391.15(c)(2)(iv) is revised as follows:

**§ 391.15 Disqualification of drivers.**

* * * * *

(c) * * *

(2) * * *

(iv) Knowingly and willfully leaving the scene of an accident while operating a commercial motor vehicle; or

* * * * *

[FR Doc. 89–2136 Filed 1–30–89; 8:45 am]

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federal register

Tuesday
January 31, 1989

Part VI

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

48 CFR Part 1 et al.

Federal Acquisition Regulation (FAR); Miscellaneous Amendments; Interim Rule With Request for Comments and Final Rules

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 4, 6, 14, 15, 16, 17, 19, 22, 25, 28, 32, 37, 48, and 52**

**[Federal Acquisition Circular 84-42]**

## Federal Acquisition Regulation (FAR); Miscellaneous Amendments

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments and final rules.

**SUMMARY:** Federal Acquisition Circular (FAC) 84-42 amends the Federal Acquisition Regulation (FAR) with respect to the following: Small Business Competitiveness Demonstration Program; Publicizing Proposed Regulations; Clarification of Records Retention Requirements; Sealed Bid Documentation; Documentation of Firm-Fixed Price Contracts; Five-Year Option Limitation; Approval and Option Clauses; Small Business Size Standards; Walsh-Healey Eligibility; Nonpersonal Healthcare Services; Value Engineering and OMB Circular A-131; and Diversion of Shipment under F.o.b. Destination Contracts.

**DATES:** *Effective date:* March 2, 1989, except for Subpart 19.10 which is effective January 31, 1989.

*Comment date:* Comments on the interim rule, Subpart 19.10, should be submitted to the FAR Secretariat, at the address below, on or before April 3, 1989 to be considered in the formulation of a final rule. Please site FAC 84-42 in all correspondence on this subject.

**ADDRESS:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW, Room 4041, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-42 in all correspondence on this subject.

**SUPPLEMENTARY INFORMATION:**

### A. Determination To Issue an Interim Rule

*FAC 84-42, Item I.* A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Item I of FAC 84-42 as an interim rule. This action is necessary because—

The Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP), published in the **Federal Register** on December 29, 1988, (53 FR 52889) an interim policy directive with comments due February 15, 1989, implementing the requirements of Pub. L. 100-656, Title VII of the "Business Opportunity Development Reform Act of 1988."

DoD, GSA, and NASA have determined that compelling reasons exist to promulgate an interim rule without prior opportunity for public comment. However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in formulating a final rule.

### B. Public Comments

*FAC 84-42, Item II.* On January 15, 1985, an interim rule was published in the **Federal Register** (50 FR 2268). The comments that were received were considered by the Councils in the development of this final rule.

*FAC 84-42, Item XI.* On January 27, 1988, a proposed rule was published in the **Federal Register** (53 FR 2464). The comments that were received were considered by the Councils in the development of this final rule.

*FAC 84-42, Item XII.* On September 2, 1986, a proposed rule was published in the **Federal Register** (51 FR 31196). The comments that were received were considered by the Councils in the development of this final rule.

### C. Paperwork Reduction Act

*FAC 84-42, Item I.* The applicability of the Paperwork Reduction Act (Pub. L. 96-511) is addressed by OFPP in their notice of interim policy directive published in the **Federal Register** on December 29, 1988 (53 FR 52889).

*FAC 84-42, Items II through XIII.* The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these final rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

### D. Regulatory Flexibility Act

*FAC 84-42, Item I.* The applicability of the Regulatory Flexibility Act (Pub L. 96-354) is addressed by OFPP in their notice of interim policy directive published in the **Federal Register** on December 29, 1988 (53 FR 52889).

*FAC 84-42, Item II.* A Final Regulatory Flexibility Analysis has been prepared and will be submitted to the Chief Counsel for Advocacy of the Small Business Administration.

*FAC 84-42, Items III, IV, V, VI, VII, VIII, X, XII, and XIII.* DoD, GSA, and NASA certify that the Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies. Accordingly, and consistent with section 1212 of Pub. L. 98-525 and section 302 of Pub. L. 98-577 pertaining to publication of proposed regulations (as implemented in FAR Subpart 1.5, Agency and Public Participation), solicitation of agency and public views on the revisions is not required. Since such solicitation is not required, the Regulatory Flexibility Act does not apply.

*FAC 84-42, Item IX.* DoD, GSA, and NASA certify that this final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq., because the changes only implement in the FAR the final rules issued by the Department of Labor at 41 CFR 50-201.101(b) on March 10, 1988.

*FAC 84-42, Item XI.* DoD, GSA, NASA certify that this rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq. The majority of nonpersonal services contracts currently awarded contain provisions requiring health care providers to maintain liability insurance and indemnify the Government for liability producing acts by the contractor arising during contract performance. In addition, most states have adopted statutory provisions with respect to liability insurance coverage by practitioners within their jurisdictions. The rule is not expected to affect insurance rates which are based upon the medical specialty involved and locale of practice, as opposed to the class of beneficiary affected.

**List of Subjects in 48 CFR Parts 1, 4, 6, 14, 15, 16, 17, 19, 22, 25, 28, 32, 37, 48, and 52**

Government procurement.

Dated: January 26, 1989.

**Harry S. Rosinski**

*Acting Director, Office of Federal Acquisition and Regulatory Policy.*

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84–42 is effective March 2, 1989 except for Subpart 19.10 which is effective January 31, 1989.

**Eleanor Spector,**

*Deputy Assistant Secretary for Procurement, DOD.*

January 24, 1989.

**Richard G. Austin,**

*Acting Administrator, General Services Administration.*

**S.J. Evans,**

*Assistant Administrator for Procurement, NASA.*

Federal Acquisition Circular (FAC) 84–42 amends the Federal Acquisition Regulation (FAR) as specified below:

**Item I—Small Business Competitiveness Demonstration Program**

FAR Subpart 19.10 is added to further implement the joint Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) policy directive implementing Title VII of the "Business Opportunity Development Reform Act of 1988," Pub. L. 100–656, published in the **Federal Register** on December 29, 1988 (53 FR 52889).

Title VII of the "Business Opportunity Development Reform Act of 1988" seeks to test the effectiveness of eliminating set-asides in certain industries through the establishment of a new program entitled the "Small Business Competitiveness Program." The program has two primary objectives: (a) To demonstrate whether small business firms in certain industry groups can compete successfully on an unrestricted basis for Federal contracts; and (b) to demonstrate whether targeted goaling and management techniques can expand Federal contract opportunities for small business in industry categories where such opportunities historically have been low, despite adequate numbers of small business contractors in the economy. The following agencies have been identified as participants in the demonstration program: the Departments of Agriculture, Defense (except the Defense Mapping Agency), Energy, Health and Human Services, and Transportation, and the Environmental Protection Agency, the General Services Administration, the National Aeronautics and Space Administration, and the Veterans' Administration.

**Item II—Publicizing Proposed Regulations**

This item converts to a final rule the interim rule that was published as Item I of FAC 84–6 in the **Federal Register** on January 15, 1985 (50 FR 2268), implementing section 302 of the Small Business and Federal Competition Enhancement Act of 1984 (Pub. L. 98–577).

The final rule differs from the interim rule in that it provides additional guidance in FAR 1.301 concerning the Paperwork Reduction Act and the Regulatory Flexibility Act, pursuant to recommendations received in response to the publication of the interim rule.

**Item III—Clarification of Records Rentention Requirements**

FAR 4.803(a)(8), 4.803(a)(10), and 4.805(n) are revised to clarify that the nonunique portions of unsuccessful offers and quotations need not be retained in the official contract file.

**Item IV—Sealed Bid Documentation**

FAR 6.401 requires contracting officers to document their reasons for not using the sealed bid method of contracting. The Competition in Contracting Act (CICA) of 1984 requires that sealed bidding be used if certain criteria are met. The Councils have determined that clarification of the existing FAR requirement for additional documentation is necessary. In its place, the Councils have modified the coverage to require only that the contracting officer briefly explain, in writing, which of the four conditions in FAR 6.401(a) was not met.

**Item V—Documentation of Firm-Fixed Price (FFP) Contracts**

FAR 16.103(d) is revised to clarify when contract file documentation showing why the particular contract type was selected is required. For firm-fixed price type contracts, documentation is only required for major systems and research and development contracts.

**Item VI—Five-Year Option Limitation**

FAR 17.204(e) is revised to clarify that the 5-year limitation on contracts containing options is not based on statute. The authority to waive the requirements in FAR 17.204(e) shall be approved in accordance with agency procedures.

**Item VII—Approval and Option Clauses**

The prescription at FAR 17.208(g) and the title of the clause prescribed therein; i.e., the clause at 52.217–9, are revised to eliminate terminology that restricts use of the clause to solicitations and contracts for services.

The clauses at 52.204–1 and 52–217–6 through 52.217–9 and related clause prefaces are revised to make them "fill-in-the-blank" type clauses rather than requiring necessary additional information to be provided elsewhere in the contract (i.e., in the contract Schedule, rather than in Section I).

**Item VIII—Small Business Size Standards**

FAR 19.102 is revised to incorporate changes made to the size standards regulations as published in the **Federal Register** by the Small Business Administration. The modified size standard in the SIC Code 8731 of Major Group 87 pertaining to Miscellaneous Services was effective by issuance of a final rule on October 27, 1988 (53 FR 43422).

**Item IX—Walsh-Healey Eligibility**

FAR 22.608–2, 22.608–3, and 22.608–4 are revised to permit the award of a contract under the urgency or substantial hardship conditions permitted by the Department of Labor (DOL) regulations (41 CFR 50–2011(b)(iii)(A)) when it is found that an otherwise qualified small business concern may be ineligible due to the provisions of Section 35(a) of the Walsh-Healey Act and the case has been forwarded to the Small Business Administration or DOL for review and final disposition. The DOL issued a final rule in the **Federal Register**, March 10, 1988 (53 FR 7741) on Walsh-Healey eligibility procedures, effective May 9, 1988.

**Item X—Restrictions on Federal Public Works Projects**

FAR Subpart 25.10, Restrictions on Federal Public Works Projects, the provision at 52.225–12, Restrictions on Federal Public Works Projects Certifications, and the clause at 52.225–13, Restrictions on Federal Public Works Projects are deleted.

Pub. L. 100–202 contained restrictions concerning the use of Federal funds for construction services and products on public works. The restrictions, which applied only to Japanese contractors, were implemented as Item I, FAC 84–36, published as an interim rule in the **Federal Register** on April 12, 1988 (53 FR 12128).

**Item XI—Nonpersonal Healthcare Services**

FAR 28.301 is revised, and Subpart 37.4 and the clause at 52.237–7 are added to prescribe uniform procedures

regarding nonpersonal services contracts for health care services. Among other things, the revisions prescribe a contract clause requiring that health care providers (i.e., physicians, dentists, and other medical practitioners) maintain medical liability insurance as a contract requirement and indemnify the Government against liability producing acts or omissions by the contractor, its agents, and employees occurring during contract performance. Additionally, the clause clarifies the relationship of the parties, by providing the professional services rendered by the contractor are rendered in its capacity as an independent contractor.

**Item XII—Value Engineering and OMB Circular A–131**

FAR 48.001, 48.101, 48.102, 48.103, 48.104–1, 48.105, 48.201, and the clauses at 52.248–1 and 52.248–3 are revised to (1) include the changes that were in the proposed rule; and (2) implement OMB Circular A–131, Value Engineering, dated January 26, 1988, and published by the Office of Management and Budget (OMB). The Circular, addressed to Heads of Executive Departments and Establishments, requires the use of value engineering, as appropriate, by Federal departments and agencies to identify and reduce nonessential procurement and program costs. The OMB Circular was published in the **Federal Register** on February 3, 1988 (53 FR 3140).

**Item XIII—Diversion of Shipment Under F.O.B. Destination Contracts**

FAR 52.247–54 is revised to require (when carrier rates are not publicly filed with any regulatory body) that contractors supply documentation supporting proposals for adjustment submitted under the Changes clause when the place of delivery is changed by the performance. Permissible documentation includes copies of the transportation contract, letter agreement, or other written communication quoting the rates/charges which would have been applied had the destination not been charged.

Therefore, 48 CFR Parts 1, 4, 6, 14, 15, 16, 17, 19, 22, 25, 28, 32, 37, 48, and 52 are amended as set forth below:

1. The authority citation for all Parts in Chapter 1 of Title 48 is revised to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Section 1.301 is amended by revising the first sentence of paragraph (b); by redesignating the existing paragraph (c) as (d); and by adding a new paragraph (c) to read as follows:

**1.301 Policy.**

* * * * *

(b) Agency heads shall establish procedures to ensure that agency acquisition regulations are published for comment in the **Federal Register** in conformance with the procedures in Subpart 1.5 and as required by section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b), and other applicable statutes, when they have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact on contractors or offerors. * * *

(c) When adopting acquisition regulations, agencies shall ensure that they comply with the Paperwork Reduction Act (44 U.S.C. 3501, et seq.) as implemented in 5 CFR Part 1320 (see 1.105) and the Regulatory Flexibility Act (5 U.S.C. 601, et seq.). Normally, when a law requires publication of a proposed regulation, the Regulatory Flexibility Act applies and agencies must prepare written analyses or certifications as provided in the law.

* * * * *

## PART 4—ADMINISTRATIVE MATTERS

3. Section 4.803 is amended by revising paragraph (a)(8) and by adding a third sentence to the introductory text of paragraph (a)(10) and by adding paragraphs (a)(10)(i), (a)(10)(ii), (a)(10)(iii), and (a)(10)(iv) to read as follows:

**4.803 Contents of contract files.**

* * * * *

(a) * * *

(8) A copy of the solicitation and all amendments thereto.

* * * * *

(10) * * * The only portions of the unsuccessful offer or quotation that need be retained are—

(i) Completed solicitation sections A, B, and K;

(ii) Technical and management proposals;

(iii) Cost/price proposals;

(iv) Any other pages of the solicitation that the offeror or quoter has altered or annotated.

* * * * *

4. Section 4.805 is amended by revising the introductory text of paragraph (n) to read as follows:

**4.805 Disposal of contract files.**

* * * * *

(n) Solicited and unsolicited unsuccessful offers and quotations above the appropriate small purchase limitation in Part 13.

* * * * *

## PART 6—COMPETITION REQUIREMENTS

5. Section 6.401 is amended by revising the introductory text to read as follows:

**6.401 Sealed bidding and competitive proposals.**

Sealed bidding and competitive proposals, as described in Parts 14 and 15, are both acceptable procedures for use under Subparts 6.1, 6.2, and when appropriate, under Subpart 6.3. Contracting officers shall exercise good judgment in selecting the method of contracting that best meets the needs of the Government. If the choice is to use competitive proposals rather than sealed bidding, the contracting officer shall briefly explain, in writing, which of the four conditions in paragraph (a) of this section has not been met. No additional documentation or justification is required.

* * * * *

## PART 14—SEALED BIDDING

**14.201–6 [Amended]**

6. Section 14.201–6 is amended in paragraph (b)(3) by removing the words "Acknowledgment of".

## PART 15—CONTRACTING BY NEGOTIATION

**15.407 [Amended]**

7. Section 15.407 is amended in paragraph (c)(4) by removing the words "Acknowledgment of".

## PART 16—TYPES OF CONTRACTS

8. Section 16.103 is amended by revising paragraph (d) to read as follows:

**16.103 Negotiating contract type.**

* * * * *

(D) Each contract file shall include documentation to show why the particular contract type was selected. Exceptions to this requirement are: (1) Small purchases under Part 13, (2) contracts on a firm fixed-price basis other than those for major systems or research and development, and (3)

awards on the set-aside portion of sealed bid partial set-asides for small business or labor surplus area concerns.

## PART 17—SPECIAL CONTRACTING METHODS

9. Section 17.204 is amended by revising paragraph (e) to read as follows:

**17.204 Contracts.**

* * * * *

(e) Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. Statutes applicable to various classes of contracts may place additional restrictions on the length of contracts.

* * * * *

**17.208 [Amended]**

10. Section 17.208 is amended in paragraph (g) by removing the word "—Services".

## PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

11. Section 19.102 is amended by revising in Major Group 87, SIC Code 8731, the description and corresponding size standard and Footnote 19 to read as follows:

**19.102 Size standards.**

* * * * *

| SIC | Description | Size |
|---|---|---|
| 8731 | Commercial Physical and Biological Research [19]. | ..... |
| | Aircraft | 1,500 |
| | Aircraft Parts, and Auxiliary Equipment, Aircraft Engines and Engines Parts. | 1,000 |
| | Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Unit Parts, and their Auxiliary Equipment and Parts. | 1,000 |
| | Other Commercial Physical and Biological Research. | 500 |

* * * * *

[19] SIC-8731: For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard to use is that of the manufacturing industry in which the specific product is classified.

Research and development, as defined in the SIC Manual, means laboratory or other physical research and development on a contract or fee basis. Research and development for purposes of size determinations does not include the following: economic, educational, engineering, operations, systems, or other nonphysical research or computer programming, data processing, commercial and/or medical laboratory testing.

For purposes of the Small Business Innovation and Research (SBIR) program, SBA has adopted a different definition. See Part 121.7 of 13 CFR.

Research and development for guided missiles and space vehicles includes evaluation and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

* * * * *

12. Subpart 19.10, consisting of sections 19.1001 through 19.1005, is added to read as follows:

**Subpart 19.10—Small Business Competitiveness Demonstration Program**

Sec.
19.1001 General.
19.1002 Definition.
19.1003 Purpose.
19.1004 Participating agencies.
19.1005 Applicability.

### Subpart 19.10—Small Business Competitiveness Demonstration Program

**19.1001 General.**

The Small Business Competitiveness Demonstration Program was established by Title VII of the "Business Opportunity Development Reform Act of 1988," Pub. L. 100-656. The program consists of two major components: (a) a test of unrestricted competition in four designated industry groups, and (b) a test of enhanced small business participation in 10 agency targeted industry categories. The program will be conducted over a period of 4 years, from January 1, 1989, through December 31, 1992. The procedures for implementing the test are set forth in the Office of Federal Procurement Policy (OFPP) policy directive and test plan as published in the **Federal Register** on December 29, 1988 (53 FR 52889), and in any participating agency supplements. Pursuant to sec. 714(a) of Pub. L. 100-656, the requirements of the FAR that are inconsistent with the OFPP policy directive and test plan are waived.

**19.1002 Definition.**

"Emerging small business," as used in this subpart, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

**19.1003 Purpose.**

The purpose of the demonstration program is to—

(a) Test the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. This portion of the program is limited to the four designated industry groups listed in section 19.1005.

(b) Measure the extent to which awards are made to a new category of small businesses known as emerging small businesses (ESB's), and to provide for certain acquisitions to be reserved for ESB participation only.

(c) Expand small business participation in 10 targeted industry categories through continued use of set-aside procedures, increased management attention, and specifically tailored acquisition procedures, as implemented through agency procedures.

**19.1004 Participating agencies.**

The following agencies have been identified as participants in the demonstration program:

The Department of Agriculture.

The Department of Defense, except the Defense Mapping Agency.

The Department of Energy.

The Department of Health and Human Services.

The Department of Transporatation.

The Environmental Protection Agency.

The General Services Administration.

The National Aeronautics and Space Administration.

The Veterans Administration.

**19.1005 Applicability.**

(a) *Designated industry groups.* The following industry groups have been designated to demonstrate whether the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts:

(1) Construction contracts under standard industrial classification (SIC) codes that comprise Major Groups 15, 16, and 17 (excluding dredging-Federal Procurement Data System (FPDS) service codes Y216 and Z216).

(2) Refuse systems and related services contracts under SIC code 4212 or 4953, limited to FPDS service code S205.

(3) Architectural and engineering services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C219, T002, T004, T008, T009, T014, and R404).

(4) Nonnuclear ship repair.

(b) *Targeted industry categories.* Each participating agency shall designate its own targeted industry categories.

## PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

13. Section 22.608-2 is amended by revising paragraph (f)(3) to read as follows:

**22.608-2 Determination of eligibility.**

* * * * *

(f) * * *

(3) If the contracting officer forwards the case to DOL or SBA for review of eligibility, the award should normally be held in abeyance until the contracting officer receives a final determination from the DOL or a certificate of eligibility from the SBA. However, see 22.608–4 for circumstances that permit award pending final determination.

* * * * *

14. Section 22.608–3 is amended by revising paragraph (b)(2); by adding paragraph (b)(3); and by removing paragraph (c) to read as follows:

**22.608–3 Protests against eligibility.**

* * * * *

(b) * * *

(2) If the offeror is a small business concern, and the contracting officer has determined the offeror ineligible, to the Administrator of the SBA; or

(3) If the offeror is a small business concern, and the contracting officer has determined the offeror to be eligible, to the DOL, Administrator of the Wage and Hour Division, without referring the matter to the SBA.

15. Section 22.608–4 is revised to read as follows:

**22.608–4 Award pending final determination.**

(a)(1) If a small business offeror's eligibility case is forwarded to SBA for review under 22.608–2 or 22.608–3, the contracting officer shall comply with Subpart 19.6, Certificates of Competency and Determinations of Eligibility. The contracting officer may not make award until (i) receipt of a Determination of Eligibility from SBA or (ii) receipt of notification from SBA that the case has been forwarded to DOL (but see paragraph (b) of this subsection), whichever is earlier.

(2) If there is exigency for award at the time the case is to be forwarded to SBA, the contracting officer may send with the case a brief statement of urgency and a request for earliest processing and determination.

(b)(1) If the contracting officer or the SBA has forwarded an offeror's eligibility case for review to the DOL under 22.608–2 or 22.608–3, award shall be held in abeyance until the contracting officer receives a final determination from the DOL, except that award may be made immediately if the contracting officer certifies in writing, and the certification is approved as required by agency regulation, that—

(i) The items to be acquired are urgently required; or

(ii) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(2) When award is made, the contracting officer shall document the contract file to explain the need for making the award before a determination of the offeror's eligibility by the DOL and give prompt written notice of the decision to award to the DOL and, as appropriate, the protester, the SBA, and other concerned parties.

## PART 25—FOREIGN ACQUISITION

### Subpart 25.10—[Removed]

16. Subpart 25.10, consisting of sections 25.1000 through 25.1003, is removed.

## PART 28—BONDS AND INSURANCE

17. Section 28.301 is amended by adding paragraph (c) to read as follows:

**28.301 Policy.**

* * * * *

(c) Contractors awarded nonpersonal services contracts for health care services are required to maintain medical liability insurance and indemnify the Government for liability producing acts or omissions by the contractor, its employees and agents (see 37.400).

## PART 32—CONTRACT FINANCING

### 32.503–6 [Amended]

18. Section 32.503–6 is amended by removing in paragraph (g)(4) Section II the figures "$1,080,000" and "120,000" and inserting in each place, respectively, "$900,000" and "300,000".

## PART 37—SERVICE CONTRACTING

19. Subpart 37.4, consisting of sections 37.400 through 37.403 is added to read as follows:

### Subpart 37.4—Nonpersonal Health Care Services

Sec.



### Subpart 37.4—Nonpersonal Health Care Services

**37.400 Scope of subpart.**

This subpart prescribes policies and procedures for obtaining health care services of physicians, dentists and other health care providers by nonpersonal services contracts, as defined in 37.101.

**37.401 Policy.**

Agencies may enter into nonpersonal health care services contracts with physicians, dentists and other health care providers under authority of 10 U.S.C. 2304 and 41 U.S.C. 253. Each contract shall—

(a) State that the contract is a nonpersonal health care services contract, as defined in 37.101, under which the contractor is an independent contractor;

(b) State that the Government may evaluate the quality of professional and administrative services provided, but retains no control over the medical, professional aspects of services rendered (e.g., professional judgments, diagnosis for specific medical treatment);

(c) Require that the contractor indemnify the Government for any liability producing act or omission by the contractor, its employees and agents occurring during contract performance;

(d) Require that the contractor maintain medical liability insurance, in a coverage amount acceptable to the contracting officer, which is not less than the amount normally prevailing within the local community for the medical specialty concerned; and

(e) State that the contractor is required to ensure that its subcontracts for provisions of health care services, contain the requirements of the clause at 52.237–7, including the maintenance of medical liability insurance.

**37.402 Contracting officer responsibilities.**

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparently successful offeror prior to contract award and shall obtain a certificate of insurance evidencing the required coverage prior to commencement of performance.

**37.403 Contract clause.**

The contracting officer shall insert the clause at 52.237–7, Indemnification and Medical Liability Insurance, in solicitations and contracts for nonpersonal health care services. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health care services awarded under the procedures in Part 13.

## PART 48—VALUE ENGINEERING

20. Section 48.001 is amended by revising the introductory text of the definition "Acquisition savings"; by removing in paragraph (b) the word "measurable"; and in the second sentence of paragraph (c) the word "all";

and by revising the definition "Sharing base" to read as follows:

**48.001 Definitions.**

"Acquisition savings," as used in this part, means savings resulting from the application of a value engineering change proposal (VECP) to contracts awarded by the same contracting office of its successor for essentially the same unit. Acquisition savings include—

* * * * *

"Sharing base," as used in this part, means the number of affected end items on contracts of the contracting office accepting the VECP.

* * * * *

21. Section 48.101 is amended by revising the third sentence in paragraph (b)(2) to read as follows:

**48.101 General.**

* * * * *

(b) * * * No value engineering (VE) sharing is permitted in architect-engineer contracts. All other contracts with a program clause share in savings on accepted VECP's, but at a lower percentage rate than under the voluntary approach. * * *

22. Section 48.102 is amended by revising paragraphs (a), (b), and (c); by removing existing paragraph (e); by redesignating paragraphs (d), (f), and (g) as paragraphs (e), (g), and (h); and by adding new paragraphs (d) and (f) to read as follows:

**48.102 Policies.**

(a) Agencies shall provide contractors a substantial financial incentive to develop and submit VECP's. Contracting activities will include value engineering provisions in appropriate supply, service, architect-engineer and construction contracts as prescribed by 48.201 and 48.202 except where exemptions are granted on a case-by-case basis, or for specific classes of contracts, by the agency head.

(b) Agencies shall: (1) establish guidelines for processing VECP's; (2) process VECP's objectively and expeditiously; and (3) provide contractors a fair share of the savings on accepted VECP's.

(c) Agencies shall consider requiring incorporation of value engineering clauses in appropriate subcontracts.

(d)(1) Agencies other than the Department of Defense shall use the value engineering program requirement clause (52.248–1, Alternates I or II) in initial production contracts for major systems programs (see definition of major system in 34.001) and for contracts for major systems research and development except where the contracting officer determines and documents the file to reflect that such use is not appropriate

(2) In Department of Defense contracts, the VE program requirement clause (52.248–1, Alternates I or II), shall be placed in initial production solicitations and contracts (first and second production buys) for major system acquisition programs as defined in DoD Directive 5000.1, except as specified in subdivisions (d)(2)(i) and (ii) of this section. A program requirement clause may be included in initial production contracts for less than major systems acquisition programs if there is a potential for savings. The contracting officer is not required to include a program requirement clause in initial production contracts—

(i) Where, in the judgment of the contracting officer, the prime contractor has demonstrated an effective VE program during either earlier program phases, or during other recent comparable production contracts.

(ii) Which are awarded on the basis of competition.

* * * * *

(f) Generally, profit or fee on the instant contact should not be adjusted downward as a result of acceptance of a VECP. Profit or fee shall be excluded when calculating instant or future contract savings.

* * * * *

23. Section 48.103 is amended by revising paragraphs (a) and (b) to read as follows:

**48.103 Processing value engineering change proposals.**

(a) Instructions to the contractor for preparing a VECP and submitting it to the Government are included in paragraphs (c) and (d) of the value engineering clauses prescribed in Subpart 48.2. Upon receiving a VECP, the contracting officer or other designated official shall promptly process and objectively evaluate the VECP in accordance with agency precedures and shall document the contract file with the rationale for accepting or rejecting the VECP.

(b) The contracting officer is responsible for accepting or rejecting the VECP within 45 days from its receipt by the Government. If the Government will need more time to evaluate the VECP, the contracting officer shall notify the contractor promptly in writing giving the reasons and the anticipated decision date. The contractor may withdraw, in whole or in part, any VECP not accepted by the Government within the period specified in the VECP. Any VECP may be approved, in whole or in part, by a contract modification incorporating the VECP. Until the effective date of the contract modification, the contractor shall perform in accordance with the existing contract. If the Government accepts the VECP, but properly rejects units subsequently delivered or does not receive units on which a savings share was paid, the contractor shall reimburse the Government for the proportionate share of these payments. If the VECP is not accepted, the contracting officer shall provide the contractor with prompt written notification, explaining the reasons for rejection.

* * * * *

24. Section 48.104–1 is amended by removing the second sentence in paragraph (a)(1); by remving the fifth sentence in paragraph (a)(2); by revising the fourth sentence in paragraph (a)(6); and by revising the second sentence in paragraph (b) to read as follows:

**48.104–1 Sharing acquisition savings.**

(a) * * *

(6) * * * For future contract savings calculated under the optional lump-sum method, the sharing base is an estimate of the number of items that the contracting office will purchase for delivery during the sharing period.

(b) * * * The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (1) 45 percent for fixed-price contracts; or (2) 75 percent for cost-reimbursement contracts.

25. Section 48.105 is amended by revising the second sentence to read as follows:

**48.105 Relationship to other incentives.**

* * * To that end, when performance, design-to-cost, or similar targets are set and incentivized, the targets of such incentives affected by the VECP are not to be adjusted because of the acceptance of the VECP. * * *

26. Section 48.201 is amended by revising paragraphs (a)(6), (f)(1), and (f)(3), and by removing paragraph (g) to read as follows:

**48.201 Clauses for supply or service contracts.**

(a) * * *

(6) When the agency head has exempted the contract (or a class of contracts) from the requirements of Part 48.

* * * * *

(f) *Architect-engineer contracts.* (1) The clause at 52.248–1, Value Engineering, shall not be used in solicitations and contracts for architect-engineer services.

* * * * *

(3) When the clause at 52.248–2, Value Engineering Program—Architect-Engineer, is used, the contract schedule shall show the program requirement as a separately priced line item (this clause makes no provisions for sharing of savings resulting from the program effort).

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

27. Section 52.204–1 is revised to read as follows:

**52.204–1 Approval of contract.**

As prescribed in 4.103, insert the following clause:

**Approval of Contract (Mar. 1989)**

This contract is subject to the written approval of . . . . . [*fill in the name of the agency official*] and shall not be binding until so approved.

(End of clause)

28. Section 52.217–6 is revised to read as follows:

**52.217–6 Option for increased quantity.**

As prescribed in 17.208(d), insert a clause substantially the same as the following:

**Option for Increased Quantity (Mar. 1989)**

The Government may increase the quantity of supplies called for in the Schedule at the unit price specified. The Contracting Officer may exercise the option by written notice to the Contractor within . . . . . [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]. Delivery of the added items shall continue at the same rate as the like items called for under the contract, unless the parties otherwise agree.

(End of clause)

29. Section 52.217–7 is revised to read as follows:

**52.217–7 Option for increased quantity—separately priced line item.**

As prescribed in 17.208(e), insert a clause substantially the same as the following:

**Option for Increased Quantity-Separately Priced Line Item (Mar. 1989)**

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within . . . . . [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

30. Section 52.217–8 is revised to read as follows:

**52.217–8 Option to extend services.**

As prescribed in 17.208(f), insert a clause substantially the same as the following:

**Option to Extend Services (Mar. 1989)**

The Government may require continued performance of any services within the limits and at the rates stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within . . . . . [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*].

31. Section 52.217–9 is revised to read as follows:

**52.217–9 Option to extend the term of the contract.**

As prescribed in 17.208(g), insert a clause substantially the same as the following:

**Option To Extend the Term of the Contract (Mar. 1989)**

(a) The Government may extend the term of this contract by written notice to the Contractor within * * * [*insert in the clause the period of time in which the Contracting Officer has to exercise the option*]; *provided*, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option provision.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed . . . . . (months) (years).

(End of clause)

**52.225–12 and 52.225–13 [Removed]**

32. Sections 52.225–12 and 52.225–13 are removed.

33. Section 52.237–7 is added to read as follows:

**52.237–7 Indemnification and Medical Liability Insurance.**

As prescribed in 37.403, insert the following clause:

**Indemnification and Medical Liability Insurance (Mar 1989)**

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to idemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain liability insurance issued by a responsible insurance carrier in the amount of not less than [*] per occurrence during the term of this contract.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) A certificate of insurance evidencing the required coverage shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

34. Section 52.247–54 is amended by inserting in the introductory paragraph a colon following the word clause and removing the remainder of the paragraph; by removing in the title of the clause "(APR 1984)" and inserting in its place "(MAR 1989)"; by adding a second sentence in paragraph (a)(2); and by removing the derivation line

*Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.

following "(End of clause)" to read as follows:

**52.247-54 Diversion of Shipment under F.o.b. Destination Contracts.**

* * * * *

(a) * * * If carrier rates are not publicly filed with any regulatory body, (e.g., interstate shipments moving by rail piggyback service) the Contractor shall provide a copy of the contract, letter agreement, or other written communication from carriers quoting the rates/charges that would have been applied for shipments to the original or old destination.

* * * * *

35. Section 52.248-1 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(MAR 1989)"; by revising the definitions "Acquisition savings" and "Sharing base"; and by removing the derivation lines following "(End of clause)" to read as follows:

**52.248-1 Value engineering.**

* * * * *

(b) *Definitions.* "Acquisition savings," as used in this clause, means savings resulting from the application of a VECP to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include—

* * * * *

(2) Concurrent contract savings, which are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, which are the product of the future unit cost reduction multiplied by the number of future contract units scheduled for delivery during the sharing period. If this contract is a multiyear contract, future contract savings include savings on quantities funded after VECP acceptance.

* * * * *

"Sharing base," as used in this clause, means the number of affected end items on contracts of the contracting office accepting the VECP.

* * * * *

36. Section 52.248-3 is amended by inserting a colon in the first sentence of the introductory text following the word "clause" and removing the remainder of the paragraph; by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(MAR 1989)"; by revising paragraphs (f)(1) and (f)(2)(iii); and by removing the derivation line following "(End of clause)" to read as follows:

**52.248-3 Value Engineering—Construction.**

* * * * *

(f) *Sharing.* (1) *Rates.* The Government's share of savings is determined by subtracting Government costs from instant contract savings and multiplying the result by (i) 45 percent for fixed-price contracts or (ii) 75 percent for cost-reimbursement contracts.

(2) * * *

(iii) Provide the Contractor's share of savings by adding the amount calculated to the contract price or fee.

* * * * *

[FR Doc. 89-2140 Filed 1-30-89; 8:45 am]

BILLING CODE 6820-61-M

federal register

Tuesday
January 31, 1989

Part VII

# Department of Transportation

## Federal Aviation Administration

## Public Meetings; Notice and Extension of Comment Period

## DEPARTMENT OF TRANSPORTATION

[Docket No. 25727]

### Public Meetings

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

**ACTION:** Notice of public meetings; extension of comment period.

**SUMMARY:** This notice announces a series of meetings to solicit information from the public concerning the need and utilization of Special Use Airspace (SUA). The United States Congress has directed that the Secretaries of Transportation and Defense, in consultation with aviation users, jointly conduct a natioal review of the need and utilization of SUA with a view to determining its impact on civil aviation operations and on the quality of the environment. In compliance with this request and consistent with the principles of consultation, the FAA and DOD now seek factual information from the public to determine what, if any, impact SUA has on civil aviation operations and the quality of the environment. The objective of these meetings is only to obtain public input on these topics for the required report to Congress, which is due June 30, 1989.

**DATES:** Comments must be received on or before March 27, 1989. The public meetings will be held on February 21, 1989, in Alta-Loma, CA; February 22, 1989, in Las Vegas, NV; February 23, 1989, in Reno, NV; February 24, 1989, in Salt Lake City, UT; and February 27, 1989, in Fort Worth, TX.

**ADDRESSES:** Send or deliver comments in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC–204], Docket [25727], 800 Independence Avenue SW., Washington, DC 20591.

Comments may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

The public meeting locations are as follows:

Alta-Loma, CA

*Date*: February 21, 1989
*Time:* 7:00 p.m.
*Location*: Alta-Loma High School, 8880 Baseline Road, Alta-Loma, CA

Las Vegas, NV

*Date*: February 22, 1989
*Time:* 7:00 p.m.
*Location*: Gold Coast Hotel, 4000 West Flamingo Road, Las Vegas, NV

Reno, NV

*Date*: February 23, 1989
*Time:* 7:00 p.m.
*Location*: Airport Plaza Hotel, 1981 Terminal Way, Reno, NV

Salt Lake City, UT

*Date*: February 24, 1989
*Time:* 7:00 p.m.
*Location*: Utah Air National Guard Theater, 765 North 2200 West, Salt Lake City, UT

Fort Worth, TX

*Date*: February 27, 1989
*Time:* 7:00 p.m.
*Location*: Holiday Inn North, 2540 Meacham Boulevard (I35 at Meacham Boulevard), Fort Worth, TX.

**FOR FURTHER INFORMATION CONTACT:** For advance requests to be heard at the meetings and for questions regarding the logistics of the meetings, contact Mr. John Broderick or Mr. Paul Gallant, Military Operations Branch (ATO–140), Room 426, Operations Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, D.C. 20591; telephone: (202) 267–9361 or Lt. Col. Charles, R. Linn, DOD/USAF, HQ USAF/XOORF, Washington, D.C. 20330–5054; telephone (202) 697–4399.

**SUPPLEMENTARY INFORMATION:**

### Background

The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223, directs the Departments of Transportation and Defense to jointly conduct a special use airspace (SUA) review and provide a report of this review to Congress. Specifically:

> "The Secretary (of Transportation) and the Secretary of Defense, in consultation with aviation users, shall jointly conduct a national review of the need and utilization of special use airspace with a view to determining its impact on civil aviation operations and on the quality of the environment."

Due to an administrative error, not all of the individual mailings advertising previous meetings were made in a timely manner. This action, therefore, schedules additional meetings in the affected locations and extends the period for public comment on Docket No. 25727.

### Meeting Procedures

(a) The meetings will be informal in nature and will be conducted jointly by a representative of the Administrator of the FAA in behalf of the Secretary of Transportation and representatives of the Secretary of Defense. Each participant will be given an opportunity to make a presentation.

(b) The meetings will be open to all persons on a space-available basis. All efforts will be made to provide a meeting site with sufficient seating capacity for the expected participation. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. The panel may allocate the time available for each presentation in order to accommodate all speakers. The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel. The meeting may be adjourned at any time if all persons present have had the opportunity to speak.

(d) Any person who wishes to present a position paper to the panel pertinent to the topic of special use airspace for consideration with public pressentation may do so.

(e) Persons wishing to hand out pertinent position papers to the attendees should present three copies to the representatives from the FAA and DOD. The FAA and DOD representatives will retain one copy each, with the third being placed in the meeting files. There should be an adequate number of copies of each handout available for all attendees.

(f) The meetings will not be formally recorded. However, informal tape recordings will be made of presentations to ensure that each respondent's comments are accurately noted. A summary of the comments at each meeting will be made and used in the final report.

Materials relating to this subject for presentation at the meetings will be accepted at the individual meetings. Every reasonable effort will be made to hear every request for presentation consistent with a reasonable closing time for the meeting. Written materials may also be submitted to the docket up to 30 days after the close of the last meeting.

### Agenda

Opening Remarks and Discussion of Meeting Procedures
Public Presentations
Closing Comments.

Issued in Washington, DC, on January 24, 1989.

**Joseph C. Foster,**
*Acting Director, Air Traffic Operations Service, Federal Aviation Administration.*

[FR Doc. 89–2147 Filed 1–30–89; 8:45 am]
BILLING CODE 4910–13–M

federal register

Tuesday
January 31, 1989

Part VIII

# Department of Education

34 CFR Parts 653 and 682

Paul Douglas Teacher Scholarship Program and Guaranteed Student Loan and PLUS Programs; Proposed Rule

**DEPARTMENT OF EDUCATION**

**34 CFR Parts 653 and 682**

## Paul Douglas Teacher Scholarship Program and Guaranteed Student Loan and PLUS Programs

**AGENCY:** Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes regulations governing the designation of teacher shortage areas under the Guaranteed Student Loan, Supplemental Loans for Students, and Paul Douglas Teacher Scholarship programs authorized by the Higher Education Act of 1965 (HEA), as amended. Public Law 100–297 has renamed the Guaranteed Student Loan (GSL) Program, the Stafford Loan Program. This change will be reflected in a later document. The Supplemental Loans for Students (SLS) program is a continuation of the predecessor student PLUS program. Accordingly, the provisions of the regulations in this package apply to loans made under the Supplemental Loans for Students (SLS) program, except where inconsistent with the Act. The proposed regulations would implement certain provisions of the Higher Education Amendments of 1986 that permit the deferment of repayment or a reduction in the teaching obligations of recipients under the affected programs. The proposed regulations would also increase the time frame during which a guarantee agency would, in general, have to institute a civil suit against a borrower on a defaulted loan under the GSL, SLS, PLUS, and Consolidation programs (the Part B programs).

**DATE:** Comments must be received on or before April 3, 1989.

**ADDRESSES:** Comments should be addressed to Mr. Saul Moskowitz, Chief, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, (Room 4310, ROB–3), 400 Maryland Avenue, SW, Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this Preamble.

**FOR FURTHER INFORMATION CONTACT:** Ms. Patricia Newcombe, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, Department of Education, (Room 4310, ROB–3), 400 Maryland Avenue, SW, Washington, DC 20202, telephone 202–732–4242.

**SUPPLEMENTARY INFORMATION:**

### Targeted Teacher Deferment and Reduction in Teaching Obligation

The Secretary proposes to amend the regulations for the Guaranteed Student Loan (GSL) and Supplemental Loans for Students (SLS) programs to implement the new targeted teacher deferment enacted by the Higher Education Amendments of 1986, Pub. L. 99–498 (October 17, 1986). *See* sections 427(a)(2)(C)(vi), 428(b)(1)(M)(vi), and 428(b)(4)(A) of the HEA, as amended. Under these provisions, a borrower is allowed a deferment in repayment of principal owed on a loan under the Guaranteed Student Loan Program (GSLP) or Supplemental Loans for Students (SLS) Program for up to three years during which the borrower is engaged as a full-time teacher in a teacher shortage area in a public or nonprofit private elementary or secondary school. The loan repayment deferment is available only to new borrowers. A new borrower is a borrower who has no outstanding balance on a GSL, PLUS, SLS, or Consolidation Program loan on the date he or she signs the promissory note for a loan that is either (1) made for a period of enrollment beginning on or after July 1, 1987, or (2) disbursed on or after July 1, 1987. The statute also provides for reduction in the teaching obligation of a scholar under the Paul Douglas Teacher Scholarship Program for full-time teaching in a shortage area. *See* section 553(b)(4)(A) of the HEA, as amended. The proposed regulations would establish criteria and procedures governing the designation of teacher shortage areas for purposes of the GSL, SLS, and Paul Douglas Teacher Scholarship Program. The proposed regulations would also establish procedures for a Douglas scholar to follow to qualify for a reduction in the scholar's teaching obligation for full-time teaching service in a teacher shortage area.

These proposed regulations would also establish procedures and define the guidelines to be used by States in identifying areas they wish the Secretary to designate as teacher shortage areas, and would specify the criteria that the Secretary would use to designate teacher shortage areas.

The statute defines the term "shortage areas" to mean (1) geographic areas of the State in which there is a shortage of elementary and secondary school teachers, and (2) areas of shortage of elementary and secondary school teachers in specific grade levels and in specific academic, instructional, subject matter, and discipline classifications. The term teacher "shortage," as used in these proposed regulations, means an inadequate supply of teachers.

Since "teacher shortage area" is not defined with precision in the statute, the Secretary has reviewed the methods that other entities, including the State of California, have used to assess the adequacy of their supply of teachers and identify teacher shortage areas. Based on this review, the Secretary has found that these methods have resulted in the designation of an average of five percent of the total FTE teaching positions in a State as being in shortage areas in that State. Therefore, for purposes of this regulation, the Secretary has elected to use five percent of the total full-time equivalency (FTE) teaching positions in a State as the maximum percentage that a State could automatically designate as being in shortage areas. In identifying shortage areas, the State must develop and apply objective written standards.

Requests by a State for approval by the Secretary of designation of a larger percentage of positions as being in shortage areas would require submission by the State of supporting documentation showing the methods used for identifying shortage areas and showing that the designation of more than the five percent maximum is necessary due to unique circumstances in the State. The Secretary particularly invites comments regarding this aspect of the proposed regulations.

In identifying teacher shortage areas to propose for designation, the Chief State School Officer shall employ data that includes: (a) Teaching positions that are unfilled, (b) teaching positions that are filled by irregularly certified teachers, and (c) teaching positions that are filled by certified teachers not prepared for the subjects they are teaching.

Under the proposal, a State might, for example, propose to designate (1) several counties in which there is a general shortage of teachers, and (2) a given field of study, such as high school physics, in which there is a statewide shortage of teachers. The State would then determine the percentage that the total unfilled FTE positions in the proposed areas (adjusted to count positions appearing in both types of shortage areas only once) constitute of the total FTE teaching positions in the State, using the following formula:

$$\frac{\text{Number of unfilled* FTE teaching positions in the designated counties} + \text{Number of unfilled* FTE teaching positions in specific subject areas outside the designated counties}}{\text{Total number of FTE (filled and unfilled) teaching positions in the State}} = \times\%$$

*Unfilled FTE teaching positions include: (a) Teaching positions that are unfilled, (b) teaching positions that are filled by irregularly certified teachers, and (c) teaching positions that are filled by certified teachers teaching in academic subject areas other than the academic subject areas in which they have been trained.

If the resulting percentage equals five percent or less, the Secretary would designate the State's proposed shortage areas. If the state wished to propose designated shortage areas in which the total number of unfilled FTE teaching positions exceeded five percent of the total number of FTE teaching positions in the State, the State would be required to submit documentation to the Secretary to support its proposal. The Secretary, after reviewing the materials provided by the State, would make a determination on the State's recommendation of shortage areas to be designated for that State.

Each State would submit a list of recommended shortage areas to be designated by the Secretary. The list would be due by January 1 of each year and would be based on data for the current school year. The Secretary's designation of shortage areas from the list would be applicable to the following school year. The purpose of the January 1 deadline would be to allow review and approval of shortage area designations early in the school year, so that the information regarding the final designations would be made available in a timely manner to teachers wishing to sign teaching contracts for the following school year. Each State would be responsible for notifying the schools affected by the Secretary's designation of shortage areas for the year, the State agency administering the Douglas Scholarship Program, and the appropriate guarantee agency of the State.

For a borrower to obtain a deferment, or for a scholar to obtain a reduction in the teaching obligation, for teaching in a designated shortage area, the borrower or scholar would be required to obtain a certification from the chief administrative officer of the school district indicating that the borrower is a full-time teacher. A borrower, or scholar teaching outside of the State in which he or she received a Douglas Scholarship, would also be required to obtain a certification from the Chief State School Officer that the position held by the teacher is within an area designated by the Secretary as a shortage area. For Douglas scholars to reduce their teaching obligations in the States in which they were awarded their scholarships, the State agency administering the Paul Douglas Scholarship Program in those States will need to verify that the position held by the scholar is within a designated teacher shortage area. The certification would cover one year, with a new certification required for each subsequent year of service for which deferment or a reduction in teaching obligation is requested. The certification may be renewed, even if the area is undesignated after the first year, if the borrower continues to be employed during subsequent years in the same teacher shortage area that originally qualified him/her for the deferment up to the maximum number of years allowed for the deferment or reduction. Therefore, a Douglas scholar may renew this certification for an additional three years or a GSL/SLS borrower may renew this certification for an additional two years if he/she continues to teach in the same teacher shortage area that originally qualified him/her for the deferment or reduction in teaching obligation.

The Secretary wishes to emphasize that the deferment and the reduction in the teaching obligation is available only for service in a designated teacher shortage area. Service in a low-income area not designated as a teacher shortage area does not satisfy this requirement. Further, the reduction in the teaching obligation under the Douglas Scholarship Program is for service in elementary and secondary schools only. It does not include service in a preschool unless, by State law, the State's elementary education program includes preschool education.

**Guarantee Agency Collection Efforts**

The revised GSL regulations published in final form on November 10, 1986, established rules for guarantee agencies to follow in their efforts to collect on defaulted loans they hold under the GSL and PLUS Programs. *See* 34 CFR 682.410(b)(4) (51 FR 40910–40911). A number of guarantee agencies have since expressed concern that the 225-day period after payment of a default claim during which an agency must institute a civil suit against a borrower on a defaulted loan does not allow an agency sufficient time to pursue all avenues of collection, including offset against Federal tax refund, or to assess adequately the cost efficiency of filing suit, before filing such a suit. Therefore, the Secretary proposes to amend the current regulation to extend to 545 days the period within which a guarantee agency must institute a civil suit against a borrower. In the case of a loan assigned to the Secretary before the 545th day, that is returned to the guarantee agency after the 365th day, the guarantee agency would have 180 days from the day it receives the loan back from the Secretary to file suit. This change is intended to give each guarantee agency sufficient time to evaluate the feasibility of suit, to use private collection firms, and to use the Department's tax refund offset program before commencing suit on a loan.

**Executive Order 12291**

These regulations have been reviewed in accordance with Executive Order 12291. They are classified as non-major because they do not meet the criteria for major regulations established in the order.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Many provisions of the regulations repeat statutory requirements. Certain reporting, recordkeeping, and compliance requirements are imposed on guarantee agencies, lenders, and schools by the regulations. These regulations, however, are modeled on existing regulations for the GSL and PLUS Programs and will not have a significant economic impact on these institutions.

**Paperwork Reduction Act**

Sections 682.210 and 653.40 contain information collection requirements. As required by of the Paperwork Reduction Act of 1980, the Department of

Education will submit a copy of these proposed regulations 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, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: James D. Houser.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in ROB-3, Room 4310, 7th and D Streets, SW., Washington, DC, 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 regulations.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

**List of Subjects**

*34 CFR Part 653*

Education, grant programs, Education, state-administered, Education, student aid.

*34 CFR Part 682*

Administrative practice and procedure, colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: January 25, 1989.

**Lauro F. Cavazos,**

*Secretary of Education.*

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program and PLUS Program; 84.176, Paul Douglas Teacher Scholarship Program.)

The Secretary proposes to amend Part 653 and Part 682 of Title 34 of the Code of Federal Regulations as follows:

## PART 653—PAUL DOUGLAS TEACHER SCHOLARSHIP PROGRAM

1. The authority citation for Part 653 continues to read as follows:

Authority: 20 U.S.C. 1111-1111h, unless otherwise noted.

2. Section 653.40 is amended by revising paragraph (b) to read as follows:

**§ 653.40 What agreement must a scholar have with the State agency?**

* * * * *

(b)(1) The requirement to teach two years for each year of scholarship assistance is reduced by one-half in the case of individuals who teach on a full-time basis in a teacher shortage area that is designated by the Secretary as provided by 34 CFR 682.210 (j)(2) through (j)(4).

(2) To qualify for a reduction in the teaching obligation, a scholar teaching in the State from which he or she received scholarship assistance must—

(i) Provide to the State agency a statement by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the scholar is teaching, certifying that the scholar is employed as a full-time teacher; and

(ii) Be teaching in a teacher shortage area designated by the Secretary as provided by 34 CFR 682.210(j) (2) through (4), as determined by the State agency.

(3) To qualify for a reduction in the teaching obligation, a scholar teaching in a State other than the State from which he or she received scholarship assistance must provide to the State agency—

(i) A statement by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the scholar is teaching, certifying that the scholar is employed as a full-time teacher; and

(ii) A statement by the Chief State School Officer for the State in which the scholar is teaching, certifying that the area in which the scholar is teaching is a teacher shortage area designated by the Secretary as provided by 34 CFR 682.210(j) (2) through (4).

(4) If a scholar who receives a reduction in his or her teaching obligation continues during subsequent school years to be employed in the same teacher shortage area that originally qualified him or her for the reduction in teaching obligation, the scholar may continue to receive the reduction in teaching obligation for those subsequent years even if his or her position does not otherwise fall within an area designated by the Secretary as a teacher shortage area in those subsequent years. To continue to receive the reduction in teaching obligation for a subsequent year, the scholar shall provide the State agency with a statement by the chief administrative officer of the public or nonprofit private elementary or secondary school in which the scholar is teaching certifying that the scholar continues to be employed as a full-time teacher in the same teacher shortage area for which the reduction in teaching obligation was approved for the previous year.

* * * * *

## PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

3. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

4. Section 682.210 is amended by removing the word "or" following the semicolon at the end of paragraph (b)(9), removing the period at the end of paragraph (b)(10) and adding "; or" in its place, and adding new paragraphs (b)(11) and (j) to read as follows:

**§ 682.210 Deferment.**

* * * * *

(b) * * *

(11) Up to three years of service as a full-time teacher in a public or nonprofit private elementary or secondary school in a teacher shortage area designated by the Secretary under paragraph (j) of this section.

* * * * *

(j) *Targeted teacher deferment.* (1)(i) To qualify for a targeted teacher deferment under paragraph (b)(11) of this section, the borrower shall provide to the lender—

(A) A statement by the chief administrative officer of the private school or public school district that employs the borrower certifying that the borrower is employed as a full-time teacher in a public or nonprofit private elementary or secondary school; and

(B) A statement by the Chief State School Officer for the State in which the borrower is employed, certifying that the position being held by the borrower falls within a teacher shortage area designated by the Secretary. This certification statement would cover a maximum of one school year, with a new certification being required for each subsequent school year of service for which a deferment is requested.

(ii) If a borrower who received this deferment in one school year continues during subsequent school years to be employed in the same teacher shortage area that originally qualified him or her for this deferment, the borrower may continue to receive the deferment for those subsequent years, up to the three year maximum deferment period, even if his or her position does not otherwise fall within an area designated by the Secretary as a teacher shortage area in those subsequent years. To continue to receive the deferment in a subsequent year under this paragraph, the borrower shall provide the lender with a statement by the chief administrative officer of the private school or school district that employs the borrower certifying that the borrower continues to be employed as a full-time teacher in the same teacher shortage area as that for which the deferment was received for the previous year.

(2) For purposes of this section, a teacher shortage area is—

(i)(A) A geographic region of the State in which there is a shortage of elementary or secondary school teachers; or

(B) A specific grade level, academic, instructional, subject matter, or discipline classification in which there is a statewide shortage of elementary or secondary school teachers; and

(ii) Designated by the Secretary under paragraph (j)(3) of this section.

(3)(i) In order for the Secretary to designate one or more teacher shortage areas in a State for a school year, the Chief State School Officer shall by January 1 of the calendar year in which the school year begins, and in accordance with objective written standards, propose teacher shortage areas to the Secretary for designation. With respect to private, nonprofit schools included in the recommendation, the Chief State School Officer shall consult with appropriate officials of the private, nonprofit schools in the State prior to submitting the recommendation.

(ii) In identifying teacher shortage areas to propose for designation under paragraph (j)(3)(i) of this section, the Chief State School Officer shall consider data from the school year in which the recommendation is to be made with respect to—

(A) Teaching positions that are unfilled;

(B) Teaching positions that are filled by teachers who are certified by irregular, provisional, temporary, or emergency certification; and

(C) Teaching positions that are filled by teachers who are certified, but who are teaching in academic subject areas other than their area of preparation.

(iii) If the total number of unduplicated full-time equivalent (FTE) elementary and secondary teaching positions identified under paragraph (j)(3)(ii) of this section in the shortage areas proposed by the State for designation does not exceed five percent of the total number of FTE elementary and secondary teaching positions in the State, the Secretary designates those areas as teacher shortage areas.

(iv) If the total number of unduplicated FTE teaching positions in the shortage areas proposed by the State for designation exceeds five percent of the total number of elementary and secondary FTE teaching positions in the State, the Chief State School Officer shall submit, with the list of proposed areas, supporting documentation showing the methods used for identifying shortage areas, and an explanation of the reasons why the Secretary should nevertheless designate all of the proposed areas as teacher shortage areas. The explanation must include a ranking of the proposed shortage areas according to priority, to assist the Secretary in determining which areas should be designated. The Secretary, after considering the explanation, determines which shortage areas to designate as teacher shortage areas.

(4) For purposes of paragraph (j) of this section—

(i) The definition of the term "school" in § 682.200 does not apply;

(ii) "Elementary school" means a day or residential school that provides elementary education, as determined under State law;

(iii) "Secondary school" means a day or residential school that provides secondary education, as determined under State law. In the absence of applicable State law, the Secretary may determine, with respect to that State, whether the term "secondary school" includes education beyond the twelfth grade;

(iv) "Teacher" means a professional who provides direct and personal services to students for their educational development through classroom teaching;

(v) "Chief State School Officer" means the highest ranking education official for elementary and secondary education for the State; and

(vi) "School year" means the period from July 1 of a calendar year through June 30 of the following calendar year.

(vii) "Teacher shortage area" means an area of specific grade, subject matter or discipline classification, or a geographic area in which the Secretary determines that there is an inadequate supply of elementary or secondary school teachers.

5. Section 682.410 is amended by revising paragraph (b)(4)(vii) to read as follows:

**§ 682.410 Fiscal, administrative, and enforcement requirements.**

* * * * *

(b) * * *

(4) * * *

(vii) One hundred eighty-one-545 days:

(A) Except as provided in paragraphs (b)(4)(vii) (B) and (C) of this section, during this period, but not sooner than 30 days after sending the notice described in paragraph (b)(4)(vi) of this section, the agency shall institute a civil suit against the borrower for repayment of the loan.

(B) Except as provided in paragraph (b)(4)(vii)(C) of this section, in the case of a loan which was assigned to the Secretary prior to the 545th day and returned to the agency less than 180 days prior to that 545th day, the agency has 180 days from the date it receives the returned loan to institute the civil suit.

(C) The agency need not file suit if the agency determines and documents in the borrower's file that—

(1) The cost of litigation would exceed the likely recover if litigation were commenced; or

(2) The borrower does not have the means to satisfy a judgment on the debt or a substantial portion thereof.

* * * * *

[FR Doc. 89-2182 Filed 1-30-89; 8:45 am]
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Monday, January 31, 1989

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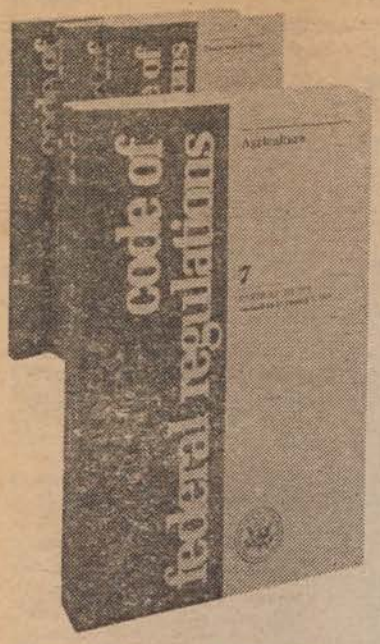


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