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Presidential Documents

Title 3—

The President

Memorandum of September 24, 1990

Annual Determination on Steel Industry Modernization

Memorandum for the United States Trade Representative

Section 806 of the Steel Import Stabilization Act (19 U.S.C. 2253 note) requires that I make an annual affirmative determination that specified conditions have been met by the domestic steel industry to justify continuation of authority under Section 805 to enforce steel restraint agreements. The attached *Report of the President under the Steel Import Stabilization Act* and the report prepared at my direction by the United States International Trade Commission, *Annual Survey Concerning Competitive Conditions in the Steel Industry and Industry Efforts to Adjust and Modernize,* enumerate the actions taken by the domestic industry consistent with an affirmative determination under section 806.

Based on this information, I hereby make an affirmative determination for the first annual period (October 1, 1989–September 30, 1990) that during such period:

(A) The major companies of the steel industry, taken as a whole, have—

(i) committed substantially all of their net cash flow from steel product operations for the purposes of reinvestment in, and modernization of, that industry; and

(ii) taken sufficient action to maintain their international competitiveness;

(B) each of the major companies experiencing positive net cash flow committed not less than 1 percent of net cash flow to the retraining of workers; and

(C) the enforcement authority provided under section 805 remains necessary to maintain the effectiveness of bilateral arrangements undertaken to eliminate unfair trade practices in the steel sector.

You are hereby authorized and directed to report this determination to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. This memorandum shall be published in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, September 24, 1990.

[FR Doc. 90–23055
Filed 9–25–90; 3:03 pm]
Billing code 3195–01–M

Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

7 CFR Chapter XVI

Rural Electrification Administration

7 CFR Chapter XVII

Electric and Telephone Programs, Redesignation of Regulations

AGENCY: Rural Electrification Administration and Rural Telephone Bank, USDA.

ACTION: Final rule, redesignation.

SUMMARY: The Rural Electrification Administration (REA) is beginning a project to simplify, clarify and update Agency regulations. This project, when complete, will provide a more logical arrangement of Agency regulations to assist borrowers and others. One component of this project is to redesignate certain regulations and combine, either in part or as a whole, other regulations in order to have all policies, procedures, and requirements related to a subject in one regulation in the Code of Federal Regulations. The Rural Telephone Bank is updating the cross reference to 7 CFR chapter XVII under 1610.8.

EFFECTIVE DATE: This final rule is effective October 19, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Blaine D. Stockton, Jr., Assistant Administrator-Management, Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250-1500, telephone number (202) 382-0552.

SUPPLEMENTARY INFORMATION: REA is amending 7 CFR chapter XVII by redesignating, reorganizing, and adding and reserving certain parts. For the information of interested parties, a distribution table follows:

DISTRIBUTION TABLE

Old part or section	New part or section
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1709	1703.
Electric Regulations	
1710 Subparts A–B [Reserved.	Removed.
1710 Subpart C	1714 Subpart D.
1710.50	1714.150.
1710.51	1714.151.
1710.52	1714.152.
1710.53	1714.152.
1710.54	1714.153.
1710.55	1714.155.
Part 1711	1721 Subpart A.
1711.1	1721.1.
1715 Subpart A [Reserved].	Removed.
1715 Subpart B	1717 Subpart N.
1715.20	1717.650.
1715.21	1717.651.
1715.22	1717.652.
1715.23	1715.653.
1715.24	1717.654.
1715.25	1717.655.
1715.26	1717.656.
1715.27	1717.657.
1715.28	1717.658.
1729 Subpart A–B [Reserved].	Removed.
Part 1729 Subpart C	Part 1724 Subpart E.
1729.6	1724.41.
1729.7–1729.9	1724.42–1724.44.
1729.10	1724.45.
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Telephone Regulations	
1745 Subpart A	1735 Subpart A.
1745.1	Removed.
1745.2	1735.2.
1745.2(a)	1735.2(e).
1745.2(b)	1735.2(g).
1745.2(c)	1735.2(j).
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1745 Subpart B	1735 Subpart B.
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1765.28	1753.38.
1765.29	1753.39.
1765,30–1765.35	1753.40–1753.45.
1765 Subpart D	1753 Subpart F.

DISTRIBUTION TABLE—Continued

Old part or section	New part or section
1765.36	1753.46.
1765.37	1753.47.
1765.38	1753.48.
1765.39	1753.49.
1765.40–1765.45	1753.50–1753.55.
1765 Subpart E	1753 Subpart G.
1765.46	1753.56.
1765.47	1753.57.
1765.48	1753.58.
1765.49–1765.55	1753.59–1753.65.
1765 Subpart F	1753 Subpart H.
1765.56	1753.66.
1765.57	1753.67.
1765.58	1753.68.
1765.59–1765.65	1753.69–1753.75.
1765 Subpart G	1753 Subpart I.
1765.66	1753.76.
1765.67	1753.77.
1765.68	1753.78.
1765.69	1753.79.
1765.70	1753.80.
1765.71	1753.81.
1765.72	1753.82.
1765.73–1765.80	1753.83–1753.90.
1765 Subpart H	1753 Subpart J.
1765.81	1753.91.
1765.82	1753.91.
1765.83	1753.93.
1765.84	1753.94.
1765.85	1753.95.
1765.86	1753.96.
1765.87–1765.99	1753.97–1753.99.
Part 1772	Part 1755.
1772.3	1755.3.
1772.97	1755.97.
1772.98	1755.98.
1772.370	1755.370.
1772.397	1755.397.

This action is simply a redesignation of these regulations with no change to substance. Therefore, no period for public comment is required. Changes to regulatory text are merely to update cross references, eliminate repetition and combine existing information from old parts into new parts.

Therefore, under the authority of the Administrator, Rural Electrification Administration, REA amends 7 CFR chapters XVI and XVII as follows:

CHAPTER XVII—[AMENDED]

PART 1709—[REDESIGNATED AS PART 1703]

1. 7 CFR Part 1709—RURAL DEVELOPMENT is redesignated as 7 CFR part 1703.

2. A new part 1714 is added as follows:

PART 1714—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

Subparts A Through C—[Reserved]

Authority: 7 U.S.C. 901–950b, Rural Electrification Act of 1936, as amended; Pub. L. 99–591, Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subparts A Through C—[Reserved]

Subpart C of Part 1710—[Redesignated as Subpart D of Part 1714]

PART 1710—[REMOVED]

3. 7 CFR part 1710 subpart C is redesignated as subpart D of part 1714 as follows and part 1710 is removed:

Old designation	New designation
1710 Subpart C	1714 Subpart D.
1710.50	1714.150.
1710.51	1714.151.
1710.52	1714.152.
1710.53	1714.153.
1710.54	1714.154.
1710.55	1714.155.

PART 1717—[AMENDED]

4. Part 1717 is amended as follows:

a. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901–950b; title I, subtitle D, sec. 1402; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subparts K Through M of Part 1717—[Added and Reserved]

b. Subparts K through M are added and reserved.

Subpart B of Part 1715—[Redesignated as Subpart N of Part 1717]

PART 1715—[REMOVED]

5. 7 CFR part 1715 subpart B is redesignated as subpart N of part 1717 as follows and part 1715 is removed:

Old designation	New designation
1715 Subpart B	1717 Subpart N.
1715.20	1717.650.
1715.21	1717.651.
1715.22	1717.652.
1715.23	1717.653.
1715.24	1717.654.
1715.25	1717.655.
1715.26	1717.656.
1715.27	1717.657.
1715.28	1717.658.

6. A new part 1721, consisting of subpart A, is added as follows:

PART 1721—POST-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

Subpart A—Advance of Funds

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

Subpart A—Advance of Funds

§ 1711–1 Redesignated as § 1721.1]

PART 1711—[REMOVED]

7. Section 1711.1 is redesignated as § 1721.1 of subpart A of part 1721 as follows and part 1711 is removed:

Old designation	New designation
1711.1	Subpart A—Advance of Funds. 1721.1.

8. A new part 1724 is added as follows:

PART 1724—ELECTRIC SYSTEM PLANNING AND DESIGN POLICIES AND PROCEDURES

Subparts A Through D—[Reserved]

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

Subparts A Through D—[Reserved]

Subpart C of Part 1729—[Redesignated as Subpart E of Part 1724]

PART 1729—[REMOVED]

9. 7 CFR Part 1729 subpart C is redesignated as subpart E of part 1724 as follows and part 1729 is removed:

Old designation	New designation
1729 Subpart C	1724 Subpart E.
1729.6	1724.41.
1729.7–1729.9 [Reserved].	1724.42–1724.44 [Reserved].
1729.10	1724.45.

10. A new part 1726, consisting of subpart G, is added as follows:

PART 1726—ELECTRIC SYSTEM CONSTRUCTION POLICIES AND PROCEDURES

Subparts A Through F—[Reserved]

Subpart G—Standard Forms of Electric Contracts

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

Subparts A Through F—[Reserved]

Subpart G—Standard Forms of Electric Contracts

§ 1735–1 [Redesignated as § 1726.300]

PART 1735—[REMOVED]

11. Section 1735.1 is redesignated as § 1726.300 in subpart G of part 1726 as follows and part 1735 is removed:

Old designation	New designation
1735.1	Subpart G—Standard Forms of Electric Contracts. 1726.300.

PART 1736—[REDESIGNATED AS PART 1728]

12. 7 CFR part 1736 is redesignated as new part 1728 and the part heading of newly designated part 1728 is revised to read as follows:

PART 1728—ELECTRIC STANDARDS AND SPECIFICATIONS FOR MATERIALS AND CONSTRUCTION

§ 1745. [Removed]

PART 1745—[REDESIGNATED AS PART 1735]

PART 1750—[AMENDED]

13. Section 1745.1 is removed, part 1745 is redesignated as new part 1735 and portions of the text of 7 CFR part 1750 are redesignated as subparts A and F through L of new part 1735 as follows:

Old designation	New designation
Part 1745	Part 1735.
1745 Subpart A	1735 Subpart A.
1745.1	Removed.
1745.2 heading and introductory text.	1735.2 heading and introductory text.
1745.2(a)	1735.2(e).
1745.2(b)	1735.2(g).
1745.2(c)	1735.2(j).
1745.2(d)	1735.2(m).
1745.2(e)	1735.2(s).
1745.2(f)	1735.2(u).
1745.2(g)	1735.2(v).
1745.3	1735.3.
	1735.4–1735.9 [Reserved].
1745 Subpart B	1735 Subpart B.
1745.10–1745.22	1735.10–1735.22.
	1735.23–1735.29 [Reserved].
1745 Subpart C	1735 Subpart C.
1745.30–1745.32	1735.30–1735.32
	1735.33–1735.39 [Reserved].
1745 Subpart D	1735 Subpart D.
1745.40–1745.47	1735.40–1735.47.
	1735.48–1735.49 [Reserved].
1745 Subpart E	1735 Subpart E.
1745.50–1745.52	1735.50–1735.52.
	1735.53–1735.59 [Reserved].
1750.1(a)	1735.1(b).
1750.1(b)	1735.1(c).
1750.2 text	1735.1(d).
1750.3(a)	1735.2(a).
1750.3(b)	1735.2(b).
1750.3(c)	1735.2(c).
1750.3(d)	1735.2(d).
1750.3(f)	1735.2(f).
1750.3(h)	1735.2(h).
1750.3(i)	1735.2(i).
1750.3(j)	1735.2(k).
1750.3(k)	1735.2(l).
1750.3(m)	1735.2(n).
1750.3(n)	1735.2(o).
1750.3(o)	1735.2(p).
1750.3(p)	1735.2(q).
1750.3(q)	1735.2(r).
1750.3(s)	1735.2(t).
1750 Subpart B	1735 Subpart F.
1750.10	1735.60.
1750.11	1735.61.
1750.12	1735.62.
	1735.63–1735.69 [Reserved].
1750 Subpart C	1735 Subpart G.
1750.20	1735.70.
1750.21	1735.71.
1750.22	1735.72.
1750.23	1735.73.
1750.24	1735.74.
1750.25	1735.75.
1750.26	1735.76.
1750.27	1735.77
	1735.78–1735.79 [Reserved].
1750 Subpart D	1735 Subpart H.
1750.30	1735.80.
	1735.81–1735.89 [Reserved].
1750 Subpart E	1735 Subpart I
1750.40	1735.90.
1750.41	1735.91.
1750.42	1735.92.
1750.43	1735.93.
1750.44	1735.94.
1750.45	1735.95.
	1735.96–1735.99 [Reserved].
1750 Subpart F	1735 Subpart J.
1750.50	1735.100.
1750.51	1735.101.

PART 1750—[REMOVED]

14. Part 1750 is removed.

PART 1735—[AMENDED]

15. Section 1735.1 of newly designated part 1735 is revised to read as follows:

§1735.1 General statement.

(a) Subparts A through E of this part set forth the general policies, types of loans and loan requirements under the Telephones loan program.

(b) The standard REA security documents (see 7 CFR 1744 subpart D or REA Bulletins 320–4, 320–22, 321–2, 322–2, 323–1, 326–1) contain provisions regarding acquisitions, mergers, and consolidations. Subparts F through J of this part implement those provisions by

setting forth the policies, procedures, and requirements for telephone borrowers planning to acquire existing telephone lines, facilities, or systems with REA loan or other funds, or planning to merge or consolidate with another system. This part supersedes all REA Bulletins that are in conflict with it.

(c) Subparts F through M of this part also detail REA's requirements with respect to mergers and acquisitions involving REA loan funds.

PART 1749—[REDESIGNATED AS PART 1737]

PART 1751—[AMENDED]

16. 7 CFR part 1749 is redesignated as part 1737 and portions of the text of part 1751 are redesignated as sections in subpart A and as subparts F through K of part 1737 as follows with heading changes as indicated:

Old designation	New designation
Part 1749—Preloan Procedures and Requirements—Telephone Program.	Part 1737—Pre-Loan Policies and Procedures Common to Guaranteed and Insured Telephone Loans.
1749 Subpart A	1737 Subpart A.
1749.1 heading and text	1737.1 heading and (a).
1749.2 heading and introductory text.	1737.2 heading and introductory text.
1749.2(a)	1737.2(b).
1749.2(b)	1737.2(c).
1749.2(c)	1737.2(e).
1749.2(d)	1737.2(h).
1749.2(e)	1737.2(i).
1749.2(f)	1737.2(j).
1749.2(g)	1737.2(k).
1749.2(h)	1737.2(p).
1749.2(i)	1737.2(r).
1749.3	1737.3, 1737.4–1737.9 [Reserved].
1749 Subpart B	1737 Subpart B.
1749.10–1749.11	1737.10–1737.11, 1737.12–1737.19 [Reserved].
1749 Subpart C	1737 Subpart C.
1749.20–1749.22	1737.20–1737–22, 1737.23–1737.29 [Reserved].
1749 Subpart D	1737 Subpart D.
1749.30–1749.32	1737.30–1737.32, 1737.33–1737.39 [Reserved].
1749 Subpart E	1737 Subpart E.
1749.40–1749.42	1737.40–1737.42, 1737.43–1737.49 [Reserved].
1751.1(a)	1737.1(b).
1751.1(b)	1737.1(c).
1751.2(a)	1737.2(a).
1751.2(c)	1737.2(d).
1751.2(e)	1737.2(f).
1751.2(f)	1737.2(g).
1751.2(i)	1737.2(l).
1751.2(j)	1737.2(m).
1751.2(k)	1737.2(n).
1751.2(l)	1737.2(o).
1751.2(n)	1737.2(q).
1751.2(o)	1737.2(s).
1751 Subpart B—Review of Application.	1737 Subpart F—Review of Application Procedures.
1751.10	1737.50.
1751.11	1737.51.
1751.12–1751.19 [Reserved].	1737.52–1737.59 [Reserved].
1751 Subpart C—Estimate of Total Project Costs.	1737 Subpart G—Project Cost Estimation Procedures.
1751.20	1737.60.
1751.21	1737.61.
1751.22–1751.29 [Reserved].	1737.62–1737.69 [Reserved].
1751 Subpart D—Feasibility Study.	1737 Subpart H—Feasibility Determination Procedures.
1751.30	1737.70.
1751.31–1751.39 [Reserved].	1737.71–1737.79 [Reserved].
1751, Subpart E	1737, Subpart I.
1751.40	1737.80.
1751.41–1751.49 [Reserved].	1737.81–1737.89 [Reserved].
1751 Subpart F—Loan Approval.	1737 Subpart J—Final Loan Approval Procedures.
1751.50	1737.90.
1751.51	1737.91.
1751.52	1737.92.
1751.53–1751.59 [Reserved].	1737.93–1737.99 [Reserved].
1751 Subpart G—Release of Funds.	1737 Subpart K—Release of Funds Procedure.
1751.60	1737.100.
1751.61	1737.101.
1751.62–1751.69 [Reserved].	1737.102–1737.109 [Reserved].

PART 1751—[REMOVED]

17. Part 1751 is removed.

18. A new part 1744, consisting of subparts B and C, is added as follows:

PART 1744—POST LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

Subpart A—[Reserved]

Subpart B—Lien Accommodations and Subordination Policy

Subpart C—Advance and Disbursement of Funds

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

Subpart A—[Reserved]

Subpart B—Lien Accommodations and Subordination Policy

Subpart C—Advance and Disbursement of Funds

PART 1747—[REDESIGNATED TO SUBPART B OF PART 1744]

PART 1754—[REDESIGNATED TO SUBPART C OF PART 1744]

PARTS 1747 and 1754—[Removed]

19. The text of 7 CFR part 1747 is redesignated as sections in subpart B of part 1744, the text of part 1754 is redesignated as sections in subpart C of part 1744 as follows and parts 1747 and 1754 are removed:

Old designation	New designation
	Subpart B
1747.1	1744.20.
1747.2	1744.21.
1747.3–1747.9 [Reserved].	1744.22–1744.29 [Reserved].
1747.10	1744.30.
1747.11–1747.19 [Reserved].	1744.31–1744.39 [Reserved].
1747.20	1744.40.
1747.21–1747.29 [Reserved].	1744.41–1744.49 [Reserved].
1747.30	1744.50.
	1744.51–1744.59 [Reserved].
	Subpart C
1754.1	1744.60.
1754.2	1744.61.
1754.3	1744.62.
1754.4	1744.63.
1754.5	1744.64.
1754.6	1744.65.
1754.7	1744.66.
1754.8	1744.67.
1754.9	1744.68.
	1744.69 [Reserved].

PART 1765—[REDESIGNATED AS PART 1753]

PART 1763—[REDESIGNATED AS SUBPART B OF PART 1753]

20. 7 CFR part 1765 is redesignated as part 1753, the text of 7 CFR part 1763 is redesignated as subpart B of part 1753 as follows with heading changes as indicated, and part 1763 is removed:

Old designation	New Designation
Part 1765—Telephone Materials, Equipment and Construction—Telephone Program.	Part 1753—Telecommunications System Construction Policies and Procedures.
1765 Subpart A	1753 Subpart A.
1765.1	1753.1.
1765.2	1753.2.
1765.3	1753.3.
1765.4	1753.4.
1765.5	1753.5.
1765.6	1753.6.
1765.7	1753.7.
1765.8	1753.8.
1765.9	1753.9.
1765.10	1753.10.
1765.11	1753.11.

Old designation	New Designation
1765.12–1765.14 [Reserved].	1753.12–1753.14 [Reserved].
	Subpart B—Engineering Services
1763.1 heading	1753.15 heading.
1763.1 (a)–(c)	1753.15(a)(1)–(a)(3).
1763.1 (d)(1) and (d)(2)	1753.15 (a)(4)(i) and (a)(4)(ii).
1763.1(e)	1753.15(a)(5).
1763.2 introductory text	1753.15(b) introductory text.
1763.2(a)–(m)	1753.15 (b)(1)–(b)(13).
1763.3 text	1753.15(c).
1763.4 (a) and (b)	1753.15 (d)(1) and (d)(2).
1763.5 (a) and (b)	1753.15 (e)(1) and (e)(2).
1763 Subpart B heading	1753.16 heading.
1763.20 text	1753.16(a).
1763.21 (a)–(e)	1753.16 (b)(1)–(b)(5).
1763.22 (a)–(c)	1753.16 (c)(1)–(c)(3).
1763 Subpart C heading	1753.17 heading.
1763.40 (a) and (b)	1753.17 (a)(1) and (a)(2).
1763.41(a)	1753.17(b)(1).
1763.41 (a)(1) and (a)(2)	1753.17 (b)(1)(i) and (b)(1)(ii).
1763.41 (a)(2)(i)–(a)(2)(iv).	1753.17(b)(1)(ii) (A)–(D).
1763.41(b)	1753.17(b)(2).
1763.42	1753.17(c).
1763.43 (a) and (b)	1753.17 (d)(1) and (d)(2).
1763.44 (a) and (b)	1753.17 (e)(1) and (e)(2).
1763.45 (a)–(d)	1753.17 (f)(1)–(f)(4).
1763.46–1763.99 [Reserved].	1753.18–1753.20 [Reserved].
	Subpart C [Reserved].
	1753.21–1751.24 [Reserved]
1765 Subpart B	1753 Subpart D.
1765.15	1753.25.
1765.16	1753.26.
1765.17	1753.27.
1765.18	1753.28.
1765.19	1753.29.
1765.20	1753.30.
1765.21–1765.25 [Reserved].	1753.31–1753.35 [Reserved].
1765 Subpart C	1753 Subpart E.
1765.26	1753.36.
1765.27	1753.37.
1765.28	1753.38.
1765.29	1753.39.
1765.30–1765.35 [Reserved].	1753.40–1753.45 [Reserved].
1765 Subpart D	1753 Subpart F.
1765.36	1753.46.
1765.37	1753.47.
1765.38	1753.48.
1765.39	1753.49.
1765.40–1765.45 [Reserved].	1753.50–1753.55 [Reserved].
1765 Subpart E	1753 Subpart G.
1765.46	1753.56.
1765.47	1753.57.
1765.48	1753.58.
1765.49–1765.55 [Reserved].	1753.59–1753.65 [Reserved].
1765 Subpart F	1753 Subpart H.
1765.56	1753.66.
1765.57	1753.67.
1765.58	1753.68.
1765.59–1765.65 [Reserved].	1753.69–1753.75 [Reserved].
1765 Subpart G	1753 Subpart I.
1765.66	1753.76.
1765.67	1753.77.
1765.68	1753.78.
1765.69	1753.79.
1765.70	1753.80.
1765.71	1753.81.
1765.72	1753.82.
1765.73–1765.80 [Reserved].	1753.83–1753.90 [Reserved].
1765 Subpart H	1753 Subpart J.
1765.81	1753.91.
1765.82	1753.92.
1765.83	1753.93.
1765.84	1753.94.
1765.85	1753.95.
1765.86	1753.96.
1765.87–1765.99 [Reserved].	1753.97–1753.99 [Reserved].

PART 1772—[REDESIGNATED AS PART 1755]

§ 1762.01 [Redesignated as § 1755.93]

21. 7 CFR part 1772 is redesignated as part 1755, § 1762.01 is redesignated as § 1755.93 as follows with heading changes as indicated, and part 1762 is removed:

Old designation	New designation
Part 1772—Telephone Standards and Specifications.	Part 1755—Telecommunications Standards and Specifications for Materials, Equipment and Construction.
	1755.1–1755.2 [Reserved].
1772.3	1755.3.
	1755.4–1755.92 [Reserved].
1762.01	1755.93.
	1755.94–1755.96 [Reserved].
1772.97	1755.97.
1772.98	1755.98.
	1755.99–1755.369 [Reserved].
1772.370	1755.370.
	1755.371–1755.396 [Reserved].
1772.397	1755.397.
	1755.398–1755.399 [Reserved].

22. The part heading of 7 CFR part 1785 is revised as follows:

PART 1785—LOAN ACCOUNT COMPUTATIONS, PROCEDURES AND POLICIES FOR ELECTRIC AND TELEPHONE BORROWERS

23.7 CFR part 1789—REA Policy on Audits of Electric and Telephone Borrowers, is redesignated as 7 CFR part 1773.

24. The part heading of 7 CFR part 1794 is revised as follows:

PART 1794—ENVIRONMENTAL POLICIES AND PROCEDURES FOR ELECTRIC AND TELEPHONE BORROWERS

25. All internal references in newly designated parts 1703, 1714, 1717, 1721, 1724, 1726, 1728, 1735, 1737, 1744, 1753, 1755, and 1773 are revised as set forth in the redesignation tables.

26. The following parts are added and reserved:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS [RESERVED]

PART 1712—PRE-LOAN POLICIES AND PROCEDURES FOR GUARANTEED ELECTRIC LOANS [RESERVED]

PART 1719—POST-LOAN POLICIES AND PROCEDURES FOR GUARANTEED ELECTRIC LOANS [RESERVED]

PART 1730—ELECTRIC SYSTEM OPERATIONS AND MAINTENANCE [RESERVED]

PART 1739—PRE-LOAN POLICIES AND PROCEDURES FOR GUARANTEED TELEPHONE LOANS [RESERVED]

PART 1741—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED TELEPHONE LOANS [RESERVED]

PART 1746—POST-LOAN POLICIES AND PROCEDURES FOR GUARANTEED TELEPHONE LOANS [RESERVED]

PART 1748—POST-LOAN POLICIES AND PROCEDURES FOR INSURED TELEPHONE LOANS [RESERVED]

PART 1751—TELECOMMUNICATIONS SYSTEM PLANNING AND DESIGN CRITERIA, AND PROCEDURE [RESERVED]

PART 1757—TELEPHONE SYSTEMS OPERATIONS AND MAINTENANCE [RESERVED]

CHAPTER XVI—[AMENDED]

PART 1610—[AMENDED]

1. The authority citation for 7 CFR part 1610 continues to read as follows:

Authority: 85 Stat. 29 et seq., 7 U.S.C. 941 et seq., as amended, at Pub. L. 93–32, 87 Stat. 70 et seq. and Pub. L. 100–203, 101 Stat. 1330, et seq.

2. Section 1610.8 of 7 CFR part 1610 is revised to read as follows:

§ 1610.8 Adoption of applicable REA policy.

The policies embodied in 7 CFR part 1610, in all parts of 7 CFR chapter XVII except those identified below, will be utilized by the Governor in carrying out the Bank's loan program to the extent that such policies are consistent with title IV of the Act (7 U.S.C. 941 et seq.)

and to the extent that policies in 7 CFR chapter XVII are consistent with 7 CFR part 1610. The parts of 7 CFR chapter XVII applicable solely to the Electric Program and thus exceptions to this section are parts 1710 through 1734 inclusive.

Dated: September 21, 1990.

George E. Pratt,

Acting Administrator, Rural Electrification Administration; Acting Governor, Rural Telephone Bank.

[FR Doc. 90-22901 Filed 9-26-90; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

Standards of Conduct

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration is hereby revising its procedural standards of conduct regulations dealing with the designation of authorized officials for purposes of making certain determinations relative to these regulations. It is also altering the composition of its Standards of Conduct Committee by appropriate regulatory change. This revision makes changes to improve the efficiency of the Agency's standards of conduct program. It will facilitate more expeditious resolution of standards of conduct issues that require Agency approval by streamlining the review process in certain cases.

EFFECTIVE DATE: These rules are effective September 29, 1990.

FOR FURTHER INFORMATION CONTACT: Robinson S. Nunn, Office of General Counsel, room 700, 1441 L Street NW., Washington, DC 20416, telephone (202) 653-6043.

SUPPLEMENTARY INFORMATION: The regulatory changes indicated below are intended to provide for the ability of SBA's Standards of Conduct Counselor (SCC) to make certain determinations presently required by regulation to be made by SBA's Standards of Conduct Committee (SOC). In this regard, present regulations require that the SOC approve provision of SBA assistance to a firm which has a business relationship or employment relationship with certain former SBA employees (see 13 CFR 105.404). They also require that requests for outside employment of certain Agency employees be approved by the SOC (see 13 CFR 105.510).

These final regulations will permit the SCC to make all determinations presently reserved to the SOC under 13 CFR 105.404. Thus, the SCC will be able to determine if approval may be granted to an applicant for SBA assistance, which has a business relationship of the nature described in the regulation, with an individual who was a former SBA employee, within one year of the request for assistance. These final regulations also expand the authority of the SCC and his or her Regional SCC's with respect to cases involving applications by Agency employees for approval of outside activities (13 CFR 105.510), which may be decided by those individuals, without reference to the SOC. In this regard, the Regional SCC's authority is expanded to cover all Regional employees graded GS-14 and below, and the SCC's authority is expanded to cover Central Office employees of GS-15 and below and all field employees.

In addition, these final regulations alter the composition of the Agency's SOC by substituting the Associate Deputy Administrator for Management and Administration for the Assistant Administrator for Administration and the Director of Personnel for the Director of Field Management, as members.

Due to the fact that this final rule governs matters of agency organization, management and personnel and makes no substantive change to the current regulation, SBA is not required to determine if these changes constitute a major rule for purposes of Executive Order 12291, to determine if they have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to do a Federalism assessment pursuant to Executive Order 12612. Finally, SBA certifies that these changes will not impose an annual recordkeeping or reporting requirement on 10 or more persons under the Paperwork Reduction Act (44 U.S.C. ch. 35).

SBA is publishing this regulation governing agency organization, procedure and practice as a final rule without opportunity for public comment pursuant to 5 U.S.C. 553(b)(3)(A).

List of Subjects in 13 CFR Part 105

Conflict of interests, Standards of conduct.

For the reasons set out in the preamble, chapter I, part 105 of title 13, Code of Federal Regulations is amended as follows:

PART 105—STANDARDS OF CONDUCT

1. The authority citation for part 105 revised to read as follows:

Authority: 15 U.S.C. 684; 15 U.S.C. 637(a)(18) and (a)(19); E.O. 12674; 3 CFR, comp., p. 215; 5 CFR 735.104.

2. Section 105.404 is revised to read as follows:

§ 105.404 SBA assistance to person employing former SBA employee.

(a) SBA shall not provide assistance to any person who has as an employee, owner, partner, attorney, agent, owner of stock, officer, director, creditor or debtor, any individual who, within one year prior to the request for such assistance was an SBA employee, without the prior approval of the SBA Standards of Conduct Counselor. The Standards of Conduct Counselor will refer matters of a controversial nature to the Standards of Conduct Committee for final decision. On all matters the decision of the Standards of Conduct Counselor is final.

(b) In reviewing applications for assistance, the Standards of Conduct Counselor will consider:

(1) The relationship of the former employee with the applicant concern;

(2) The nature of the SBA assistance requested;

(3) The position held by the former employee with SBA and its relationship to the assistance requested; and

(4) The appearance of a possible conflict of interest that might arise if the assistance were granted.

3. The last sentence of § 105.501(d)(1) is revised and two sentences are added to read as follows:

§ 105.501 Involvement in matters in which Government has substantial interest.

* * * * *

(d) * * *

(1) * * * In order to determine the possibility of any conflict of interest and the appearances of the arrangement, this function must first be reviewed and approved by the Standards of Conduct Counselor. The Standards of Conduct Counselor will refer matters of a controversial nature to the Standards of Conduct Committee for final decision. On all other matters the decision of the Standards of Conduct Counselor is final.

* * * * *

4. Section 105.510 is amended as follows:

a. In paragraph (b)(1)(i), by removing, from the first sentence the term "GS-13" and inserting the term "GS-15" in lieu thereof;

b. Paragraph (b)(1)(ii) is revised;

c. Paragraph (b)(2) introductory text and (b)(2)(i) are revised.

§ 105.510 Outside employment and activities.

* * * * *

(b) * * *

(1) * * *

(ii) All other SBA field office requests shall be reviewed by the Regional Standards of Conduct Counselor and forwarded with his written recommendations to the Agency Standards of Conduct Counselor for decision.

(2) For employees of SBA's Central Office, all submittals shall initially be made to the Agency Standards of Conduct Counselor, noted in § 105.802.

(i) Requests by employees of level of GS–15 and below and relating to outside activities of a noncontroversial, low visibility nature, having no apparent connection with SBA activities, having no significant "appearances" problems, and involving no apparent interference with the performance of official duties or official time shall be resolved by the Agency Standards of Conduct Counselor.

* * * * *

5. Section 105.801(a) introductory text and (b)(2) and (b)(3) are revised to read as follows:

§ 105.801 Standards of Conduct Committee.

(a) The Standard of Conduct Committee shall as provided for in these regulations:

* * * * *

(b) * * *

(2) The Associate Deputy Administrator for Management and Administration, or in his or her absence, the Assistant Administrator for Administration;

(3) The Director of Personnel, or in his or her absence the Deputy Director of Personnel.

6. Section 105.802(d) is revised to read as follows:

§ 105.802 Standards of Conduct Counselor.

* * * * *

(d) Where a specific ruling regarding a particular situation is required, the request should be directed to the Standards of Conduct Counselor for appropriate action.

Dated: September 20, 1990.

Susan S. Engeleiter,

Administrator.

[FR Doc. 90–22837 Filed 9–26–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35a

[TD 8309]

RIN 1545–APOO

Imposition of Backup Withholding Due to Notification of an Incorrect Taxpayer Identification Number

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains amendments to § 35a.3406–1 of the Temporary Income Tax Regulations under section 3406 of the Internal Revenue Code of 1986 (the "Code"). The amendments liberalize certain rules concerning the requirement for payors to backup withholding under section 3406(a)(1)(B) of the Code on certain reportable payments due to notification of an incorrect taxpayer identification number. These amendments affect payors, brokers, and payees of certain reportable payments and provide guidance necessary to comply with the law. The substance of § 35a.3406–1 of the regulations, as amended by this document, is included in the proposed regulations under section 3406 of the Code set forth in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These amendments are effective on and after January 1, 1989.

FOR FURTHER INFORMATION CONTACT: Renay France (202–377–9344, not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). The collection(s) of information contained in this regulation have been reviewed and approved by the Office of Management and Budget (OMB) under control number 1545–0969.

The estimated average annual burden per respondent/recordkeeper, depending on individual circumstances, is .25 hours. These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning the collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble of the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains amendments to part 35a of title 26 of the Code of Federal Regulations ("CFR"). The amendments provide guidance relating to the requirement under section 3406(a)(1)(B) of the Code that a payor backup withhold 20 percent from reportable payments due to an incorrect taxpayer identification number. This provision was added to the Code by section 104 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369, 371). On November 23, 1987, the Internal Revenue Service published in the **Federal Register** temporary regulations (26 CFR part 35a.3406–1, T.D. 8163, 52 FR 44861) concerning the requirement to backup withhold under section 3406(a)(1)(B). Amendments to these temporary regulations were published in the **Federal Register** on April 11, 1989 (T.D. 8248, 54 FR 14341).

This issue of the **Federal Register** contains a notice of proposed rulemaking containing proposed regulations that, in large measure, would reorganize and restate in traditional regulation form various temporary regulations issued under section 3406. The substance of § 35a.3406–1, as amended by this Treasury decision, is included in such proposed regulations. Accordingly, the notice of proposed rulemaking provides an opportunity for the public to comment on all of the amendments made by this document.

Explanation of Provisions

Overview of the law prior to the amendments made by this Treasury decision

Section 3406 (a)(1)(B) of the Code requires a payor to institute backup withholding at a rate of 20 percent on any reportable payment to a payee if the Service or a broker notifies the payor that the taxpayer identification number ("TIN") provided by the payee is incorrect. After a payor receives a "B" notice from the Service or a broker, (i) the payor must promptly furnish a copy to the payee, (ii) the payor must

commence backup withholding on reportable payments no later than the 30th day after receipt of the "B" notice, and (iii) the payee may prevent backup withholding from commencing or terminate backup withholding, as the case may be, by furnishing the payor with a name/TIN combination in the appropriate manner. Section 3406 (e)(2), (e)(5), and (h)(8). If the payor receives two "B" notices for the payee within any three-year period, the payee may prevent backup withholding from commencing or terminate backup withholding, as the case may be, only by obtaining a notice from the Service that a correct name/TIN combination has been provided (the "2/3 rule"). Section 3406 (h)(2).

Pursuant to the "B" notice temporary regulations, an incorrect TIN exists if the name/TIN combination provided on an information return does not match a name/TIN combination in the records of the Service or the Social Security Administration (the "match requirement"). Backup withholding applies to all reportable payments to accounts of the payee that have the same incorrect name/TIN combination as the one contained on the "B" notice and that the payor can locate using reasonable care (the "reasonable care requirement"). § 35a.3406–1 (b) (3) and (5).

The "B" notice temporary regulations require that a payor send a notice to the payee within 5 business days of having received the "B" notice (the "5-day requirement"). § 35a.3406–1 (c)(2). However, the preamble to the April 11, 1989 amendments to the "B" notice temporary regulations states that the Service will mail "B" notices 2 to 3 weeks in advance of the date that they will be considered to be effective. 54 FR 14342.

The "B" notice temporary regulations also provide, in part, that, with respect to accounts of the payee identified by the payor as having the same name/TIN combination, the payor must withhold 20 percent of either (i) withdrawals made after 7 business days following the payor's receipt of the "B" notice (to the extent of reportable payments made since such receipt) or (ii) reportable payments made after the 7-day period ("the 7-day requirement"). § 35a.3406–1 (d).

In addition, the "B" notice temporary regulations apply the 2/3 rule on a payee basis—that is, they require a payor to identify and backup withhold on any account of a payee with the incorrect TIN and for whom the payor has received two "B" notices. § 35a.3406–1 (f).

The amendments to the "B" notice temporary regulations made by this Treasury decision

Comments on the "B" notice temporary regulations have primarily focused on the match requirement, the reasonable care requirement, the 5-day requirement, the 7-day requirement, and the application of the 2/3 rule. The amendments contained in this Treasury decision are intended to address these concerns. The Service recognizes, however, that further changes in these and other areas of the "B" notice temporary regulations may be appropriate. Accordingly, the substance of the "B" notice temporary regulations, as amended by this Treasury decision, is included in the proposed regulations in the notice of proposed rulemaking under section 3406 of the Code in the Proposed Rules section of this issue of the **Federal Register.** This will allow persons to comment on areas where further changes might be appropriate.

The match requirement and certain multi-name fiduciary and nominee accounts.

Certain payors have informed the Service that they are likely to receive substantial numbers of "B" notices with respect to accounts maintained by fiduciaries or nominees even though the proper TIN for the ultimate taxpayer has been provided. These payors indicate that this may result, for example, because the Service's processing system does not read the full registration on certain multi-name fiduciary accounts (*i.e.*, it reads only the first 80 characters of any registration) or because only the name of the fiduciary or nominee and the TIN of the beneficial owner are listed on the account. Accordingly, the "B" notice temporary regulations are amended to provide that, until final regulations are issued with respect to this issue, backup withholding under section 3406(a)(1)(B) will not apply to accounts with respect to which at least one person named in the registration is identified as acting in the capacity as nominee or as administrator, conservator, custodian, receiver, tutor, curator, committee, executor, guardian, trustee, or other fiduciary capacity recognized under governing law. Prior to the issuance of final regulations on this issue, for purposes of section 3406 (a)(1)(B), payors are requested, but not required, to send copies of the "B" notices (or an acceptable substitute therefor) to the payees of such fiduciary and nominee accounts. The Service invites comments from payors on how fiduciary and nominee accounts can be formatted on information returns so that the correct/TIN combination is identified.

Notwithstanding the exemption from backup withholding provided for fiduciary and nominee accounts described above, payors continue to be required to file information returns for reportable payments made to such accounts and to be subject to the penalty under section 6721 of the Code for providing an incorrect TIN on such an information return. However, the fact that a payor sends a copy of the "B" notice (or an acceptable substitute therefor) and other prescribed information to the payee of a fiduciary or nominee account exempted from backup withholding will be considered strong evidence of (but not a requirement for) qualification for the reasonable cause exception to the penalty under section 6721 for information returns filed subsequent to receipt of the "B" notice.

The match requirement and legal impediments to correcting a name or TIN on an account

Some payors have informed the Service that there may be situations in which there are legal impediments to correcting a name or TIN on an account. For example, state law may prohibit a payor from changing the name on a negotiable instrument without proper authorization from the holder of the instrument. The Service requests comments on how to accommodate these situations.

The reasonable care requirement. Certain payors have requested a less costly and time-consuming procedure for determining accounts of the payee that are potentially subject to backup withholding. Accordingly, the "B" notice temporary regulations are amended to provide that, where the "B" notice contains an account number or designation, backup withholding applies only to the account or accounts corresponding to that number or designation and containing the incorrect name/TIN combination. In a case where the "B" notice does not contain the account number or designation (because no account number or designation was provided on the related information return), backup withholding applies to all reportable payments made to accounts of the payee with the incorrect name/TIN combination that the payor can locate with reasonable care.

The 5-day requirement. Several payors have informed the Service that, in a substantial number of cases, they will be unable to comply with the 5-day requirement even where the Service mails the "B" notices by 2 to 3 weeks in

advance of their effective date because of the many tasks required of payors after receipt of "B" notices. However, lengthening the period allowed for a payor to notify a payee decreases day-for-day the period allowed for the payee to provide a certified TIN to the payor and prevent backup withholding from starting. The Service believes that 15 business days should serve the interests of both payors and payees. Therefore, the "B" notice temporary regulations are amended to provide that the period in which payors must notify payees of their incorrect TINs for purposes of backup withholding under section 3406(a)(1)(B) of the Code is extended from 5 to 15 business days.

The 7-day requirement. The Service is concerned that the 7-day requirement may have the effect of eliminating any chance that a payee could provide a new name/TIN combination (or correct an error) prior to the payor's commencing backup withholding. Accordingly, the 7-day requirement is eliminated. Payors are required to commence backup withholding only after the close of 30 business days following receipt of the "B" notice, although payors may still elect to impose backup withholding at any time after receipt of the notice. The Service will consider other enforcement measures, rather than requiring backup withholding on withdrawals, in collecting the appropriate tax from payees who withdraw funds during the 30-day grace period.

The 2/3 rule. Several payors have indicated that it is not feasible for them to apply the 2/3 rule on a payee basis. This requires them over time to correlate a payee with all accounts of the payee whether or not they have the same name/TIN combination as the one indicated on a "B" notice. This is especially difficult where the payor does not have a direct relationship with the payee. Accordingly, the 2/3 rule is amended to apply on an account, rather than a payee, basis. The 2/3 rule thus applies only where a payor receives a "B" notice twice within 3 calendar years with respect to the same account.

Concluding Comments

The amendments made by this Treasury decision are effective on and after January 1, 1989. Thus, a payor is only required to notify payees and backup withhold on payee accounts as required by these regulations if the payor receives a notice of an incorrect taxpayer identification number from the Internal Revenue Service on or after January 1, 1990. In this connection payors may notify payees by sending an acceptable substitute of the notice set forth in the appendix to § 35a.3406–1. For this purpose, the notice set forth in the Federal Register on November 23, 1987 (52 FR 44871), or such notice as amended on April 11, 1989 (54 FR 14345) or an acceptable substitute of either will satisfy the requirement that the payor send a "B" notice to a payee.

Special Analyses

These rules are not major rules as defined in Executive Order 12291 because the economic or other consequences are a direct result of a statute. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these regulations is Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the Internal Revenue Service and the Treasury Department participated in their development.

List of Subject in 26 CFR Part 35a

Employment taxes, Income taxes, Backup withholding, Interest and Dividend Tax Compliance Act of 1983.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 35a is amended as follows:

PART 35a—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE INTEREST AND DIVIDEND TAX COMPLIANCE ACT OF 1983

Paragraph 1. The authority citation for part 35a is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 35a.3406–1 also issued under 26 U.S.C. 3406 (a), (b), (e), (g), (h), and (i); 26 U.S.C. 6109; 26 U.S.C. 6676; and 26 U.S.C. 6721.

§ 35a.3406–1 [Amended]

Par. 2. Section 35a.3406–1 is amended as follows:

1. Paragraph (a)(1) is amended by removing the last two sentences and adding the following new sentences in their place: "See section 6721 for the penalty that may be imposed on a payor for providing an incorrect taxpayer identification number on an information return filed with the Internal Revenue Service unless there is reasonable cause for the error.".

§ 35a.3406–1 [Amended]

2. Paragraph (b)(2) is amended by removing the last sentence of the concluding text and adding the following sentence in its place: "See paragraph (b)(5)(ii) of this section for accounts of the payee with respect to which the broker is required to notify a payor under this paragraph (b) (2).".

§ 35a.3406–1 [Amended]

3. Paragraph (b)(5)(i)(B), second sentence, is amended by removing the words "name, taxpayer identification number, and the account number" and adding in their place the following words: "name and taxpayer identification number".

§ 35a.3406–1 [Amended]

4. The concluding text following paragraph (c)(1)(ii) is amended by removing the words "Federal Register on November 23, 1987 (52 FR 44871)" in the second and third sentences and adding in their place the words "appendix to this section".

§ 35a.3406–1 [Amended]

5. Paragraph (c)(2)(i) is amended by removing the word "5" and by adding in its place the word "15".

§ 35a.3406–1 [Amended]

6. Paragraph (c)(3) introductory text, second sentence, is amended by removing the words "Federal Register on November 23, 1987 (52 FR 44871)" and adding in their place the words "appendix to this section".

§ 35a.3406–1 [Amended]

7. Paragraph (c)(3)(vii) is amended by adding the word "and" at the end thereof.

§ 35a.3406–1 [Amended]

8. Paragraph (c)(3)(viii) is amended by removing the words "; and" at the end thereof and adding a period in their place.

§ 35a.3406–1 [Amended]

9. Paragraph (c)(3)(ix) is removed.

§ 35a.3406–1 [Amended]

10. Paragraph (d)(2)(i) is amended by removing the words "paragraph (d)(1)(i)" and adding the words "paragraph (d)(1)" in their place in the first sentence, and by removing the last sentence.

§ 35a.3406-1 [Amended]

11. Paragraph (f)(2)(ii) is amended by removing the word "an" and by adding in its place the word "the" immediately before the words "account with the payor;".

§ 35a.3406-1 [Amended]

12. Paragraph (f)(2)(iii) is amended by removing the words "to existing accounts with the payor;" and by adding in their place the words "to the account;".

§ 35a.3406-1 [Amended]

13. Paragraph (f)(4)(i) is amended by removing the words "paragraph (f)(3)(i)" and inserting in their place the words "paragraph (f)(3)", and by removing the last sentence.

§ 35a.3406-1 [Amended]

14. Paragraph (g) is amended by adding the words "with respect to the same account" immediately after the words "provided an incorrect taxpayer identification number".

§ 35a.3406-1 [Amended]

15. The first paragraph of the appendix to § 35a.3406-1 is amended by removing the words "notice published in the Federal Register on November 23, 1987 (52 FR 44871) or to the".

§ 35a.3406-1 [Amended]

16. The second paragraph of the "Notice of Backup Withholding" in the appendix to § 35a.3406-1 is amended by removing the word "6676" and adding in its place the word "6723".

§ 35a.3406-1 [Amended]

17. The text in the "Notice of Backup Withholding" in the appendix to § 35a.3406-1 entitled "Remember" is amended by removing the last sentence in the first paragraph.

§ 35a.3406-1 [Amended]

18. Paragraph (a)(3)(x) is added; and paragraphs (b)(3), (b)(5)(i) introductory text, and (b)(5)(ii); (c)(3)(vi); (d)(1); (f)(1) introductory text, (f)(1)(i), (f)(1)(ii), (f)(1)(iii), (f)(2)(iv), and (f)(3); and (j) are revised. The added and revised provisions read as follows:

§ 35a.3406-1 Imposition of backup withholding due to notification of an incorrect taxpayer identification number.

(a) *Requirement that a payor backup withhold due to notification of an incorrect taxpayer identification number.* * * *

* * * * *

(3) *Reportable payments excluded from backup withholding.* * * *

* * * * *

(x) *Payments to certain fiduciary and nominee accounts.* Payments to a fiduciary or nominee account. For purposes of this paragraph, a fiduciary or nominee account means an account with respect to which at least one person named in the registration is identified as acting in the capacity as nominee or of administrator, conservator, custodian, receiver, tutor, curator, committee, executor, guardian, trustee, or other fiduciary capacity recognized under governing law.

* * * * *

(b) *Notice regarding an incorrect taxpayer identification number.* * * *

* * * * *

(3) *Accounts subject to backup withholding.* After receiving notice from the Internal Revenue Service or from a broker, as provided in paragraph (b) (1) and (2) of this section, the payor is required to notify the payee in accordance with paragraph (c) of this section and to institute backup withholding as prescribed in paragraph (d) of this section on all reportable payments subject to backup withholding that are made to the account or accounts of the payee containing the incorrect taxpayer identification number. See paragraph (f) of this section for the rules that apply when a payor has received two notifications of an incorrect taxpayer identification number with respect to an account of the payee from the Internal Revenue Service or a broker within 3 calendar years. See paragraph (b)(5) of this section for the determination of the account or accounts of the payee containing the incorrect taxpayer identification number.

* * * * *

(5) *Determination of the account or accounts of the payee containing the incorrect taxpayer identification number*— (i) *Payors.* If an account number or designation is provided in the notice received under paragraph (b) (1) or (2) of this section, the payor need only determine whether the account or accounts corresponding to that number or designation contain the same name and incorrect taxpayer identification number provided in the notice. If no account number or designation is provided in the notice received under paragraph (b) (1) or (2) of this section, the payor must locate, using reasonable care, all accounts of the payee containing the same name and incorrect taxpayer identification number provided in the notice. A payor who satisfies the following two-part facts and circumstances test will be considered to have exercised reasonable care.

* * * * *

(ii) *Brokers.* Brokers are required to use the information and follow the procedures described in paragraph (b)(5)(i) of this section to locate accounts of the payee with respect to which a broker is required to notify a payor pursuant to paragraph (b)(2) of this section.

(c) *Notice from payors of backup withholding due to an incorrect taxpayer identification number.* * * *

* * * * *

(3) *Requirements of substitute notice to the payee.* * * *

* * * * *

(vi) Advises the payee that as a result of providing an incorrect taxpayer identification number, the payor is required under section 3406 (a)(1)(B) of the Internal Revenue Code to begin backup withholding 20 percent of the reportable payments made to the account of the payee no later than after the close of the day 30 business days after the date that the payor is notified of the incorrect taxpayer identification number by the Internal Revenue Service or a broker if the payor has not received the required Form W-9 (or an acceptable substitute form) as described in paragraph (e) of this section;

* * * * *

(d) *Period during which backup withholding is required due to notification of an incorrect taxpayer identification number*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, upon receiving a notice described in paragraph (b) (1) or (2) of this section, the payor must impose backup withholding on all reportable payments made to the account of the payee that are subject to backup withholding after the close of the 30th business day after the date the payor receives the notice described in paragraph (b) (1) or (2) of this section and on or before the close of the 30th calendar day after the day the payor receives from the payee the certified Form W-9 (or acceptable substitute form) as described in paragraph (e) of this section.

* * * * *

(f) *Notification of two incorrect taxpayer identification numbers within a 3-year period*—(1) *In general.* If a payor receives a notification as described in paragraph (b) (1) or (2) of this section twice within 3 calendar years, and in each case the payor pursuant to paragraph (b)(5) of this section identifies the same account as containing the incorrect taxpayer identification number, then the payor shall—

(i) Disregard any future certifications (described in paragraph (e) of this section) furnished by the payee with respect to the account;

(ii) Send the notice described in paragraph (f)(2) of this section to the payee (and not the notice required under paragraph (c) of this section) within 15 business days after the date that the payor receives the second notice described in this paragraph (f), and

(iii) Impose backup withholding on the account containing the incorrect taxpayer identification number for the period described in paragraph (f)(3) of this section.

* * * * *

(2) *Notice to payee who has provided two incorrect taxpayer identification numbers within 3 years.* * * *

* * * * *

(iv) As a result of providing an incorrect taxpayer identification number, the payor is required under section 3406 (a)(1)(B) to begin backup withholding 20 percent of reportable payments made to the account of the payee no later than after the close of the day 30 business days after the date that the payor is notified of the incorrect taxpayer identification number if the Internal Revenue Service has not notified the payor that the payee provided a correct taxpayer identification number to the Internal Revenue Service as described in paragraph (h) of this section; and

* * * * *

(3) *Period during which backup withholding is required due to a second notification of an incorrect number within 3 years.* Upon receiving the second notice of an incorrect taxpayer identification number from the Internal Revenue Service or a broker as described in paragraph (f)(1) of this section, the payor must backup withhold on all reportable payments subject to backup withholding made to the account of the payee after the close of the 30th business day after the day on which the payor receives a notice described in paragraph (b)(1) or (2) of this section and on or before the close of the 30th calendar day after the payor receives the notification from the Internal Revenue Service as described in paragraph (h) of this section.

* * * * *

(j) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). D opened an account with Bank O prior to 1984 and furnished a taxpayer identification number to O at the time he opened the account. O is open for business Monday through Friday. O pays interest on the account at the end of each calendar month and the account is a pre-1984 account as described in A–34 of § 35a.9999–1 and A–20 of § 35a.9999–3. On October 1, 1990, the Internal Revenue Service notifies Bank O that the taxpayer identification number provided by D is incorrect. O timely sends the notice information to D as required in paragraph (c)(1) of this section. O does not receive a certified Form W–9 or an acceptable substitute form (hereinafter "certification") from D as described in paragraph (e) of this section. O is required to backup withhold 20 percent of all reportable payments made after November 14, 1990 (which is 30 business days after the date the Internal Revenue Service notified O). Therefore, O is not required to backup withhold on the reportable payment made on October 31, 1990, but is required to backup withhold on the reportable payment made on November 30, 1990. O is required to continue to backup withhold under section 3406 (a)(1)(B) until O receives the certification described in paragraph (e) of this section from D.

Example (2). Assume the same facts as in *Example (1)* except that D furnishes a new taxpayer identification number to O on November 1, 1990, but does not certify, under penalties of perjury, that it is his correct taxpayer identificaton number as required in paragraph (e) of this section. Even though the account is a pre-1984 account, O is required to withhold 20 percent of all reportable payments made after November 14, 1990 (which is 30 business days after the date the Internal Revenue Service notified O), and before the date O receives the certification described in paragraph (e) of this section from D.

Example (3). Assume the same facts as in *Example (2)* except that D provides O with the certification described in paragraph (e) of this section on November 20, 1990. D elects pursuant to paragraph (d)(2)(ii) of this section to treat the certification as received on November 20, 1990. Even though D did not provide the certification to O within 30 business days after the Internal Revenue Service notified O that D provided an incorrect taxpayer identification number, O is not required to backup withhold under section 3406 (a)(1)(B) because O did not make any reportable payment to D after 30 business days after notification of an incorrect taxpayer identification number and before O received D's certification in the manner required in paragraph (e) of this section. Pursuant to section 3406 (e)(5)(B), O may elect to treat the certification as having been received at any time within 30 calendar days after it is provided by D.

Example (4). Individual F has two post-1983 accounts with Bank R that pay reportable interest: a savings account and a money market account. The money market account was opened in 1986, and the savings account was opened on February 1, 1991. R treats each of these accounts as a separate account with the Bank. F provided R with the certifications as described under A–32 of § 35a.9999–1 at the time each account was opened. On October 1, 1990, the Internal Revenue Service notified R pursuant to paragraph (b)(1) of this section that F furnished an incorrect taxpayer identification number with respect to the money market account. R timely sends F the notice required under paragraph (b)(1) of this section and receives the certification required under paragraph (e) of this section from F on November 1, 1990. On October 1, 1991, the Internal Revenue Service notifies R that F furnished an incorrect taxpayer identification number with respect to the money market account. Further, R determines from its business records that two notifications of an incorrect taxpayer identification number have been received with respect to the money market account within 3 calendar years. R must send F the notice required under paragraph (f)(2) of this section and must commence backup withholding on reportable interest paid on the money market account pursuant to paragraph (f)(3) of this section after November 14, 1991 (which is 30 business days after R received the second notice). R must continue to backup withhold on the money market account until R receives from the payee a copy of the notice that was provided to the payee by the Internal Revenue Service as described in paragraph (h) of this section. R is not required to backup withhold on the savings account until it receives notice under paragraph (b)(1) or (2) of this section with respect to the savings account.

* * * * *

There is a need for immediate guidance with respect to the amendments made in this Treasury decision. For this reason, it is found impracticable and contrary to the public interest to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Approved August 27, 1990.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 90–22489 Filed 9–20–90; 10:53 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AD30

Loan Guaranty: Processing Assumptions of VA Guaranteed Home Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations; correction.

SUMMARY: On pages 37468–37478 of the Federal Register of September 12, 1990 (55 FR 37468), the Department of Veterans Affairs (VA) published a final

rule to amend its regulations for processing assumptions of VA guaranteed home loans to implement the requirements of the Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987. On page 37476, the mandatory language pertaining to § 36.4308 should have included instructions in reference to paragraph (a), to remove the words "paragraph (e)" and insert in their place, the words "paragraphs (b) or (c)". Also on page 37476, the OMB control number "2900–0516" was inadvertently omitted in the parenthetical statement at the end of § 36.4308 concerning OMB approval of recordkeeping requirements contained in that section. To avoid any confusion, VA is printing the amendatory language pertaining to § 36.4308, paragraph (a), and adding the OMB control number at the end of that section.

EFFECTIVE DATE: October 12, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard Levy, (202) 233–6376.

Approved: September 21, 1990.

Donald R. Howell,

Records Management Service.

PART 36—[AMENDED]

§ 36.4308 [Amended]

1. In § 36.4308, paragraph (a), remove the words "paragraph (e)" and insert in their place, the words "paragraphs (b) or (c)".

2. Section 36.4308 is further amended by adding a parenthetical statement at the end of the section to read as follows:

§ 36.4308 Transfer of title by borrower or maturity by demand or acceleration.

* * * * *

(Recordkeeping requirements contained in § 36.4308 were approved by the Office of Management and Budget under OMB control number 2900–0516)

[FR Doc. 90–22915 Filed 9–26–90; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–021; FRL–3831–5]

Approval and Promulgation of Implementation Plans; Alabama: New Source Review Regulatory Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving revisions to the Alabama state implementation plan (SIP) which were submitted to EPA on April 17, 1987. Alabama has revised its regulation for new source review in nonattainment areas (NSR) to include a definition of fugitive emissions and specify two additional categories of nonexempt sources to be consistent with EPA's regulations. These revisions are identical to the requirements of 40 CFR 51.165(a)(1)(ix) and 51.165(a)(1)(iv)(*c*)(*26*) and (*27*) (formerly 40 CFR 51.18(j)(1)(ix) and 51.18(j)(1)(iv)(*c*)(*26*) and (*27*)).

DATES: This action will be effective November 27, 1990, unless notice is received within 30 days that adverse or critical comments will be submitted. Such notice may be submitted to Beverly T. Hudson at the EPA Regional Office address listed below. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Division, Alabama Department of Environmental Management, 1751 Federal Drive, Montgomery, Alabama 36109.

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

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson of the EPA Region IV Air Programs Branch, at the above address and telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: On April 17, 1987, Alabama submitted regulation changes and revisions to the Alabama state implementation plan (SIP). This submittal contained certification that the revisions were preceded by adequate notice and a public hearing. EPA is approving these revisions as submitted on the above date.

On December 1, 1988, 53 FR 48552, EPA proposed approval of a relaxation of Alabama's NSR rule, which is largely in conformity with 40 CFR 51.165(a). Final approval of that relaxation is contingent upon Alabama's making two changes to that relaxed rule. The revisions being approved today are the two changes EPA required. A discussion of the revisions and the basis for EPA's action now follows.

Two revisions to chapter 16 of Alabama's Air Pollution Control Commission Rules and Regulations were adopted by the Alabama Department of Environmental Management (ADEM) on April 15, 1987. The revisions included a definition of fugitive emissions and expanded the applicability of subparagraph 16.3.2(1)(2). Up until this time, Alabama's SIP did not not contain a definition of fugitive emissions as required by 40 CFR 51.165(a)(1)(ix). This definition will bring the State's regulation into conformance with federal requirements. Subparagraph 16.3.2(1)(2) has been added to specify two categories of nonattainment area sources which are not exempt from review under this new source review regulation. Exempt sources are those that become major solely because of their fugitive emissions. The list of source categories not exempted is now identical to those in EPA's nonattainment area exemption rule found at 40 CFR 51.165(a)(1)(iv)(*c*)(*26*) and (*27*).

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One Notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Final Action

After reviewing Alabama's new source review SIP revisions, EPA has found that they substantially meet the requirements contained in 40 CFR 51.165(a)(1)(ix) and 51.165(a)(1)(iv)(*c*)(*26*) and (*27*). EPA is therefore approving them.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 27, 1990. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

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.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations.

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

Dated: September 11, 1990.

William K. Reilly,

Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

Subpart B—Alabama

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.50 is amended by adding paragraph (c)(47) to read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

(47) Revisions to Alabama's New Source Review regulations were submitted to EPA on April 17, 1987.

(i) Incorporation by reference.

(A) Letter of April 17, 1987, from the Alabama Department of Environmental Management.

(B) Revisions to Alabama regulation 16.3.2, adopted by the Alabama Department of Environmental Management (ADEM) on April 15, 1987.

(ii) Other material—none.

[FR Doc. 90–22904 Filed 9–26–90; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL–3835–5]

Standards of Performance for New Stationary Sources; Wyoming; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

SUMMARY: EPA is today providing notice that it granted delegation of authority to Wyoming on September 6, 1990, to implement and enforce the New Source Performance Standards (NSPS) for 40 CFR part 60, subparts Db, Kb, AAA, BBB and TTT. This is a result of a request for delegation from the State of Wyoming on October 27, 1989.

EFFECTIVE DATE: September 6, 1990.

ADDRESSES: Copies of the submittal are available for public inspection between 8 a.m. and 4 p.m. Monday through Friday at the following office: Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, CO 80204–2405.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, CO 80202–2405, (303) 293–1814, (FTS) 330–1814.

SUPPLEMENTARY INFORMATION: Section 111(c) of the Clean Air Act permits EPA to delegate to the states the authority to implement and enforce standards set forth in 40 CFR part 60, NSPS.

On October 27, 1989, the State of Wyoming submitted revisions to its NSPS regulations. Such revisions included the addition of five NSPS for the following source categories: industrial-commercial-institutional steam generating units, volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984, new residential wood heaters, rubber tire manufacturing industry, and industrial surface coating: surface coating of plastic parts for business machines (40 CFR part 60, subparts Db, Kb, AAA, BBB and TTT, respectively). Pursuant to such submittal, on September 6, 1990 delegation was given with the following letter:

Hon. Mike Sullivan,

Governor of Wyoming, Office of the Governor, Cheyenne, Wyoming 82002

Dear Governor Sullivan: This letter is in response to your submittal dated October 27, 1989. That submittal contained additions and revisions to Section 22, New Source Performance Standards (NSPS), of the Wyoming Air Quality Standards and Regulations (WAQSR).

Subsequent to states adopting NSPS regulations, the Environmental Protection Agency (EPA) delegates the authority for the implementation and enforcement of those NSPS so long as those regulations are equivalent to, or more stringent than, the federal regulations. EPA, therefore, is acting on the delegation of authority to Wyoming for implementation and enforcement of five NSPS.

EPA has reviewed the pertinent statutes and regulations of the State of Wyoming and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of Wyoming. Therefore, pursuant to Section 111(c) of the Clean Air Act (CAA), as amended, and 40 CFR parts 60, EPA hereby delegates its authority for the implementation and enforcement of the NSPS to the State of Wyoming as follows:

(A) Responsibility for all sources located, or to be located in the State of Wyoming subject to the standards of performance for new stationary sources promulgated in 40 (FR part 60. The categories of new stationary sources covered by this delegation are as follows: industrial-commercial-institutional steam generating units (Db); volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984 (Kb); new residential wood heaters (AAA); rubber tire manufacturing industry (BBB); and industrial surface coating: surface coating of plastic parts for business machines (TTT).

(B) Not all authorities of NSPS can be delegated to states under section 111(c) of the CAA. The EPA Administrator retains the authority to implement those sections of NSPS that require: (1) approving equivalency determinations and alternative test methods; (2) decision making to ensure national consistency; and (3) EPA rulemaking to implement. With respect to this delegation, the following are the authorities in 40 CFR part 60 that EPA cannot delegate to the State:

i. 40 CFR 60.44b(f), 60.44b(g), and 60.44b(a)(4) in industrial-commercial-institutional steam generating units;

ii. 40 CFR 60.111b(f)(4), 60.114b, 60.116b(e)(3)(iii), 60.116b(e)(3)(iv), and 60.116b(f)(2)(iii) in volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984;

iii. 40 CFR 60.530(c), 60.531, 60.533, 60.534, 60.535, 60.536(i)(2), 60.537, 60.538(e), and 60.539 in new residential wood heaters;

iv. 40 CFR 60.543(c)(2)(ii)(B) in rubber tire manufacturing industry; and

v. 40 CFR 60.723(b)(1), 60.723(b)(2)(i)(c), 60.723(b)(2)(iv), 60.724(e), and 60.725(b) in industrial surface coating: surface coating of plastic parts for business machines.

(C) As 40 CFR part 60 is updated by EPA, Wyoming must revise its rules and regulations accordingly and in a timely manner or such delegation will be revoked.

This delegation is based upon and is a continuation of the same conditions as those stated in EPA's original delegation letter of August 2, 1977, except that condition 6, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority as stated in condition 3. If at any time there is a conflict between a State and Federal Regulation (40 CFR Part 60), the Federal Regulation must be applied if it is more stringent than that of the State, as stated in condition 9 of our letter dated August 2, 1977.

A copy of the August 2, 1977 letter was published in the notices section of the **Federal Register** of September 15, 1977 (42 FR 46386), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new or modified sources shall be submitted to the State of Wyoming (42 FR 46304). Copies of the **Federal Register** are enclosed for your convenience.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we

receive written notice of objections from you within ten days of the date on which you receive this letter, the State of Wyoming will be deemed to have accepted all the terms of this delegation. An information notice will be published in the Federal Register in the near future informing the public of this delegation. This letter will appear in such notice in its entirety.

Sincerely,
James J. Scherer,
Regional Administrator.

List of Subjects in 40 CFR Part 60

Air pollution control, Fossil fuel-fired steam generators, Incinerators, Industrial-commercial-institutional steam generating units, industrial surface coating, new residential wood heaters, petroleum, petroleum liquid storage vessels, rubber tire manufacturing industry, surface coating of plastic parts for business machines.

Authority: 42 U.S.C. 7411.

Dated: September 5, 1990.

Kerrigan Clough,
Acting Regional Administrator.

For the reasons set out in the preamble, part 60 of chapter I, title 40 of the *Code of Federal Regulations* is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

Subpart A—General Provisions

2. Section 60.4(c) is amended by revising the table to read as follows:

§ 60.4 Address.

* * * * *

(c)* * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for Region VIII]

Subpart	State					
	CO	MT	ND	SD	UT	WY
A General provisions	(*)	(*)	(*)	(*)	(*)	(*)
D Fossil fuel fired steam generators	(*)	(*)	(*)	(*)	(*)	(*)
Da Electric utility steam generators	(*)	(*)	(*)	(*)	(*)	(*)
Db Industrial-commercial institutional steam generators	(*)	(*)	(*)		(*)	(*)
E Incinerator	(*)	(*)	(*)	(*)	(*)	(*)
F Portland cement plant	(*)	(*)	(*)	(*)	(*)	(*)
G Nitric acid plants	(*)	(*)	(*)		(*)	(*)
H Sulfuric acid plant	(*)	(*)	(*)		(*)	(*)
I Asphalt concrete plants	(*)	(*)	(*)	(*)	(*)	(*)
J Petroleum refineries	(*)	(*)	(*)		(*)	(*)
K Petroleum storage vessels (6/11/73–5/19/78)	(*)	(*)	(*)	(*)	(*)	(*)
Ka Petroleum storage vessels (5/18/78–7/23/84	(*)	(*)	(*)		(*)	(*)
Kb Petroleum storage vessels (after 7/23/84)		(*)	(*)		(*)	(*)
L Secondary lead smelters	(*)	(*)			(*)	(*)
M Secondary brass & bronze production plants	(*)	(*)			(*)	(*)
N Primary emissions from basic oxygen process furnaces (after 6/11/73)	(*)	(*)			(*)	(*)
Na Secondary emissions from basic oxygen process furnaces (after 1/20/83)	(*)	(*)			(*)	(*)
O Sewage treatment plants	(*)	(*)	(*)	(*)	(*)	(*)
P Primary copper smelters	(*)	(*)			(*)	(*)
Q Primary zinc smelters	(*)	(*)			(*)	(*)
R Primary lead smelters	(*)	(*)			(*)	(*)
S Primary aluminum reduction plants	(*)	(*)			(*)	(*)
T Phosphate fertilizer industry: Wet process phosphoric plants	(*)	(*)	(*)		(*)	(*)
U Phosphate fertilizer industry: Superphosphoric acid plants	(*)	(*)	(*)		(*)	(*)
V Phosphate fertilizer industry: Diammonium phosphate plants	(*)	(*)	(*)		(*)	(*)
W Phosphate fertilizer industry: Triple superphosphate plants	(*)	(*)	(*)		(*)	(*)
X Phosphate fertilizer industry: Granular triple superphosphate storage facilities	(*)	(*)	(*)		(*)	(*)
Y Coal preparation plants	(*)	(*)	(*)	(*)	(*)	(*)
Z Ferroalloy production facilities	(*)	(*)			(*)	(*)
AA Steel plants: Electric arc furnaces (10/21/74–8/17/83)	(*)	(*)			(*)	(*)
AAa Steel plants: Electric arc furnaces and argon-oxygen decarburization vessels (after 8/7/83)		(*)			(*)	(*)
BB Kraft pulp mills	(*)	(*)			(*)	(*)
CC Glass manufacturing plants	(*)	(*)			(*)	(*)
DD Grain elevator	(*)	(*)	(*)	(*)	(*)	(*)
EE Surface coating of metal furniture	(*)	(*)			(*)	(*)
GG Stationary gas turbines	(*)	(*)	(*)	(*)	(*)	(*)
HH Lime manufacturing plants	(*)	(*)	(*)	(*)	(*)	(*)
KK Lead-acid battery manufacturing plants	(*)	(*)			(*)	(*)
LL Metallic mineral Processing plants	(*)	(*)		(*)	(*)	(*)
MM Automobile & light duty truck surface coating operations	(*)	(*)			(*)	(*)
NN Phosphate rock plants	(*)	(*)			(*)	(*)
PP Ammonium sulfate manufacturing	(*)	(*)			(*)	(*)
QQ Graphic arts industry: Publication rotogravure printing	(*)	(*)			(*)	(*)
RR Pressure sensitive tape & label surface coating	(*)	(*)			(*)	(*)
SS Industrial surface coating: Large appliances	(*)	(*)			(*)	(*)
TT Metal coil surface coating	(*)	(*)			(*)	(*)
UU Asphalt processing & asphalt roofing manufacture	(*)	(*)			(*)	(*)
VV Synthetic organic chemicals manufacturing: Equipment leaks of VOC	(*)	(*)	(*)		(*)	(*)
WW Beverage can surface coating industry	(*)	(*)			(*)	(*)
XX Bulk gasoline terminals	(*)	(*)	(*)		(*)	(*)
AAA Residential wood heaters					(*)	(*)

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS—Continued

[(NSPS) for Region VIII]

Subpart	State					
	CO	MT	ND	SD	UT	WY
BBB Rubber tires					(*)	(*)
FFF Flexible vinyl and urethane coating and printing	(*)	(*)			(*)	(*)
GGG Equipment leaks of VOC in petroleum refineries	(*)	(*)	(*)		(*)	(*)
HHH Synthetic fiber production	(*)	(*)			(*)	(*)
III VOC emissions from the synthetic organic chemical manufacturing industry air oxidation unit processes					(*)	
JJJ Petroleum dry cleaners	(*)	(*)	(*)		(*)	(*)
KKK Equipment leaks of VOC from onshore natural gas processing plants	(*)	(*)	(*)		(*)	(*)
LLL Onshore natural gas processing: SO2 emissions	(*)	(*)	(*)		(*)	(*)
NNN VOC emissions from the synthetic organic chemical manufacturing industry distillation operations					(*)	
OOO Nonmetallic mineral processing plants	(*)	(*)	(*)	(*)	(*)	(*)
PPP Wool fiberglass insulation manufacturing plants	(*)	(*)			(*)	(*)
QQQ VOC emissions from petroleum refinery wastewater systems					(*)	
SSS Magnetic tape industry					(*)	
TTT Plastic parts for business machines coatings					(*)	(*)
VVV Polymeric coating of supporting substrates					(*)	

(*) Indicates delegation.

[FR Doc. 90-22916 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 9E3704/R1084; FRL-3772-6]

Pesticide Tolerances for 2,4-D

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the herbicide 2,4-D in or on the raw agricultural commodity raspberries at 0.1 part per million (ppm). This regulation was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: This regulation becomes effective September 27, 1990.

ADDRESSES: Written objections, identified by the document control number, [PP 9E3704/R1084], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 14, 1990 (55 FR 24116), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 9E3704 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of Minnesota.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid), in or on the raw agricultural commodity raspberries at 0.1 part per million (ppm). The petitioner proposed that this use of 2,4-D be limited to Minnesota based on the geographical representation of the residue data submitted. Additional data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and a request for a hearing with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 30, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.142 is amended by adding new paragraph (j), to read as follows:

§ 180.142 2,4-D; tolerances for residues.

* * * * *

(j) A tolerance with regional registration as defined in § 180.1(n) is established for the residues of 2,4-D (2,4-dichlorophenoxyacetic acid). The tolerance includes residues from the application of 2,4-D and its N-oleyl-1,3-propylenediamine salt on the following raw agricultural commodity:

Commodity	Parts per million
Raspberries	0.1

[FR Doc. 90-22906 Filed 9-26-90; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[PP 9F3798/R1098; FRL-3799-7]

Pesticide Tolerances for Lactofen (1-(Carboethoxy)Ethyl-5-(2-Chloro-4-(Trifluoromethyl)Phenoxy)-2-Nitrobenzoate); Technical Amendment; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Correction.

SUMMARY: In FR Doc. 90-19363 in the Federal Register of August 17, 1990, the following correction is made: In the first column of page 33695, in § 180.432(b) in the table therein, in the entry for cottonseed change "0.5" parts per million to read "0.05" parts per million. This change corrects an inadvertent typographical error.

DATES: Effective September 27, 1990.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne Miller, Acting Product Manager (PM-23), Registration Division (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)-557-1830.

Dated: September 10, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-22907 Filed 9-26-90; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Parts 185 and 186

[FAP 7H5544/R1092; FRL-3801-9]

Pesticide Tolerances for N,N-Dimethylpiperidinium Chloride

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document renews temporary food additive and feed additive regulations to permit the plant growth regulator *N,N*-dimethylpiperidinium chloride in raisins at 6.0 parts per million (ppm), raisin waste at 26 ppm, and grape pomace (wet and dry) at 3.0 ppm. These regulations to establish the maximum permissible levels for residues of the pesticide in or on the commodities were requested pursuant to a petition by BASF Corp. These temporary tolerances expire June 30, 1991.

DATES: Effective on September 14, 1990.

ADDRESSES: Written objections, identified by the document control number, [FAP 7H5544/R1092], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 18, 1990 (55 FR 29267), EPA issued a notice which announced that it had received food/feed additive petition (FAP) 7H5544 from BASF Corp., Agricultural Chemicals Group, P.O. Box 13528, Research Triangle Park, NC 27709, proposing to establish tolerances for the plant growth regulator *N,N*-dimethylpiperidinium chloride in 40 CFR 185.2775 for the food commodity raisins at 6.0 ppm and in 40 CFR 186.2275 for the feed commodities raisin waste at 26.0 ppm and grape pomace (wet and dry) at 3.0 ppm. These tolerances were previously established as temporary tolerances in 21 CFR 193.48 and 561.197, respectively (redesignated as 40 CFR 185.2275 and 186.2275, respectively, in the Federal Register of June 29, 1988 (53 FR 24668) that expired on June 30, 1989. Food and feed additive regulations are established pursuant to the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 348.

There were no comments or requests for referral to an advisory committee received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated and discussed in the previous final rule. Based on the data and information considered, it is concluded that the pesticide may be safely used in the prescribed manner when such use is in accordance with the label and labeling registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (86 Stat. 751 (7 U.S.C. 136 et seq.)). These regulations are being issued in conjunction with Experimental Use Permit No. 7969-EUP-24. This Experimental Use Permit expires on June 30, 1991; therefore, these regulations will expire on this date. These regulations are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and a request for a hearing with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 185 and 186

Administrative practice and procedure, Animal feeds, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 14, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 185—[AMENDED]

1. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By adding new § 185.2275, to read as follows:

§ 185.2275 N,N-dimethylpiperidinium chloride

(a) A tolerance of 6 parts per million (ppm) is established for residues of the plant growth regulator *N,N*-dimethylpiperidinium chloride in the processed fraction raisins, resulting from application of the plant regulator to the growing crop groups. Such residues may be present therein only as a result of the application of the plant growth regulator to the growing grapes in accordance with an experimental use permit that expires June 30, 1991.

(b) Residues in or on raisins not in excess of 6 ppm resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental use program will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the emergency use permit and food additive tolerance.

(c) BASF Corporation shall immediately notify the Environmental Protection Agency (EPA) of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of EPA or the Food and Drug Administration (FDA).

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. In § 186.2275, by adding new paragraph (b), to read as follows:

§ 186.2275 N,N-dimethylpiperidinium chloride.

* * * * *

(b) A feed additive regulation is established permitting the combined residues of the plant growth regulator *N,N*-dimethylpiperidinium chloride in or on the following feeds resulting from application of the plant growth regulator to grapes in accordance with an experimental use program. The conditions set forth below shall be met.

Feeds	Parts per million	Expiration date
Grape pomace (wet and dry)	3.0	6/30/91
Raisin waste	26.0	6/30/91

(1) Residues in the feed not in excess of the established tolerance resulting from the use described in this paragraph remaining after expiration of the experimental program will not be considered to be actionable if the plant growth regulator is applied during the term of and in accordance with the provisions of the experimental use program and feed additive regulation.

(2) The company concerned shall immediately notify EPA of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of EPA or FDA.

(3) These temporary tolerances expire June 30, 1991.

[FR Doc. 90-22905 Filed 9-26-90; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Parts 261, 264, 265, 268, 271 and 302

[EPA/OSW-FR-90-020; SWH-FRL-3836-3]

RIN 2050-AA78

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Toxicity Characteristic Clarifications

AGENCY: EPA.

ACTION: Final rule; clarification.

SUMMARY: On March 29, 1990 (55 FR 11798), the Environmental Protection Agency (EPA) promulgated the Toxicity Characteristics (TC) rule to revise the existing EP toxicity characteristics, which are used to identify those wastes defined as hazardous and that are subject to regulation under subtitle C of the Resource Conservation and Recovery Act (RCRA) due to their potential to leach significant concentrations of specific toxic constituents. The preamble to these regulations included implementation guidance to assist the regulated community in understanding their regulatory obligation for managing new TC wastes. This notice is intended to clarify for the regulated community the following issues: (1) The regulatory status of surface impoundments managing newly regulated TC wastes, (2) ground-water monitoring requirements for newly regulated land disposal facilities, (3) section 3010 notification requirements, and (4) permit modification requirements.

DATES: Effective September 25, 1990.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact the RCRA/Superfund Hotline at (800) 424-9346 (toll free) or (202) 382-3000 in the Washington, DC metropolitan area. For information on specific aspects of this notice, contact Steve Cochran, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

A. Background

On March 29, 1990 (55 FR 11798), EPA promulgated a rule to revise the existing EP toxicity characteristics, which are used to identify those wastes which are hazardous and thus subject to regulation under subtitle C of RCRA. The rule broadened and refined the scope of the hazardous waste regulatory program and fulfilled specific statutory mandates under the Hazardous and Solid Waste Amendments of 1984.

Today's notice provides clarification regarding four implementation issues brought to the Agency's attention since the publication of the final rule. First, this notice provides clarification regarding the compliance options for surface impoundments managing newly regulated TC wastes. Secondly, this notice addresses the ground-water monitoring requirements that owner/operators of land disposal facilities managing newly regulated TC wastes must meet. Third, the Agency is providing additional clarification regarding § 3010 notification responsibilities for generators and owner/operators of treatment, storage, and/or disposal facilities (TSDFs) managing newly regulated TC wastes. Finally, the Agency is clarifying the permit modification requirements for hazardous waste management facilities with newly regulated wastes under the TC.

B. Surface Impoundments

The universe of newly regulated Toxicity Characteristic (TC) wastes includes (along with other wastes) both wastewaters and wastes generated from the treatment of wastewaters. Some of these watewaters and wastewater treatment wastes are generated or managed in surface impoundments. Surface impoundments receiving, generating, or actively managing newly regulated TC wastes on or after September 25, 1990 are subject to all applicable regulations for surface impoundments managing RCRA hazardous wastes. Some of the factors that determine the regulatory status of these surface impoundments for permitting purposes and the various compliance options are discussed below.

1. Impoundments ceasing operation prior to effective date.

Facilities with impoundments in which newly regulated TC wastes currently are generated, stored, and/or disposed may cease operation of the units prior to the effective date of the TC (i.e., September 25, 1990). If these units have wastes in place but are not being used for waste management after the TC effective date, these inactive units would not be subject to regulation under 40 CFR parts 264 or 265. However, it should be noted that inactive units that are located at facilities otherwise subject to subtitle C's interim status or permitting requirements are solid waste management units subject to corrective action requirements under sections 3008(h) and 3004(u) of RCRA. All facilities, of course, may be subject to CERCLA cleanup authorities.

In some cases facilities will choose to remove some or all of the wastes from the impoundments. If the removed wastes are not managed on or after the effective date of the TC rule, they will not be subject to subtitle C. However, any TC waste contained in inactive impoundments that is removed (i.e., actively managed) after the effective date would be subject to regulation. For example, if the TC waste was excavated for treatment and disposal, it would be regulated as hazardous waste at the time of excavation and would be required to be managed at a subtitle C facility. Such a removal activity in and of itself, however, does not subject the inactive impoundment to subtitle C.

2. Conversion to non-hazardous waste impoundment.

A facility with surface impoundments in which TC wastes have been generated and/or managed may choose to redesign or reconfigure the existing wastewater treatment system prior to the effective date such that only non-hazardous wastes are generated or managed in some or all units of the treatment train on or after the effective date of the rule. If all TC sludges are removed from the surface impoundments prior to the effective date of the rule, the units may continue to be used and will not be subject to subtitle C of RCRA (provided no other hazardous wastes are generated, managed, or disposed in the unit).

Under another scenario, there may be surface impoundments that (1) contain TC wastes deposited prior to the effective date, and (2) receive or generate only non-hazardous wastes by the effective date as a result of system reconfiguration or modification. The regulatory status of such units depends on how the residual TC waste is managed after the effective date of the rule. If (1) the TC wastes remain in the surface impoundment on or after the effective date of the rule, and (2) the unit does not receive or generate any other hazardous wastes on or after the effective date, and (3) the impoundment is the final disposal site for the wastes, then the unit is not subject to subtitle C. Note that EPA does not consider one time removal of waste from a unit on or after the TC effective date, in and of itself, to make the unit a storage unit and thus subject to subtitle C. The Agency does not view one time removal of waste as part of a closure as changing the status of the unit, as long as there has not been ongoing management of the waste in the impoundment. Removal of waste in the context of a closure provides human health and environmental benefits since it eliminates potential sources of ground water pollution. This approach is also consistent with current operational procedures for landfills under identical circumstances with respect to newly regulated TC wastes.

3. Active hazardous waste management impoundments.

Facilities with units in which TC wastes are managed on or after the effective date of the rule may continue to use these units to manage TC wastes if all applicable subtitle C requirements are satisfied. These facilities are required to obtain interim status and apply for a permit (or submit a change in interim status or a permit modification, if appropriate) in accordance with the appropriate compliance dates. The units will be subject to the applicable requirements of 40 CFR parts 264 and 265 as of the effective date of the TC.

As described in section 2 above, facility owners or operators may elect to manage only non-hazardous wastes in surface impoundments so that the unit will not be subject to subtitle C. However, there are a number of scenarios where these impoundments could become regulated. For example, if any TC waste remains in the surface impoundment on the TC's effective date and the impoundment is not the final disposal site for the wastes, then the impoundment is considered to be actively managing (e.g., storing) hazardous wastes and therefore is subject to the Subtitle C requirements upon the effective date of the rule. If a facility plans to remove on a periodic basis all or some of the TC waste from the unit on or after the effective date of the TC rule, the unit would be subject to subtitle C (including permitting, facility-wide corrective action, financial responsibility) on the effective date of the rule.

A second example would be where the non-hazardous wastewater influent to a unit causes a TC hazardous sludge (disposed prior to the effective date) to be scoured from the unit so that the effluent from the unit exhibits the TC on or after the effective date. In that case, the unit generating this TC wastewater and any surface impoundment receiving that hazardous effluent would be subject to the subtitle C management standards and would need to be under interim status or obtain a permit.

A third example is where a TC waste is generated within the unit from non-hazardous wastewater on or after the TC effective date. This could occur where the hazardous constituents in the wastewater become concentrated, or if a new TC sludge is formed by settling. In these examples, once the TC waste is generated and stored or disposed of in the unit, the unit is subject to subtitle C.

C. Ground-Water Monitoring Requirements

The Agency is aware of confusion regarding the timing of the subtitle C ground-water monitoring requirements as they apply to land disposal units or facilities that are newly regulated as a result of the final TC. Subpart F of 40 CFR part 265 describes the ground-water monitoring requirements for interim status land disposal facilities managing hazardous wastes. The applicability section of subpart F (see § 265.90) is not clear as to whether such units or facilities newly regulated under the toxicity characteristic must comply with the ground-water monitoring requirements on the effective date of the

TC (*i.e.*, September 25, 1990) or one year later on September 25, 1991.

In 1980, the Agency promulgated the interim status program, including the part 265, subpart F ground water monitoring requirements. The Agency allowed affected facilities an additional year from the effective date of the regulations for compliance with the groundwater monitoring requirements as codified at § 265.90(a): "within one year after the effective date of these regulations, the owner or operator * * * must implement a ground water monitoring program capable of determining the facility's impact on the quality of ground water. * * *" EPA provided this delayed compliance schedule for groundwater monitoring requirements in order to allow facilities sufficient time to properly plan and install groundwater monitoring systems (45 FR 33161, May 19, 1980). EPA believes that the rationale for allowing an additional year after the effective date of the initial regulations for full implementation of groundwater monitoring requirements is also applicable to newly regulated facilities. EPA believes that the 6 month effective date provided for RCRA regulations is insufficient to allow for proper site characterization and well placement. Thus, EPA interprets § 265.90(a) to provide a one year timeframe from the effective date of new listings or characteristics rules for the implementation of a complete groundwater monitoring program at newly regulated units or facilities. The Agency intends to codify this in a future rulemaking by modifying the appropriate sections of the regulations.

Consistent with EPA's implementation of the loss of interim status requirement for land disposal facilities in 1985 (50 FR 38946, September 25, 1985), land disposal facilities newly subject to the ground-water monitoring requirements must complete site characterization and design and installation of groundwater monitoring systems capable of determining the facility's impact on ground water quality by September 25, 1991. Therefore, owner/operators who have not already done so should immediately commence characterizing their facility's hydrogeology and designing and installing their groundwater monitoring systems to meet this deadline. As in 1985, EPA intends to rigorously enforce both the part 265 subpart F requirements and the loss of interim status requirements.

To certify compliance with these requirements, facilities must submit a ground-water monitoring system certification, certifications of financial responsibility and part B permit applications by September 25, 1991.

D. Section 3010 Notifications

In the preamble to the TC final rule (55 FR 11849), the Agency indicated that, pursuant to RCRA section 3010, the Administrator may require all persons who handle hazardous wastes to notify the Agency of their hazardous waste management activity within 90 days after the wastes are identified as hazardous. For the TC rule, the notification date was June 27, 1990. However, the Agency waived notification for those facilities that already have notified EPA of their hazardous waste activity under section 3010 of RCRA and have obtained an EPA identification number.

Based on inquiries received by various EPA offices concerning the notification requirements, and a review of the preamble language, the Agency understands that a significant number of regulated facilities may have been confused by certain language in the notification section of the TC preamble. As a result, the Agency is today clarifying the notification requirements for generators and TSDFs, and is also providing additional time for such notification.

Notification requirements for large quantity generators (those that generate more than 1,000 kg per month of total hazardous waste) and TSDFs, as specified in the TC final rule, required notification by June 27, 1990 unless they had already notified EPA of hazardous waste activity and obtained an EPA identification number. Based on inquiries received by various EPA offices, it is apparent that many persons did not understand that in order to have the notification requirement waived, a generator must have met two criteria: (1) They must have previously notified the Agency of hazardous waste management activity, and (2) they must have received an EPA identification number (see § 262.12). Some persons interpreted this section to mean that any previous notification under any Agency program (rather than under the RCRA program) was sufficient. Others took the interpretation that if they had an EPA identification number for any Agency program, that was sufficient to take advantage of the notification waiver. Both interpretations are incorrect. Due to this apparent confusion, the Agency is today allowing large quantity generators and TSDFs newly regulated by the TC additional time to notify the appropriate EPA Regional Office of their hazardous waste activity. Large quantity generators and TSDFs have until October 29, 1990 to notify the Agency of their hazardous waste management activity. This is done by completing a section 3010 notification form (EPA Form 8700–12, dated 7/90; see 55 FR 31389, August 2, 1990 for a copy of the form) and sending it to the appropriate EPA Regional Office. It is important to note that this extension applies only to the notification requirement, and does not provide an extension for any other requirement under TC rule, including the date by which an EPA ID number must be obtained.

For newly regulated TSDFs, RCRA specifies that in order for a newly regulated TSDF to be granted interim status, three conditions must be met: (1) The facility/unit must be in existence on the effective date of the rule; (2) the facility must submit a section 3010 notification (if required by the Agency) within the required time frame (for the TC the date was June 27, 1990); and (3) the facility must submit a part A by September 25, 1990. As indicated above, the Agency is today extending the time by which TSDFs must notify the Agency in order to be eligible for interim status to October 29, 1990. This is done by completing a section 3010 notification form (EPA Form 8700–12 as described above) and sending it to the appropriate EPA Regional Office. This extension of the section 3010 notification date does not affect the date part A applications are due, which remains September 25, 1990. It also does not affect the compliance date for any other requirement other than the section 3010 notification.

Notification requirements for small quantity generators (generators of between 100 and 1,000 kg of total hazardous waste per month) newly regulated as a result of the TC were already clarified in a TC correction notice published in the **Federal Register** on August 2, 1990 (see page 31387; see also editorial correction notice dated August 10, 1990, page 32733). Small quantity generators that are newly regulated by the TC are required to notify their respective EPA Regional Office by November 2, 1990 of their hazardous waste management activity. This is done by completing a section 3010 notification form (EPA Form 8700–12 as described above) and sending it to the appropriate EPA Regional Office.

E. Permit Modifications

The Toxicity Characteristic (TC) rule is expected to cause many permitted facilities to seek modifications to their permits. The TC is the first major expansion of regulated wastes under part 261 since the new permit modification rule was promulgated on September 28, 1988 (53 FR 37912). In the

preamble to the TC rule, the Agency generally described the implementation of the permit modification procedures for newly regulated wastes (see 55 FR 11849, March 29, 1990). However, the Agency has received questions asking for clarification of certain provisions of the new modification rule.

Under the new permit modification procedures, permitted facilities that manage TC wastes must submit Class 1 permit modifications to the appropriate EPA Regional Office by the TC rule effective date, September 25, 1990, if they are to continue managing the newly regulated TC wastes in units that require a permit (see § 270.42(g)). A number of people have expressed confusion about the type and extent of information permitted facilities must submit with these Class 1 permit modifications. This confusion stems from the fact that § 270.42(g) does not clearly define what information must be contained in the Class 1 submission. The rule language for Class 1 modifications in § 270.42(a) suggests that facilities must also submit the detailed part B application information specified in §§ 270.13 through 270.21, 270.62 and 270.63. However, this is not the intent of the requirements under § 270.42(g) because there would be insufficient time for facilities to develop the necessary data by the effective date. Furthermore, the more extensive information requirements under § 270.42(a) are intended for facility changes initiated by an owner/operator, not for changes under § 270.42(g) resulting from new regulatory requirements imposed by the Agency.

The new waste provision of § 270.42(g) is analogous to the procedures required for interim status facilities or newly regulated facilities, where a facility can continue to manage newly regulated wastes by submitting basic information about the affected waste streams and units and then complying with the part 265 management standards for any newly regulated units until final permit conditions are developed. Therefore, the Class 1 submission would comprise a revised part A form clearly indicating all activities that are newly regulated as a result of the TC rule, and any other description that will clarify which units at the facility are managing the new wastes. This Class 1 permit modification serves as a notification to the Agency and the public of the newly regulated activities.

A subsequent Class 2 or 3 permit modification (if necessary) must be submitted 180 days after the TC effective date (i.e., March 24, 1991), and it is at this time that the detailed part B information must be submitted. It is expected that a Class 2 for 3 permit change will be necessary for virtually every facility that has wastestreams which are newly regulated as hazardous under the TC. In situations where a wastestream was already regulated as hazardous under the permit but now has additional waste codes associated with it due to the TC rule, only a Class 1 modification may be required.

Dated: September 24, 1990.

Henry L. Longest II,

Acting, Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 90-22981 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 2

Information Collection Requirements Approved by the Office of Management and Budget

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This amendment updates and displays the Office of Management and Budget (OMB) control numbers assigned by OMB for collections of information contained in, or authorized by, FEMA regulations. The update is necessary to make corrections to parts and sections and control numbers listed incorrectly, add new requirements, and delete requirements no longer needed or controlled.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Linda S. Borror, (202) 646-2625.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) seeks, in part, to minimize the Federal paperwork burden. The Act requires that agencies obtain OMB review and clearance of certain reporting and recordkeeping requirements/collections of information and give public notice of such clearance numbers. This rule amends 44 CFR part 2, subpart C to update and display the control numbers assigned by OMB to FEMA's collections of information which are contained in, or authorized by, FEMA regulations.

Because this is a nonsubstantive amendment dealing with procedural matters, it is not subject to the provisions of the Administrative Procedure Act (5 U.S.C. 551-553 *et seq.*) requiring advance notice and comment. FEMA has determined that this regulation will not impose unnecessary burdens on the economy or on individuals, and therefore, is not significant for the purposes of Executive Order 12291; that a regulatory analysis is not required; that environmental impact documents under the National Environmental Policy Act of 1969 are not required since the action is administrative and categorically exempt from 44 CFR part 10; and that the updated cumulative list of assigned OMB control numbers is not subject to further review and clearance by OMB under the Paperwork Reduction Act of 1980.

List of Subjects in 44 CFR Part 2

Authority delegations (government agencies), Organization and functions (government agencies), Reporting and recordkeeping requirements.

Accordingly, title 44, chapter I, subchapter A of the Code of Federal Regulations, part 2, subpart C is amended as follows:

PART 2—[AMENDED]

Subpart C—[Amended]

1. The authority citation for part 2, subpart C continues to read as follows:

Authority: 49 FR 36503, Sept. 18, 1984; as amended at 50 FR 40006, Oct. 1, 1985; 51 FR 34604, Sept. 30, 1986

§ 2.81 OMB control numbers assigned to information collections.

2. Section 2.81 is amended by revising the cumulative list of parts and sections in 44 CFR which identifies or describes FEMA's information collection requirements that have been assigned OMB control numbers as follows:

* * * * *

	Current OMB Control No.
44 CFR part or section where identified or described:	
7 Subpart E	3067-0177
11.36	3067-0122
11.54	3067-0122
11 Subpart D	3067-0167
59.22(a)	3067-0020
59.22(b)(2)	3067-0018
60.3, 60.4, 60.5	3067-0022
61, 61 App. A(1), 61 App. A(2)	3067-0022
62 Subpart C, 62 App. A, 62 App B	3067-0169
63 Subpart B	3067-0196
64.3(c)	3067-0020
65	3067-0147
66, 67	3067-0148
70	3067-0147
71	3067-0120
75 Subpart B	3067-0127
80, 81, 83	3067-0031
151 Subpart B	3067-0141

	Current OMB Control No.
205.33	3067-0113
205.34	3067-0113
205.52(e)	3067-0009
205.54(e)	3067-0146
205.54(f), 205.54(j)	3067-0163
205.59	3067-0166
205.94	3067-0034
205.96	3067-0026
205 Subpart G	3067-0066
205.116	3067-0151
205.200(b)	3067-0048
205.207	3067-0048
205.208	3067-0048
206.35	3067-0113
206.36	3067-0113
206.101(e)	3067-0009
206.131(e)	3067-0146
206.131(f), 206.131(j)	3067-0163
206.171	3067-0166
206.202(c)	3067-0033
206.204	3067-0151
206.364	3067-0034
206.366	3067-0026
206 Subpart L	3067-0066
206.436	3067-0207
206.437	3067-0208
206.405	3067-0212
220.6	3067-0168
220.19	3067-0156
221.8	3067-0156
222.5, 222.6	3067-0184
302.3(a), 302.3(d)	3067-0138
302.3(b)	3067-0123
302.3(c)(1)	3067-0096
302.3(c)(3)	3067-0090
308.7	3067-0074
352.4	3067-0201
352.24	3067-0201
360.4(c)	3067-0100
48 CFR part of section where identified or described:	
4452.226-01(a)	3067-0213

Dated: September 20, 1990.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 90-22877 Filed 9-26-90; 8:45 am]

BILLING CODE 6718-01-M

44 CFR Part 72

RIN 3067-AB61

National Flood Insurance Program

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule revises the National Flood Insurance Program (NFIP) regulations dealing with reimbursement procedures for the review of proposed projects to determine if they would qualify for NFIP map revisions upon their completion. The rule increases the rates for review services, increases the threshold levels for notifying requestors of total costs and adds an additional fee category.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Charles A. Lindsey, Chief, Technical Operations Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472; telephone (202) 646-2760.

SUPPLEMENTARY INFORMATION: On January 1, 1986, the Federal Insurance Administration implemented 44 CFR, Part 72—Procedures and Fees for Obtaining Conditional Approval of Map Changes. Its purpose was to provide cost recovery for engineering review and administrative processing associated with the issuance of conditional Letters of Map Amendment (LOMAs) and conditional Letters of Map Revision (LOMRs) for proposed floodplain modification projects. The fee structure for the issuance of these conditional LOMAs and LOMRs was based upon the then prevailing private sector labor rates of $25.00 per hour.

A cost analysis conducted during 1988 resulted in revision of §§ 72.3 and 72.4 to reflect a revised cost of $30.00 per hour. This change was effective on March 23, 1989.

Based on a cost analysis conducted during March 1990, §§ 72.3 and 72.4 are again revised to reflect the currently prevailing private sector labor rate of $35.00 per hour. This rate will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate and fee schedule will be published as a notice in the **Federal Register** for each fiscal year if the rate increases or decreases. An additional fee category, Review of new hydrology, is added under § 72.3, along with a corresponding fee. This category will be used when FEMA is requested to review new hydrologic and hydraulic models which are not based on proposed changes in the floodplain. The number of hours allotted for the review of new hydrology is seven, and the corresponding fee, at $35.00 per hour, is $245.00. Additionally, the threshold levels at which requestors are notified of total costs are increased.

On July 19, 1990, FEMA published a notice of proposed rulemaking designed to notify interested parties of FEMA's intent to implement these rule changes. The final rule published today is essentially the same as the proposed rule.

In the summary of the proposed rule, FEMA invited the public to submit comments during the 32-day period which closed on August 20, 1990. No comments were received during the comment period.

FEMA has determined, based upon an Environmental Assessment, that this rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This rule will not have a significant economic impact on a substantial number of small entities and, hence, has not undergone regulatory flexibility analysis.

This rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this rule does not contain a collection of information as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 72

Flood insurance, Flood plains

Accordingly, 44 CFR chapter I, subchapter B, part 72 is amended as follows:

PART 72—PROCEDURE AND FEES FOR OBTAINING CONDITIONAL APPROVAL OF MAP CHANGES

1. The authority citation for part 72 continues to read as follows:

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

§ 72.3 [Amended]

2. Section 72.3 is amended by revising paragraphs (a)(1), (a)(2), (b)(1) through (b)(5) and by adding (b)(6) to read as follows:

§ 72.3 Initial fee schedule.

(a) * * *

(1) Single-lot	$175
(2) Multi-lot/Subdivision	$245

(b) * * *

(1) Review of new hydrology	$245
(2) New bridge or culvert (no channelization)	$490
(3) Channel modifications only	$560
(4) Channel modification and new bridge or culvert	$735
(5) Levees, berms or other structural measures	$945
(6) Structural measures on alluvial fans	$2,800

§ 72.4 [Amended]

3. Section 72.4 is amended by revising the introductory text to paragraph (c), (c)(2), (c)(3), and by adding paragraphs (c)(4) and (c)(5) to read as follows:

* * * * *

(c) Following completion of FEMA review for any conditional LOMA or conditional LOMR, the requestor will be billed at the prevailing private section labor rate for any actual costs exceeding the initial fee incurred during the review. The rate (currently $35.00 per hour) will be revised on a fiscal year basis using the most current fiscal data available and the revised hourly rate will be published as a notice in the Federal Register for each fiscal year if the rate increases or decreases.

* * * * *

(2) Requestors of conditional LOMRs for the review of new hydrology, bridges or culverts, channel modifications, or combination bridge/culvert and channel modification will be notified of the anticipated total cost if the total cost of processing their request will exceed $1,500.

(3) Requestors of conditional LOMRs for the review of levees, dams or other structural measures will be notified of the anticipated total cost if the total cost of processing their request will exceed $2,500.

(4) Requestors of conditional LOMRs, for the review of structures on alluvial fans will be notified of the anticipated total cost if the total cost of processing their request will exceed $5,000.

(5) In the event that processing costs exeed the limits defined in paragraphs (c)(1) through (c)(4) of this section, processing of the request will be suspended pending FEMA receipt of written approval from the requestor to proceed.

Dated: September 21, 1990.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 90-22878 Filed 9-26-90; 8:45 am]

BILLING CODE 6718-21-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB38

Endangered and Threatened Wildlife and Plants; Endangered Status for Four Snub-Nosed Monkeys

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Sichuan, Yunnan, Guizhou, and Tonkin snub-nosed monkeys. The last is reclassified from threatened status. All occupy restricted ranges in China or Vietnam, and are jeopardized by human habitat disruption and/or direct taking. This rule will implement the protection of the Endangered Species Act of 1973 for these four monkeys.

EFFECTIVE DATE: October 29, 1990.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority; Mail Stop: Arlington Square, Room 725; U.S. Fish and Wildlife Service; Washington, DC 20240 or telephone (703-358-1708 or FTS 921-1708).

SUPPLEMENTARY INFORMATION:

Background

The snub-nosed monkeys or langurs of eastern Asia are placed in the genus *Rhinopithecus*, which sometimes has been treated only as subgenus of *Pygathrix*, the Douc langurs, but which now is recognized as a full genus (Eudey 1987). There currently are thought to be four species: The Sichuan or golden snub-nosed monkey (*R. roxellana*), found in the mountainous region on the southeastern slopes of the Tibetan Plateau in the Chinese provinces of Hubei, Shaanxi, Gansu, Sichuan, and Yunnan; the Yunnan or black snub-nosed monkey (*R. bieti*), which occurs in the Yun-ling Mountain Range of Tibet and Yunnan; the Guizhou or gray snub-nosed monkey (*R. brelichi*), found in the Fan-jin Mountain Range south of the Middle Yangtze in Guizhou Province of China; and the Tonkin snub-nosed monkey (*R. avunculus*), of northern Vietnam (Brandon-Jones 1984; Eudey 1987). As indicated by the names, coloration varies between the species. In size, these monkeys range from about 20 to 33 inches (51 to 83 centimeters) in head and body length, and 20 to 38 inches (51 to 97 centimeters) in tail length. They inhabit high mountain forests, up to about 13,000 feet (4,000 meters), but may descend to lower elevations in winter. Part of their range is covered by snow for more than half the year.

It is known that these species are among the most critically endangered primates in the world. The Primate Specialist Group of the International Union for Conservation of Nature (IUCN) Species Survival Commission considers *R. bieti*, *R. brelichi*, and *R. avunculus* to have the "highest possible priority rating" for conservation action. Only one other Asian primate has been given this rating. *R. roxellana* has a "very high conservation rating" (Eudey 1987). The IUCN now formally classifies *R. bieti*, *R. brelichi*, and *R. avunculus* as endangered, and *R. roxellana* as vulnerable. All snub-nosed monkeys are on appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. In the Federal Register of October 19, 1978 (41 FR 45993), the U.S. Fish and Wildlife Service classified *R. avunculus* as threatened, pursuant to the Endangered Species Act of 1973. In order to more accurately express the bioconservation situation, as well as to help establish closer alignment between the Convention appendices and the U.S. List of Endangered and Threatened Wildlife, the Service proposed to reclassify *R. avunculus* as endangered and to determine endangered status for *R. roxellana*, *R. bieti*, and *R. brelichi* in the Federal Register of January 16, 1990 (55 FR 1486). In the proposal and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Three responses were received, all supportive.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Sichuan, Yunnan, Guizhou, and Tonkin snub-nosed monkeys should be classified as endangered. Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Sichuan, Yunnan, Guizhou, and Tonkin snub-nosed monkeys are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* All four species have declined substantially in range and numbers in recent years. The main problem is habitat loss and environmental disturbance through human activities. An especially severe factor is the destruction of forests through slash and burn agriculture. *R. avunculus* also is thought to have suffered in association with military activity during the Vietnam War. A number of protected reserves exist in China and Vietnam, but even these areas appear to have large populations of people. Estimates of the numbers of surviving individuals for each species have fluctuated, but are now thought to

be about 10,000 to 15,000 for *R. roxellana*, 600 to 800 for *R. bieti*, 200 to 670 for *R. brelichi*, and 880 for *R. avunculus* (Eudey 1987; MacKinnon and MacKinnon 1987; Wang and Quan 1986).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* All species have been hunted by people to obtain food, pelts, and parts for medicinal purposes. Tan (1985) reported a number of large-scale roundups of *R. roxellana*, during each of which up to about 200 individuals were captured for export. In another case, thousands of commune members encircled a mountain forest, gradually driving several hundred monkeys into a large stockade, where a "breeding farm" would be established. However, the monkeys therein rapidly died off and the project failed.

C. *Disease or predation.* Not now known to be immediate problems, but of potential concern in any situation in which a species is reduced to very limited numbers or habitat.

D. *The inadequacy of existing regulatory mechanisms.* Tan (1985) reported that commercial hunting was continuing in China, and suggested that protective measures are inadequate. Eudey (1987) indicated that nature reserves are not being properly protected in China, and MacKinnon and MacKinnon (1987) stated that only a small part of the habitat of *R. avunculus* is protected in Vietnam.

E. *Other natural or manmade factors affecting its continued existence.* None now known.

The decision to determine endangered status for the Sichuan, Yunnan, Guizhou, and Tonkin snub-nosed monkeys was based on an assessment of the best available scientific information, and of past, present, and probable future threats to the species. All four of these monkeys have very low numbers and are vulnerable to human exploitation and disturbance. If conservation measures are not implemented, further declines are likely to occur. Critical habitat is not being determined, as its designation is not applicable to foreign species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened pursuant to the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas, with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. No such actions are currently known with respect to the species covered by this rule.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species, and to provide assistance for such programs, in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (within the United States or upon the high seas), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with other such lawful activities. All such permits must also be consistent with the purposes and policy of the Act, as required by section 10(d) thereof. Except for *R. avunculus*, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. International trade in these four species is expected to be minimal.

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register of October 25, 1983 (48 FR 49244).

Literature Cited

Brandon-Jones, D. 1984. Colobus and leaf monkeys. In Macdonald, D., ed., The encyclopedia of mammals, Facts on File Publications, New York, pp. 398–409.

Eudey, A.A. 1987. Action plan for Asian primate conservation: 1987–91. International Union for Conservation of Nature/Species Survival Commission Primate Specialist Group, 65 pp.

MacKinnon, J., and K. MacKinnon. 1987. Conservation status of the primates of the Indo-Chinese subregion. Primate Conservation 8:187–195.

Tan Bangjie. 1985. The status of primates in China. Primate Conservation 5:63–81.

Wang Sung, and Quan Guoquiang. 1986. Primate status and conservation in China. In Benirschke, K., ed. Primates, the road to self-sustaining populations, Springer-Verlag, New York, pp. 213–220.

Author

The primary author of this rule is Dr. Ronald M. Nowak, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 921–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is hereby amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 is revised to read as folows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by removing the entry under MAMMALS for the "Langur, Tonkin snub-nosed (*Pygathrix (Rhinopithecus) avunculus*)" and by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*		*	
Monkey (=langur), Guizhou snub-nosed.	*Rhinopithecus (=Pygathrix) brelichi*	China	Entire	E	400	NA	NA
*	*	*	*	*		*	
Monkey (=langur), Sichuan snub-nosed.	*Rhinopithecus (=Pygathrix) roxellana.*	China	Entire	E	400	NA	NA
*	*	*	*	*		*	
Monkey (=langur), Tonkin snub-nosed.	*Rhinopithecus (=Pygathrix) avunculus.*	Viet Nam	Entire	E	16,400	NA	NA
*	*	*	*	*		*	
Monkey (=langur), Yunnan snub-nosed.	*Rhinopithecus (=Pygathrix) bieti*	China	Entire	E	400	NA	NA
*	*	*	*	*		*	

Dated: September 20, 1990.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90–22885 Filed 9–26–90; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511–0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of reopening.

SUMMARY: NOAA announces the reopening of the ocean commercial salmon fishery in the exclusive economic zone (EEZ) from Leadbetter Point, Washington, to Cape Falcon, Oregon, for two days, on September 18–19, 1990. This fishery was closed at midnight, September 14, 1990. Evaluation of landings data following closure of the fishery indicates that sufficient coho salmon remain to allow an additional two days of fishing. This action is intended to maximize the harvest of coho salmon in this subarea without exceeding the ocean share of salmon allocated to the commercial fishery.

DATES: *Effective*: Reopening of the EEZ to commercial salmon fishing from Leadbetter Point, Washington, to Cape Falcon, Oregon, is effective 0001 hours local time September 18, 1990, through 2400 hours local time September 19, 1990. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until October 9, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been complied in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.219(a)(2) that if a fishery is closed under a quota before the end of a scheduled season based on overestimate of actual catch, the Secretary will reopen that fishery in as timely a manner as possible for all or part of the remaining original season provided the Secretary finds that a reopening of the fishery is consistent with the management objectives for the affected species and the additional open period is no less than 24 hours.

Management measures for 1990 were effective on May 1, 1990 (55 FR 18894, May 7, 1990). The 1990 commercial fishery for all salmon in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, commenced on August 30, 1990, and closed at midnight, September 14, 1990, upon the projected attainment of the revised subarea quota of 23,600 coho salmon. Subsequent evaluation of landing data indicated that this closure was based on an overestimate of actual catch.

According to the best available information, commercial catches through September 14, 1990 totaled 20,300 coho salmon, leaving 3,300 coho salmon available for harvest in the subarea coho quota. This amount of available coho salmon has been determined to be sufficient for an additional two days of fishing, on September 18–19, 1990. This action is being taken in as timely a manner as possible and is consistent with the management objectives for coho salmon in this subarea. As in the original season, Conservation Zone 1, the Columbia River mouth, is closed (55 FR 18894, May 7, 1990).

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 0001 hours local time, September 18, 1990, by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz. NOAA issues this notice of the reopening of the commercial fishery in the EEZ from Leadbetter Point, Washington, to Cape Falcon, Oregon, which is effective 0001 hours local time September 18 through 2400 hours local time September 19, 1990. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding this reopening. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the **Federal Register**, through October 9, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 21, 1990.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–22827 Filed 9–21–90; 4:45 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 55, No. 188
Thursday, September 27, 1990

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245-AC25

Small Business Investment Companies; Portfolio Valuation

AGENCY: Small Busines Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule clarifies the requirements regarding the valuation of Small Business Investment Company (SBIC) portfolio companies which an independent public accountant (IPA) must follow in performing an audit on an SBIC (13 CFR part 107, appendix I). This action is proposed to ensure that SBIC audits are performed in accordance with the requirements of the U.S. Small Business Administration (SBA). It is expected that this proposed rule will eliminate uncertainty that may exist regarding the role of the IPA in the valuation process.

DATES: Written comments must be received on or before October 29, 1990.

ADDRESSES: Written comments should be directed to Thomas C. Bresnan, Staff Accountant, Small Business Administration, Office of Investment, 1441 L Street, NW., room 808, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Thomas C. Bresnan, Staff Accountant, Telephone: (202) 653-6389.

SUPPLEMENTARY INFORMATION: SBA has determined that a clarification of its requirements regarding valuation of SBIC portfolio companies as set forth in Title 13, Code of Federal Regulations, Part 107, Appendix I—"Audit Guide for SBICs and Preparation of the Annual Report"—is appropriate. Recent hearings before the U.S. Senate Committee on Small Business and the preliminary results of a special study undertaken by SBA's Office of Inspector General (OIG) have shown that some IPAs who performed annual audits of SBICs did not perform such audits in accordance with the requirements of the Agency.

OIG found that, of five SBICs subjected to an on-site inspection for purposes of the special study, two did not have written procedures for determining valuations, and three did not have adequate support for their valuations. IPAs for each of the five SBICs had reviewed the valuation process in the course of their respective audits but had not critically reviewed the support for the valuations. This proposed rule would ensure that appropriate reviews are performed by the IPAs and reported.

This proposed rule clarifies the expectations of SBA regarding the role of the IPA performing an SBIC audit. Nothing in this proposed rule alters the division of responsibility between the SBIC and its auditor, the IPA, as to valuation of portfolio concerns. Responsibility for the valuation of portfolio investments remains with the Board of Directors/General Partner(s) of the SBIC. SBA Policy and Procedural Release No. 2006 contains the valuation guidelines a licensee should apply in valuing its portfolio securities.

The IPA, on the other hand, is responsible for reviewing the valuations in order to determine their reasonableness. As Section V., Subsection J. "Audit Procedures" already provides, "[t]he auditor is not to be an appraiser in the sense that he is to determine the value of the licensee's securities."

The text of this proposed rule is consistent with the established division of responsibility between an SBIC and its auditor. The first amendment of this propsed rule would revise Appendix I, Section III. *Scope of Audit* by replacing the final paragraph thereof with new text which would clarify what an IPA auditing an SBIC must do in order to be satisfied as to the reasonableness of a valuation arrived at by the Board/General Partner(s). The IPA would be required to assess the valuation procedures and determine that such procedures are adequate, that they were in fact followed and that they were consistently applied. The IPA would determine that the procedures include a requirement that the licensee make a reasonable analysis of all applicable facts. The IPA would also determine whether the valuation is adequately documented and whether the documentation is (1) appropriate for the particular investment and (2) sufficient, in the IPAs opinion, to support the valuation. The IPA would be required to inspect as many of the valuations as would represent at least 50% of the dollar value of the entire portfolio.

Under the proposed rule, if the IPA is unable to satisfy himself as to any of the items in the preceding paragraph, the IPA's report must so indicate.

The second amendment of this proposed rule would amend Appendix I, Section V., Subsection J. "Audit Procedures" by conforming the text of this subsection to the changes proposed to be made to *Scope of Audit* by the first amendment hereof.

This proposed rule would not require the IPA to substitute his judgment for that of the Board of Directors/General Partner(s) as to the amount of the proper valuation of a portfolio concern. Rather, the IPA would be expected to opine as to the reasonableness of such valuation, as he is currently expected to do under the existing rule.

This proposed rule would not generally require the IPA to make predictions as to the future of the portfolio concern. Under certain circumstances, however, projections of future profitability may be an indispensable component of the valuation process because the value of a firm is its value as a going concern, not its value on liquidation. It is expected that in most cases examination of historical and current data would be sufficient to establish a basis for valuation.

Compliance With the Regulatory Flexibility Act, Executive Orders 12291 and 12612, and the Paperwork Reduction Act

Regulatory Flexibility Act

SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities. No new obligations would be imposed on auditors by this proposed rule. Rather, this action is merely a clarification of existing responsibilities.

Executive Order 12291

SBA certifies that this proposed rule, if adopted in final form, would be a *nonmajor* rule for purposes of E.O. 12291, for the following reasons:

1. It is *not* likely to result in an annual economic effect on the national economy of $100 million or more; in this regard, SBA is satisfied that this proposed clarification of the Audit Guide will not increase the cost of audits performed under it.

2. It is *not* likely to result in a major increase in costs for consumers, the investment company industry, Federal, State, or local government agencies, or geographic regions.

3. It is *not* likely to have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based businesses to compete with foreign-based businesses in the domestic or export markets.

Executive Order 12612

SBA certifies that this proposed rule, if promulgated as a final rule, would not have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

Paperwork Reduction Act of 1980

If promulgated in final form, this rule would not impose any reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set out in the preamble, title 13, part 107 of the Code of Federal Regulations is proposed to be amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*, as amended, Public Law 100–590 and Public Law 101–162. 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Public Law 101–162; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Public Law 100–590.

2. Appendix I, Section III. *Scope of Audit* is amended by removing the final paragraph thereof and inserting the following in lieu thereof:

III. Scope of Audit

* * * * *

The independent public accountant is expected to satisfy himself as to the reasonableness of the basis used by the Board of Directors/General Partner(s) in determining the valuation of loans and investments.

This means that the accountant is to assess the procedures that the Board/General Partner(s) follows in valuing investments. The accountant must determine that the procedures are adequate (*i.e.*, that the procedures require a reasonable analysis of all applicable facts), that they were in fact followed and that they were consistently applied.

The accountant will inspect the documentation supporting the valuations made by the Board/General Partner(s) and determine whether such valuations are adequately documented in the licensee's files, and whether such documentation is both appropriate for the investment and sufficient in the accountant's opinion to support the valuation assigned.

The accountant will inspect a sufficient number of valuations to support his findings. A sufficient number of valuations shall mean valuations representing no less than 50% of the dollar value of the entire portfolio.

In cases where the accountant cannot satisfy himself that all the preceding requirements have been fulfilled, he must specifically so state in his opinion.

3. Appendix I, Section V. *Reporting Requirements—General*, Subsection J. "Audit Procedures", is amended by removing the final paragraph thereof and inserting the following in lieu thereof:

V. Reporting Requirements—General

* * * * *

J. Audit Procedures

* * * *

The auditor is not to be an appraiser in the sense that he is to determine the value of the licensee's securities. The auditor is expected to satisfy himself as to the reasonableness of the basis used by the Board of Directors/General Partner(s) in determining the valuation of loans and investments.

This means that the auditor is to assess the procedures that the Board/General Partner(s) follows in valuing investments. The auditor must determine that the procedures are adequate (*i.e.*, that the procedures require a reasonable analysis of all applicable facts), that they were in fact followed and that they were consistently applied.

The auditor will inspect the documentation supporting the valuations made by the Board/General Partner(s) and determine whether such valuations are adequately documented in the licensee's files, and whether such documentation is both appropriate for the investment and sufficient in the auditor's opinion to support the valuation assigned.

The auditor will inspect a sufficient number of valuations to support his findings. A sufficient number of valuations shall mean valuations representing no less than 50% of the dollar value of the entire portfolio.

In cases where the auditor cannot satisfy himself that all the preceding requirements have been fulfilled, he must specifically so state in his opinion.

Susan Engeleiter,

Administrator.

[FR Doc. 90–22839 Filed 9–26–90; 8:45 am]

BILLING CODE 8025–01–M

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13 CFR Part 107

Small Business Investment Companies; Miscellaneous Amendments

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: SBA proposes fifteen amendments to the regulations governing the Small Business Investment Company (SBIC) program which are presently in force. The proposed regulatory amendments are intended to clarify the present regulations and to state SBA's position on several new developments.

DATES: Comments will be accepted until November 27, 1990.

ADDRESSES: Written comments should be sent to Bernard Kulik, Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Room 808, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Joseph L. Newell, Director, Office of Investment, Telephone (202) 653–6584.

SUPPLEMENTARY INFORMATION: SBA proposes fifteen regulatory amendments to the regulations governing the SBIC program.

The first proposal would limit (but not prohibit) pension fund participation in the SBIC program. This limitation would be stated in a new clause to the definition of "Private Capital" in § 107.3 of the Regulations. The amended definition would permit investments by pension funds but would henceforth not recognize them for purposes related to "Private Capital": licensing, leveraging and regulatory compliance. SBA does not think that, for the purposes of the SBIC program, pension funds are suitable investors, or SBICs suitable investments for pension funds, because pension funds need reliable and steady investment income. This need is incompatible with the venture capital mission of the SBIC program.

The proposed definition of "Subdivider and developer" in § 107.3 would clarify the meaing of that phrase, as it is used in § 107.901(c)(1)(i). That paragraph bans certain real estate investments, classified under Major Group 65 of the SIC Manual, but excepts from the prohibition subdividers and developers, who are also classified

under Major Group 65. The definition states that these industry groups buy new land which they subdivide, and make ready for construction, but which they sell as vacant lots, to be built on by others. This definition will resolve confusion by separating subdividers and developers from "operative builders for their own account"; the latter are classified under Major Group 15 (Building construction—general contractors and operative builders). The distinction between these two major groups and Major Group 70 (Hotels, Rooming Houses, etc.) becomes significant in relation to § 107.101(c) (2) and (3), where these major groups are treated differently for purposes of portfolio diversification.

A proposed new paragraph, to be added to § 107.201(b) will limit the automatic subordination of debentures sold with SBA's guarantee. At present, SBIC debentures guaranteed by SBA are generally subordinated to all other debts and obligations of the issuing SBIC. The Agency uses its discretionary authority to limit or deny subordination only rarely. This has resulted in considerable losses when SBA was required to honor its guarantee, and then turned to the SBIC for reimbursement. SBA now proposes to limit, after the effective data of this rule, the subordination of its claims based on newly guaranteed debentures in general to debt outstanding to State and Federally regulated commercial lenders to the extent that such debt aggregates no more than 200% of private capital or $10 million, whichever is less. An SBIC may at any time request SBA to extend the subordination to additional loans "in exercise of [SBA's] reasonable investment prudence and in considering the financial soundness of such company," 15 U.S.C. 683(b). It should be noted that the regulation is so drafted that the "old-style" subordination would expire with the "old-style" debentures. In the event of the "roll-over" of an old debenture the replacement debenture would not be automatically subordinated to all obligations of the Licensee, but only to the debt described above.

Section 107.204 Leverage for section 301(d) Licensees offers specialized SBIC's in its paragraph (d) preferred stock leverage in excess of 100% of private capital, up to the amount of such Licensee's "qualified investments." The definition of "qualified investments" includes "unsecured debt instruments." This phrase was sometimes misinterpreted to mean debt instruments which were not secured by the borrower's assets, but secured by the personal guarantees of third parties or a security interest in their assets, for example, the residence of the borrower company's owner. The current proposed amendment makes clear that only totally unsecured debt qualified for purpose of this section.

Section 107.304, setting forth requirements that must be met in connection with each investment, is proposed to be revised to require each prospective portfolio concern to provide the Licensee with financial statements and projections necessary to support its investment decision. If the Licensee makes the investment, the portfolio concern must transmit at least annually such financial statements certified by its chief financial officer, general partner or owner, as necessary to support the licensee's valuation. In appropriate cases, the Licensee may accept complete copies of Federal income tax returns. This requirement is necessary to enable the Licensee to value its investments on a current basis, as it is required to do by appendix I to part 107.

Section 107.321 states the conditions under which a Licensee may require a portfolio concern to redeem equity securities. As amended, the regulation would prohibit a put at a fixed price, because such a put effectively changes the nature of the equity security into a debt instrument. Rather, the parties must either agree on a formula, based on a book value or earnings at the time of redemption, or on an arbitration procedure by independent professional appraisers agreed to by both parties. Arbitration costs are to be shared by the portfolio concern and the License. SBA understands that it is important for Licensees to arrange for an exit from an investment, but such exit should not occur without regard to the small concern's financial health at the time of the put.

The proposed amendment to § 107.401, governing financial assistance by SBICs in the form of guarantees, prohibits loan guarantees among SBICs. It also describes a financing by the pledge of a Licensee's asset. The purpose of this amendment, to prohibit loan guarantees of portfolio loans between Licensees, is to prevent double-encumbrance of program funds for the same loan. A guarantor SBIC is not able to invest funds underlying a guarantee so long as the guarantee is not released; at the same time, the guaranteed SBIC has loaned its funds to the portfolio concern. Thus, twice the amount of the loan is committed, and unavailable for other investments. The original purpose of the regulation permitting Licensees to guarantee the debt of small concerns to third parties was to attract additional private capital (outside funds) into the small business sector of the economy. The use of this regulation for guarantees among Licensees, however, was counterproductive to this purpose: it shrank the available investment pool. The other purpose, equating a pledge on a nonrecourse basis of a Licensee asset in support of a small concern's debt to the lesser of such debt or the value of that asset, is to make clear that such a guarantee does not equal the amount guaranteed, unless the value of the asset equals or exceeds the amount of the guaranteed debt. For example, a Licensee may pledge a Certificate of Deposit (CD) in its portfolio, in support of a small concern's obligation to a creditor of the small concern. Such financial assistance amounts to the lesser of the value of the asset or the debt. If the value of the CD exceeds the debt, only the debt will measure the financing. If, on the other hand, the debt exceeds the value of the asset, the non-recourse provision of the financing will result in a financing equal to the value of the pledged asset.

Proposed paragraph (d), added to § 107.402, limits the commitment fee that may be charged on the undisbursed portion of a loan commitment, to the prime rate in effect on the date of commitment, to be computed from the date of commitment to the date of disbursement, or cancellation of the commitment. The reason for this regulation is that in some instances the commitment fee equalled or exceeded the interest rate which the portfolio concern would have paid, if the loan had been disbursed. This was so because the fee was calculated in advance, irrespective of disbursement, and because in some instances the disbursement followed within a few days of the commitment. In effect, such commitment fees amounted to "points". The regulation makes clear that any commitment fee exceeding the stated limit will be disallowed in its entirety for purposes of the exclusion of a good-faith commitment fee from the cost-of-money definition, resulting in its inclusion in the cost of money.

The amendment tc § 107.403(b)(1) limits the interim financing in contemplation of a long-term financing by the Licensee to an amount that cannot exceed the long-term financing, and limits its term to one year or less. The reason for this amendment is SBA's experience with disproportionately large short-term financings in contemplation of much smaller long-term financings. Since, at the time of the interim financing the amount of the long-term

financing cannot be determined, the regulation merely requires that the long-term financing at least equal the short-term financing. The one-year limit has the purpose of distinguishing between true interim or provisional financings during negotiations of the long-term investment, and short-term financings which use this regulation to avoid the long-term requirement of the statute.

The amendment to § 107.707 restricts, as of its effective date, exchanges and purchases of portfolio securities between Licensees to non-recourse transactions only. It has the same purpose as the amendment to § 107.401 to prevent the double-encumbrance of program funds. The prohibition against inter-Licensee loan guarantees would be easily avoided if a Licensee, instead of guaranteeing a loan, would make the loan and sell it with recourse to another Licensee. It is therefore necessary to bar inter-SBIC portfolio sales with recourse, in order to make the prohibition on loan guarantees effective.

The amendment to § 107.708 clarifies an ambiguity in the existing regulation. That regulation can be read to require so-called "idle funds" to be invested, among other options, either in one-year CDs in any bank, or in federally insured deposit accounts. The intent of this change is to restrict idle-funds investments to federally insured CD's or deposits up to the amount of federal insurance. Accordingly, the regulation now provides that CD's and deposits of idle funds must be federally insured in their full amounts. The regulation also raises the limit of the "petty cash" fund that SBICs may keep from $500 to $1,000.

The amendment to § 107.711 is primarily designed to prohibit leveraged buy-outs (LBOs) of concerns that are in fact large, but which qualify as small only because of their heavy debt structure caused by the LBO. This qualification became possible because one (of the two) applicable size standards, 13 CFR 121.802(a)(2)(i), focuses on net worth ($6 million) and 2-year average net income ($2 million), but does not consider total assets. It is therefore possible to show a net worth figure below $6 million, even where total assets are greatly in excess of that figure, by deducting from the gross asset figure the debt incurred by the target company as a result of the LBO. To prevent this result, the amendment limits the gross assets of a concern, the ownership change of which is to be financed by an SBIC, to $20 million. That number was arrived at by subjecting the gross asset limitation of $9 million, in effect until 1979 (13 CFR 121.3–11(a), 1979) to the inflation factor since that time. The gross asset limitation was discontinued Sept. 28, 1979 (44 FR 55815). (SBA is currently reviewing the size standards applicable to the SBIC and the development company programs with a view to an increase, similar to the increase set forth above.) Another change made by this amendment limits the aggregate of all ownership change financings to an amount equal to the Licensee's private capital. The purpose of this limitation is to prevent the development of LBO specialists. The regulation also limits permissible ownership changes to facilitate business ownership by disadvantaged persons to those where the disadvantaged person(s) will both own and manage the small concern. The purpose of this change is to preclude "fronting".

Section 107.901(c)(2) is amended to provide for the case, not now provided for, where a small concern seeks SBIC financing for the acquisition of an existing building, or to construct or renovate a building for its own use and for rental to others. The amendment makes clear that such a transaction is permissible if the small concern itself uses at least 51% of an existing, or two-thirds of a newly constructed or renovated building for its own use. The amendment conforms the SBIC rules to rules governing the business loan and the development company programs, where the same distinction is made. The amended regulation would require that the property be zoned for its intended use at the time of its acquisition.

Finally, the amendment to § 107.903(b) makes clear what was implicit before: that SBA approval of (otherwise prohibited) self-dealing transactions can be granted only before the subject transaction has been consummated. Licensees have sometimes assumed that such approvals will be given retrospectively ("*nunc pro tunc*"), but this is clearly not the intent of the statute (15 U.S.C. 687d), which requires SBA to control such conflicts of interest.

SBA advises that the numerical limitations, such as the $10 million limit in § 107.201, are set forth for discussion, and SBA invites comments and suggestions thereon. SBA further advises that, in addition to the size standard review mentioned above, other regulatory proposals are in preparation, to strengthen the program and reduce losses both to Licensees and to SBA. SBA also invites suggestions in this regard.

Compliance With Executive Orders 12291 and 12612, and the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12291. SBA has determined that these proposed regulations, taken as a whole, will constitute a major rule for purposes of Executive Order 12291, because they are likely to have an annual impact on the national economy of $100 million or more. In this regard, the amendment to § 107.711 limiting leveraged buyouts to concerns with total assets not exceeding $20 million, would probably prevent such transactions in an aggregate of $100 million. The proposed limitation of SBA's subordination in § 107.201 is estimated to prevent SBIC losses up to $50 million. The proposed amendment to the definition of "Private Captial" eliminating pension fund contributions from consideration in the SBIC program would probably prevent up to $2 million in pension funds from being so invested.

Executive Order 12612. SBA certifies that these proposed regulations would have no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Regulatory Flexibility Act. For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, these proposed regulations may have a significant economic impact on a substantial number of small entities. Pursuant to E.O. 12291 and 5 U.S.C. 603, SBA offers the following regulatory flexibility and impact analysis.

1. This action, taken as a whole, is proposed to strengthen the original intent of the program as assistance to truly small businesses, to reduce losses being sustained by SBICs and by SBA as their guarantor, and to clarify certain regulations that have been misinterpreted to the detriment of the program.

2. The legal basis for these proposed regulations is section 308(c) of the Small Business Investment Act, 15 U.S.C. 687(c).

3. These proposed rules would apply to all 390 currently operating Licensees, including 134 section 301(d) companies.

4. The potential benefits of these 15 regulatory proposals have been set forth in the respective discussions of these proposals above, under **SUPPLEMENTARY INFORMATION.**

5. The potential costs of these regulations cannot be quantified or even estimated, as for the most part these regulatory proposals would only prevent transactions from being consummated, such as excessive leveraging of

Licensees at the expense of SBA as guarantor of indebtedness subordinated to such excessive leverage. Other examples are prevention of the leveraged buy-outs of very large concerns with SBIC assistance (see discussion under § 107.711), of the investment of pension fund money, of fixed put prices, of inter-SBIC loan guaranties and sales of portfolio items with recourse, or the limitation of short-term interim financing to the contemplated long-term financing. Other proposed regulations, such as the requirement of financial information from potential and actual investees, merely codify good business practice already in place at well-managed Licensees. Similarly, the mistaken notion that a debt is unsecured even though it is secured by a third party, is corrected only because it has happened, and thus made this statement of the obvious necessary.

6. There are no federal rules which duplicate, overlap or conflict with these proposed rules.

7. SBA is not aware of regulatory alternatives that could achieve the same objectives at lower cost, as explained above under No. 5.

Paperwork Reduction Act. For purposes of the Paperwork Reduction Act, 44 U.S.C., ch. 35 we hereby certify that these regulations, if adopted, will impose one new record-keeping requirement. Proposed § 107.304(b) would provide that Licensees require prospective and actual portfolio concerns to furnish such financial statements and projections as will support the Licensee's investment decision and valuation. Approval of this requirement is being sought from the Office of Management and Budget.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and record-keeping requirements, Small businesses.

For the reasons set forth above, part 107 of title 13, Code of Federal Regulations, is proposed to be amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 631 et seq., as amended, Pub. L. 100-590 and Pub. L. 101-162. 15 U.S.C. 687(c); 15 U.S.C. 683, as amended by Pub. L. 101-162; 15 U.S.C. 687d; 15 U.S.C. 687g; 15 U.S.C. 687b; 15 U.S.C. 687m, as amended by Pub L. 100-590.

2. The Table of Contents of part 107 is amended by revising the caption of § 107.304 to read as follows:

* * * * *

§ 107.304 Size status and nondiscrimination; financial statements.

* * * * *

3. Section 107.3 is amended by revising the definition of "Private Capital"; by adding a definition for "Subdivider and Developer" in alphabetical order; and by revising footnote 4 in the definition of "SIC Manual" to read "[4] as of January 1990, the latest edition of the SIC Manual was 1987.":

§ 107.3 Definition of terms.[2]

* * * * *

Private Capital. "Private Capital" means:

General. 'Private Capital' means the combined private paid-in capital and paid-in surplus of a Corporate Licensee, or the private partnership capital of an Unincorporated Licensee, exclusive of any funds borrowed by the Licensee from any source, obtained from SBA through the sale of Preferred Securities, or invested by a pension fund after [the effective date of these regulations].

* * * * *

Subdivider and Developer. "Subdivider and Developer" means a Small Concern whose primary business involves the acquisition of unimproved land and its subsequent improvement for the purpose of selling vacant lots to others.

* * * * *

4. Section 107.210 is amended by redesignating present paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), and adding a new paragraph (b)(2) to read as follows:

§ 107.201 Funds to licensee.

* * * * *

(b) * * *

(2) In the event SBA pays a claim under its guarantee, it shall be subrogated fully to the rights satisfied by such payment; and no state law, and no federal law, shall preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee. With respect to debentures guaranteed after [the effective date of this regulation], SBA's claims against any Licensee shall be subordinated, in the event of the insolvency of such Licensee, only in favor of present and future indebtedness outstanding to Lending Institutions, and only to the extent that the aggregate amount of such indebtedness does not exceed the lesser of two hundred percent of such Licensee's Private Capital, or ten million dollars: Provided, however, That in its sole discretion SBA may agree in advance and in writing to a subordination in favor of one or more loans from Lending Institutions or other lenders and/or to loans that would cause the aggregate amount of outstanding senior debt to exceed the foregoing limitation; and Provided, Further, That nothing contained herein shall affect the seniority of any indebtedness created prior to [the effective date of this regulation] over the claims of SBA derived from any debentures outstanding as of that date.

4. Section 107.205 is amended by revising paragraph (d)(2) to read as follows:

§ 107.205 Leverage for Section 301(d) Licensees.

* * * * *

(d) * * *

(2) *Qualified Investments.* In no event shall the amount of preferred securities purchased by SBA in excess of one hundred percent of Private Capital exceed the amount of the Licensee's funds invested in, or legally committed to, qualified investments. As used herein, "qualified investments" means, subject to §§ 107.320 and 107.801, stock of any class (including preferred stock) or limited partnership interests in eligible small concerns, or shares of any eligible syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint venture for profit; or unsecured debt instruments which are subordinated by their terms to all other borrowings (as distinguished from all other debts and obligations) of the issuer. "Qualified investments" shall not include a debt secured by any agreement with a third party, whether or not a security interest has been created in any asset of such third party, with or without recourse against such third party.

* * * * *

5. Section 107.304 is revised to read as follows:

§ 107.304 Size status and nondiscrimination; financial statements.

(a) *Size status and nondiscrimination.* No assistance shall be provided unless:

(1) The Licensee and the Small Concern have executed SBA Form 480, Size standards have been met, or SBA has determined at the request of the Licensee or of such concern that the latter is a Small Concern; and

(2) The Small Concern has certified on SBA Form 652-D that it will not illegally

[2] Terms defined in this section are capitalized hereafter.

discriminate in its operations, employment practices or facilities as set forth in part 113 of this chapter.

Such forms shall be kept available for SBA's examination: *Provided, however,* That the foregoing shall not apply when the Licensee acquires the securities from an underwriter in a public offering (see § 107.404), in which event the Licensee shall keep the prospectus showing the small size status of the issuer as part of its records for SBA's examination.

(b) *Financial statements*—(1) *Initial Financing decision.* In considering any Financing for a Small Concern the Licensee shall require the concern to submit such financial statements, plans of operation, cash flow analyses and projections as are necessary to support the Licensee's investment decision, considering the size and type of the business, and the amount of the Financing in question. Such materials shall be in English and shall be retained by, and become a part of the permanent records of, the Licensee.

(2) *Subsequent reports.* The terms of the Financing shall require each Assisted Small Concern to forward to the Licensee, at least annually, such financial statements as are necessary to verify the financial condition of such Small Concern, and for the valuation of its investment therein. Such statements shall be in English and be certified by the chief financial officer, general partner, or proprietor of such Small Concern and shall be retained by, and become a part of the permanent records of, the Licensee. If the Licensee shall deem it appropriate, considering the size and type of the business involved, the Licensee may accept, instead, a complete copy of the Federal income tax return, including all appropriate schedules thereto, filed by the business or by the proprietor, as the case may be: *Provided, however,* That the foregoing shall not apply when the Licensee acquires the securities from an underwriter in a public offering (see § 107.404), in which event the Licensee shall keep copies of all reports furnished by such concern to the holders of its securities.

6. Section 107.321 is amended by revising paragraph (b) to read as follows:

§ 107.321 Redemption provisions.

* * * * *

(b) The redemption price shall not be stated as a fixed dollar amount, or as an alternative dollar amount. Not later than the date of the Licensee's first disbursement, the parties may agree upon a formula for determination of the redemption price, which must be legal and reasonable, and based upon book value and/or earnings (for the current period as of the time of redemption or over a representative period including the time of redemption, as the parties may determine) of the Small Concern; or they may agree that the redemption price may be fixed at the fair market value at the time of redemption by one or more disinterested appraisers (who are members of a recognized professional association) as agreed to by both parties. The redemption agreement shall not require the appraisers to assume any fact not in existence at the time of the appraisal. The expense of any such appraisal shall be borne by each party.

7. Section 107.401 is amended by revising paragraph (a), and by adding a new paragraph (a)(7), to read as follows:

§ 107.401 SBIC guaranty of loans.

(a) Subject to § 107.301(a) (Minimum Period of Financing), a Licensee may guaranty to any non-Associate creditor (other than another Licensee) the monetary obligation of a Small Concern: *Provided, however,* That:

* * * * *

(7) A guaranty limited to the pledge of a Licensee asset on a non-recourse basis shall be deemed a Financing equal to the lesser of the fair market value of such asset or assets, or the amount of the debt so guaranteed.

8. Section 107.402 is amended by adding a new paragraph (d) to read as follows:

§ 107.402 Commitments.

* * * * *

(d) *Limit on commitment fee.* The amount of any commitment fee shall not exceed interest at the prime rate, as printed in a national financial newspaper published each business day, in effect on the date of commitment, for the number of days from the date that the commitment is accepted in writing by the Small Concern to the date of disbursement or cancellation, as the case may be, inclusive of both dates. Any commitment fee that exceeds the limitation set forth herein shall be deemed in its entirety to be outside the scope of a "bona fide commitment fee" otherwise excludible from computation of the Small Concern's Cost of Money. See the definition of "Cost of Money" in § 107.3.

9. Section 107.403 is amended by revising paragraph (b)(1) to read as follows:

§ 107.403 Other permissible financing.

* * * * *

(b) * * *

(1) *Short-term Financing.* Financing with a term of less than five years when it constitutes interim financing in contemplation of long-term Financing of a Small Concern by the Licensee in an amount at least equal to such interim financing, or the protection of prior investments, or financing ownership change pursuant to § 107.711: Provided, however, That the maximum aggregate period for short-term Financing in contemplation of long-term Financing shall not exceed one year. This paragraph (b)(1) supplements the authority to make short term investments in Disadvantaged Concerns under § 107.301(a).

* * * * *

10. Section 107.707 is revised to read as follows:

§ 107.707 Purchases of securities from another Licensee.

After [the effective date of this regulation] a Licensee may exchange with or purchase for cash from another Licensee Portfolio securities (or any interest therein) only on a non-recourse basis: Provided, however, That:

(a) A Licensee shall not have at any time more than one-third of its total assets (valued at cost) invested in such securities; and

(b) A Licensee that has previously sold Portfolio securities (or any interest therein) on a recourse basis shall include the amount for which it may be contingently liable in its overline limit under § 107.303.

11. Section 107.708 is revised to read as follows:

§ 107.708 Deposits and Investments of idle funds.

Except as hereinafter set forth, all funds of a Licensee shall be deposited without delay in an account in a federally-insured bank or savings and loan association. Funds of a Licensee not invested in Small Concerns and not reasonably needed for its day-to-day operations shall be invested in:

(a) Direct obligations of, or obligations guaranteed as to principal and interest by the United States, the remaining maturities of which do not exceed fifteen months; or

(b) In federally-insured certificates of deposit maturing within one year or less, in a federally-insured bank or savings and loan institution, up to the limit of such insurance or

(c) In a federally-insured deposit account of such bank or institution, up to the limit of such insurance, subject to a withdrawal restriction not to exceed one year: Provided, however, That:

(1) A Licensee may maintain a petty cash fund of up to $1,000 and

(2) Corporate assets of a corporate general partner not invested in the Licensee shall be excluded from the time limits imposed by this section.

12. Section 107.711 is revised to read as follows:

§ 107.711 Financing changes of ownership.

(a) *General.* A Licensee may Finance, or participate in the Financing of, a change of ownership in a Small Concern when, in the reasonable judgment of the Licensee, it will promote the sound development or preserve the existence of the Small Concern as such, or will facilitate the ownership and management of the Small Concern by a person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

(b) *Business divestiture.* A Licensee may Finance, or participate in the Financing of, a business divestiture if, in the reasonable judgment of the Licensee, such divestiture will result in the creation of a Small Concern.

(c) *Special size standard.* For the purpose of this section "Small Concern" means a concern that qualifies as small under § 121.802(a)(2) of this Chapter and, together with all its affiliates, does not have gross assets in excess of twenty million dollars.

(d) *Restriction.* Subject to any lower limit imposed by § 107.403(b) (1) and (3), the aggregate of all Financings pursuant to this section shall not exceed the amount of the Licensee's Private Capital at the end of any fiscal year.

13. Section 107.901 is amended by revising the introductory text of paragraph (c)(2) to read as follows:

§ 107.901 Prohibited uses of funds.

* * * * *

(c) * * *

(2) If the Financing is to be used by a Small Concern, regardless of SIC classification, to acquire realty or to discharge an obligation relating to the prior acquisition of realty unless at least fifty-one percent of the square footage of an existing building that is to be acquired by the Small Concern or at least two-thirds of the square footage of a building that is to be built or renovated by the Small Concern is to be used by the Small Concern for business activity not prohibited by paragraph (c)(1); or such realty is to be promptly and substantially improved for sale to others; and all necessary zoning approvals have been obtained:

* * * * *

14. Section 107.903 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 107.903 Conflicts of interest.

* * * * *

(b) *Prohibitions.* Except where a prior written approval may be granted by SBA in special instances in furtherance of the purposes of the Act:

* * * * *

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 21, 1990.

Susan S. Engeleiter,

Administrator.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 301, and 602

[IA-224-82]

RIN 1545-AE20

Backup Withholding and Due Diligence

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations that relate to backup withholding under section 3406(a)(1) (A), (B), (C), and (D) of the Internal Revenue Code of 1986 (the "Code") when a payee fails to provide a taxpayer identification number in the manner required to a person required to make an information return, when the Internal Revenue Service or a broker notifies a payor or broker that a payee has furnished an incorrect taxpayer identification number, when a payee is subject to notified payee underreporting, or when a payee fails to certify, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting. These proposed regulations also reference the provisions of the Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 (part 35a) that were published in the Federal Register in question and answer format (part 35a) on October 4, 1983 (48 FR 45362), November 25, 1983 (48 FR 53106), December 20, 1983 (48 FR 56332), February 28, 1984 (49 FR 7227), August 22, 1984 (49 FR 33237, 33240). April 23, 1987 (52 FR 13430), November 23, 1987 (52 FR 44861), and April 11, 1989 (54 FR 14341) concerning the actions that payors must take to establish the due diligence defense to the penalty under section 6676(b) for filing an information return with a missing or an incorrect taxpayer identification number.

Changes to the applicable tax law that are reflected in this document were made by the Interest and Dividend Tax Compliance Act of 1983 (97 Stat. 369), the Tax Reform Act of 1984 (98 Stat. 494), and the Tax Reform Act of 1986 (100 Stat. 2748). These regulations do not address the changes in law made by the Omnibus Budget Reconciliation Act of 1989 (103 Stat. 2106). These regulations affect payors, brokers, and payees of certain reportable payments and provide them with the guidance necessary to comply with the law.

DATES: Written comments and requests for a public hearing must be received by January 25, 1991. These regulations are proposed to be generally effective with respect to reportable payments made and transactions occurring after December 31, 1983.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, CC:CORP:T:R (IA-224-82) LR-224-82, room 4429, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Arthur E. Davis, III, of the Office of the Assistant Chief Counsel (Income Tax and Accounting) (202-377-9581) with respect to broker transactions, Teresa Hughes of the Office of the Associate Chief Counsel (International) (202-566-6284) with respect to foreign transactions, and with respect to all other provisions, Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting) (202-377-9344), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. The telephone numbers provided above are not toll-free calls.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection-of-information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection-of-information requirements should be sent to the Office of Management and Budget, *Attention:* Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, *Attn:* IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection-of-information requirements in this regulation are in

§ 31.3406(a)–1; § 31.6011(a)–11; § 31.6051–4(a); § 31.6302(c)–1(a)(1)(i)(*d*) and § 31.6413(a)–3. This information is required by the Internal Revenue Service to enable the Internal Revenue Service to enforce sections 3406, 6011, 6051, 6302, and 6413 of the Code. This information will be used to encourage compliance with respect to the reporting and payment of taxes on interest and dividend income and other reportable payments. The likely respondents and/or recordkeepers are: individuals, State or local governments, businesses, other for-profit institutions, Federal agencies, nonprofit institutions, and small businesses or organizations.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances. Estimated total annual reporting and/or recordkeeping burden: 98,582 hours.

The estimated average annual burden per respondent/recordkeeper is approximately 1 hour. Estimated number of respondents and/or recordkeepers: 105,000.

Estimated annual frequency of responses: 17.

Submission to Small Business Administration

Pursuant to section 7805(f) of the Code, the rules proposed in this document will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Background

This document contains proposed regulations relating to the requirement that a payor or broker withhold 20 percent from any reportable payment under section 3406(a)(1)(A) or (a)(1)(B), or 20 percent from any reportable interest or dividend payment under section 3406 (a)(1)(C) or (a)(1)(D) of the Code. These provisions were added to the Code by section 104 of the Interest and Dividend Tax Compliance Act of 1983 (Pub. L. 98–67, 97 Stat. 369, 371). These proposed regulations are proposed to be issued under the authority contained in section 3406 (a), (b), (c), (e), (g), (h), and (i), section 6042(c), section 6044(e), section 6049(c), section 6103(q), section 6109, section 6302(c), section 6676, and section 7805 of the Code.

On October 4, 1983, the **Federal Register** published Temporary Employment Tax Regulations under the Interest and Dividend Tax Compliance Act of 1983 (26 CFR part 35a) under sections 3406 and 6676 (b) of the Internal Revenue Code of 1954 (26 CFR part 35a.9999–1; T.D. 7916, 48 FR 45362, as amended on November 25, 1983, by T.D. 7922, 48 FR 53111, on November 23, 1987, by T.D. 8163, 52 FR 44861, and on April 11, 1989, by T.D. 8248, 54 FR 14341). Additional temporary regulations were published in the **Federal Register** on November 25, 1983 (26 CFR part 35a.9999–2; T.D. 7922, 48 FR 53106, as amended on December 20, 1983, by T.D. 7929, 48 FR 56342, on March 13, 1984, by T.D. 7922, 49 FR 9417, and on November 23, 1987, by T.D. 8163, and on April 11, 1989, by T.D. 8248, 54 FR 14341), on December 20, 1983 (26 CFR part 35a.9999–3; T.D. 7929, 48 FR 56332, as amended on January 3, 1984, by T.D. 7933, 49 FR 63, on August 22, 1984, by T.D. 7966, 49 FR 33236, on November 23, 1987, by T.D. 8163, 52 FR 44861, and on April 11, 1989, by T.D. 8248, 54 FR 14341), on February 28, 1984 (26 CFR part 35a.9999–3A; T.D. 7946, 49 FR 7227), on August 22, 1984 (26 CFR part 35a.9999–4T, T.D. 7966, 49 FR 33237, as amended on August 29, 1984, by T.D. 7972, 49 FR 34340; and 26 CFR part 35a.9999–5, T.D. 7967, 49 FR 33240, as amended on September 19, 1984, by T.D. 7973, 49 FR 36645, on August 20, 1985, by T.D. 8046, 50 FR 33526, on April 3, 1986, by T.D. 8046, 51 FR 11447, and on December 19, 1986, by T.D. 8110, 51 FR 45453, on May 19, 1988, by T.D. 8202, 53 FR 17927), on April 23, 1987 (26 CFR part 35a.3406–2; T.D. 8137, 52 FR 13430), and on November 23, 1987 (26 CFR part 35a.3406–1; T.D. 8163, 52 FR 44861, as amended on April 11, 1989, by T.D. 8248, 54 FR 14341). Those regulations were published primarily to provide guidance under the Interest and Dividend Tax Compliance Act of 1983.

Explanation of Provisions

On August 31, 1983, after a news release was issued soliciting comments on backup withholding, a hearing was held at the Internal Revenue Service. The Service received numerous comments, all of which were carefully considered in preparation of both these proposed regulations and the temporary regulations that were published in question and answer format during 1983 and subsequently.

These proposed regulations generally reorganize and restate, in traditional regulation form, the rules contained in the previously published temporary regulations on backup withholding with changes in several areas where commentators have sought clarification. The Service recognizes that the proposed regulations are lengthy, but believes this is needed in order to provide clear guidance for the numerous situations where backup withholding is or is not applicable. In addition, an extensive table of contents has been added to make the regulations more accessible to readers.

General Rules

These proposed regulations require withholding by a payor or broker at a 20 percent rate in certain situations. In general, payments that are subject to backup withholding include: (1) Payments of rents, commissions, fees, or other forms of compensation for services and other fixed or determinable gains, profits, or income payments that are subject to reporting under section 6041 or 6041A (a); (2) payments of dividends that are subject to reporting under section 6042; (3) payments of patronage dividends that are subject to reporting under section 6044; (4) payments of interest and original issue discount that are subject to reporting under section 6049; (5) payments of certain fishing boat operators that are subject to reporting under section 6050A; (6) certain transactions effectuated by brokers and barter exchanges that are subject to reporting under section 6045; and (7) payments of royalties that are subject to reporting under section 6050N.

With respect to payments of interest, original issue discount, dividends, or patronage dividends (hereafter, "reportable interest or dividend payments"), backup withholding is required in four situations. First, backup withholding is required if a payee does not provide a taxpayer identification number to the payor in the manner required. An individual's taxpayer identification number is the individual's social security number. A nonindividual's taxpayer identification number is the entity's employer identification number. The term "nonindividual" means a trust, estate, corporation, or similar entity. With respect to pre-1984 accounts or instruments, the payee is required to provide his taxpayer identification number, either in writing or orally. With respect to accounts established or instruments acquired after 1983, the payee is required to certify, under penalties of perjury, that the payee's taxpayer identification number is correct. Second, backup withholding is required if the Internal Revenue Service or a broker notifies the payor that the payee's taxpayer identification number is incorrect. Third, backup withholding is required if the Internal Revenue Service or a broker notifies the payor that the payee is subject to backup

withholding due to notified payee underreporting. Fourth, with respect to accounts established or instruments acquired after 1983, backup withholding is required if a payee fails to certify, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting.

With respect to other reportable payments, backup withholding is required only in two situations. First, backup withholding applies if the payee does not provide a taxpayer identification number in the manner required. With respect to post-1983 brokerage or barter exchange relationships, the customer is required to certify, under penalties of perjury, that the taxpayer identification number provided is correct. With respect to all remaining types of reportable payments (e.g., rents, royalties, commissions, rents, pension or annuity distributions, etc.), the taxpayer identification number is not required to be certified under penalties of perjury. Second, backup withholding is required if the Internal Revenue Service or a broker notifies the payor that the payee's taxpayer identification number is incorrect.

Clarification and modifications

With respect to a "window transaction" as defined in these proposed regulations, backup withholding applies only if the payee fails to furnish a taxpayer identification number. The payee does not have to certify, under penalties of perjury, that the number provided is correct. In addition, commentators have questioned whether backup withholding is required with respect to a window transaction if the Internal Revenue Service notifies the payor to withhold either because of an incorrect taxpayer identification number under section 3406(a)(1)(B) or a notified payee underreporting under section 3406(a)(1)(C). Because requiring backup withholding on window transactions due to notification from the Service to withhold would create administrative problems for payors, these proposed regulations provide that the payor is required to withhold only on redemptions of United States savings bonds, or payments on interest coupons, commercial paper, or banker's acceptances, any of which are in definitive form, if the payee fails to provide a taxpayer identification number. Thus, payors of window transactions are not required to check their records to determine if the payee is subject to backup withholding under section 3406(a)(1) (B) or (C). Many commentators questioned the meaning of "in definitive form"; these proposed regulations provide a definition.

A person who furnishes a number that does not contain nine digits or contains an alpha character (i.e., an obviously incorrect number) is treated as failing to provide a taxpayer identification number. Thus, backup withholding applies to payments made to any payee who furnishes an obviously incorrect number. Commentators have questioned whether a number that contains nine identical digits (e.g., 999–99–9999) or nine sequential digits (e.g., 012–345–678) is a number with respect to which they should impose backup withholding on the account or instrument. Payors should not impose backup withholding when a payee furnishes such numbers because an obviously incorrect number for purposes of backup withholding is one that does not contain nine numerals. While the Service recognizes that these other numbers are likely to be erroneous, administrative problems for payors would result if the payor were required to determine whether a number containing nine digits is correct.

Backup withholding will apply with respect to numbers with nine numerals only when the Service notifies the payor that the number is incorrect. In this connection, payors are required to backup withhold only if the payor receives a notice of an incorrect number from the Internal Revenue Service under section 3406(a)(1)(B) on or after January 1, 1990.

Backup withholding only applies to reportable payments that are not withheld upon under another provision of the Code. Thus, payors are not required to withhold on a payment under more than one section of the Code.

Commentators requested clarification on the amount of a payment subject to backup withholding. These proposed regulations provide generally that the reporting threshold is to be ignored in determining the amount subject to backup withholding. Backup withholding, therefore, applies to the first dollar of any payment. There are limited exceptions to this rule, however, that are described in these proposed regulations. For example, a payor can elect not to withhold on reportable interest or dividend payments of $10 or less and which on an annualized basis would be $10 or less. This minimal payment rule means that payors look at the amount on a payment-by-payment basis. Thus, payors are not required to add the payments that they have made thus far in the year to determine whether the payee was paid more than $10 during the year. Payors are, however, required to annualize each payment. Annualization means that payors determine the amount the payment would have been for a 1-year period rather than for the period for which it is paid. For example, with respect to a savings account that pays interest quarterly, payors would not have to withhold on any quarterly payment that is $2.50 or less.

These proposed regulations do not require that a separate annualization computation be made for payments made on accounts opened between a payor's customary paying date. Because this could create administrative and programming problems for payors, these proposed regulations provide that, with respect to accounts opened during the payment cycle, a payor will be allowed to assume that the payment was made for the entire payment cycle.

Barter exchanges or brokers who effect sales of securities where the amount of the gross proceeds or other reportable payment under section 6045 is not more than $10 are also not required to withhold on those minimal amounts if the barter exchange or broker so elects. In addition, any window transaction that aggregates $10 or less is not subject to withholding if the payor so elects. Brokers, barter exchanges, or payors with respect to window transactions are not required to annualize the payments.

Commentators have requested guidance on whether backup withholding applies in instances where the sale of a fractional share results in less than $20 of gross proceeds that are not otherwise subject to information reporting under § 5f.6045–1(c)(3)(ix). Although section 3406 permits backup withholding regardless of the amount that must be paid before an information return is required to be made, these regulations provide that gross proceeds of less than $20 resulting from the sale of a fractiona1 share will not be subject to backup withholding.

With respect to taxable reinvestment plans, the regulations allow payors to ignore fees, commissions, or any discount in the purchase price of the shares in determining the amount subject to withholding.

A payor may elect to reduce the amount of interest subject to withholding when a premature withdrawal penalty is imposed with respect to a time savings account, a certificate of deposit, or similar deposit.

These proposed regulations describe the procedures for determining the amount of original issue discount subject to backup withholding. Commentators have questioned whether

a subsequent holder of a short-term discount obligation is required to certify, under penalties of perjury, that the purchase price is correct. These proposed regulations provide that the holder is not required to certify such information.

With respect to payments that are subject to reporting under sections 6041 or 6041A(a) (e.g., rents, commissions, nonemployee compensation), the payor is generally not required to withhold on payments that aggregate less than $600 during a calendar year. Once the payment or payments aggregate $600, however, backup withholding applies to the entire payment that causes the amount to equal or exceed $600 and to any subsequent payments made to the payee during the year. For example, if a payor pays nonemployee compensation of $550 to a person on February 25 and pays $50 on December 3, these proposed regulations clarify that the payor is only required to withhold 20 percent of $50 even though $600 of reportable payments were paid during the year.

Exceptions to the $600 rule exist if the payor was required to make an information return for the preceding calendar year or the payor was required to impose backup withholding during the preceding calendar year. In these instances, the payor is required to withhold on the first dollar of any payment to the payee.

In the case of a corporate reorganization where a payee is required to exchange stock held in the former corporation for stock in the new corporation before the dividends which have been paid with respect to the stock in the new corporation will be provided to the payee, the temporary regulations provide that the dividend is considered paid for purposes of backup withholding on the payment date without regard to when the payee actually exchanges the stock and receives the dividend. Commentators have stated, however, that current industry practice for paying and recordkeeping purposes is to treat the dividend as paid on the date that the shares are exchanged since that is the date the payee receives the dividend. Thus, these proposed regulations provide that in the case of a corporate reorganization, the dividends are treated as paid for purposes of backup withholding on the date that the payee actually exchanges the stock in the former corporation and receives the dividend.

The temporary regulations and these proposed regulations provide similar rules for a person who is awaiting a taxpayer identification number and set forth the requirements for such a payee to qualify for a 60-day exemption period. Both regulations also provide that the exemption does not apply to window transactions. These proposed regulations provide further that the exemption does not apply to the redemption of a bearer bond that is subject to reporting under section 6045. As with window transactions, the payor with respect to a bearer bond would not have funds on which to withhold after the 60-day period if the payee did not provide a taxpayer identification number. Thus, these proposed regulations provide that a person who presents a bearer bond after September 27, 1990 will be subject to backup withholding unless the person provides a certified taxpayer identification number.

Moreover, with respect to other reportable gross proceeds under section 6045, the regulations provide that when a payee instructs a broker to sell or retire an obligation and the customer does not have a taxpayer identification number, the broker may allow the payee to furnish the number in the manner required within 60 days of the sale provided the customer provides an awaiting-TIN certificate and does not withdraw or reinvest more than 80 percent of the gross proceeds. If the broker does not receive the customer's taxpayer identification number in the manner required on or before the 60th day after the sale or redemption, the broker is required to withhold 20 percent of the gross proceeds.

Commentators have also requested a definition of a readily tradable instrument. Accordingly, these regulations provide a definition. In addition, with respect to a readily tradable instrument acquired through a broker and not held in street name, the regulations clarify that a payor may assume that the taxpayer identification number and other information received from a broker are correct. The broker is generally required only to notify the payor if the payee failed to provide a certification to the broker that the taxpayer identification number is correct or that the payee is not subject to backup withholding due to notified payee underreporting. The payor may ignore a notice from the broker that the payee has failed to make the certification to the broker, however, if the payor has received the certification directly from the payee.

The payor of an instrument acquired through a broker is required to send a notice to the payee if (1) the broker notifies the payor of the readily tradable instrument that the payee failed to provide the certifications (and the payor has not received that certification from the payee directly) or (2) the broker notifies the payor that the Internal Revenue Service notified the broker that the payee is subject to backup withholding or the Internal Revenue Service notifies the payor to impose backup withholding. Whenever the payor is required to notify the payee that backup withholding has commenced or will commence with respect to a readily tradable instrument, the notice must inform the payee of the condition or conditions for imposing backup withholding and explain what the payee must do to stop backup withholding. These proposed regulations amend the language of the notice that the payor sends to notify the payee that backup withholding has commenced or will commence as a result of a certification failure. With respect to the notice that a payor is required to send after being notified by the Service or a broker that a payee is subject to backup withholding under section 3406(a)(1)(B) or section 3406(a)(1)(C), these proposed regulations incorporate those requirements set forth in the temporary regulations.

Special rules exist when an account is established directly with, or an instrument is acquired directly from, the payor by means of electronic or mail communication. The temporary regulations provide that, at the payor's option, the payee may be given 30 days to provide the required certifications as long as the payee furnishes a taxpayer identification number at the time of acquisition. Many commentators asked whether this special rule in the temporary regulations is limited to mutual funds. These proposed regulations clarify that these special rules apply to an account or other readily tradeable instrument that is established directly with, or acquired directly from, any payor, including bank deposits, certificates of deposit, or repurchase agreements, provided the account or instrument is established or acquired by means of electronic or mail communication. In addition, these proposed regulations clarify that a broker who holds an instrument as nominee for a payee (*i.e.*, in street name) is considered a payor. Accordingly, these special rules apply where an instrument is acquired from a broker by means of electronic or mail communication and the broker holds the instrument in street name for a payee.

With respect to a post-1983 brokerage account through which a readily tradeable instrument is sold by electronic means (*i.e.*, by telephone or wire instruction), commentators requested clarification of the special rule that the broker may permit the

customer to furnish the required certification that his taxpayer identification number is correct within 30 days of the sale, provided the customer furnishes his taxpayer identification number at the time of the sale and does not withdraw or reinvest more than 80 percent of the gross proceeds before furnishing the certification. Although the temporary regulations provide that reinvestment of up to 80 percent of the gross proceeds in other securities will not be considered a withdrawal, commentators objected to the provision that withdrawal of any amount of cash results in immediate imposition of backup withholding. These proposed regulations alter that rule and provide that as long as at least 20 percent of the gross proceeds are held in cash, the broker may permit the customer to furnish the required certification within 30 days of the sale. If no certified number is received within 30 days of the sale or if the customer withdraws or reinvests more than 80 percent of the gross proceeds before the broker receives the certification, however, the broker must withhold 20 percent of the reportable gross proceeds at that time. Thus, the broker rules more closely parallel the special 30-day rule with respect to reportable interest or dividends.

In the case of an issuer or its paying agent of a taxable interest coupon who receives an envelope or "shell" used for processing the coupon signed by the payee stating that the interest is exempt from taxation under section 103(a) (relating to interest on certain State or local governmental obligations), commentators requested clarification of whether the amount is subject to backup withholding if the interest is not, in fact, tax-exempt. Because the middleman payor (*e.g.*, bank or broker) may only treat the interest as tax-exempt by receiving a properly completed "shell" or envelope from the payee (including the payee's name, address, and taxpayer identification number) under § 1.6049-5(b)(2), the issuer will not be required to withhold even if the interest is taxable because the shell or envelope will contain the payee's taxpayer identification number. If the middleman payor does not receive a properly completed shell or envelope from the payee, including the payee's taxpayer identification number, the middleman payor is not permitted to treat the interest as tax-exempt. Accordingly, the middleman payor would be required to impose backup withholding if the interest is not, in fact, tax-exempt and the payee did not furnish his taxpayer identification number.

Many commentators questioned whether specific transactions are subject to broker reporting under section 6045. Examples provided in these regulations show that certain transactions are covered under section 6045 and thus are subject to backup withholding. Please note, however, that real estate transactions subject to information reporting by a real estate reporting person, as defined under section 6045(e)(2), are not subject to backup withholding (pursuant to section 3406(h)(5)(D)) except as provided in regulations. These proposed regulations do not contain backup withholding requirements with respect to real estate transactions.

Many commentators also questioned whether they were required to obtain a certificate each time a payee opens a new account or brokerage relationship even if the payor already has a certificate from the payee. These proposed regulations clarify that a payor, at its option, may require a payee to file only one Form W–9 for all accounts or instruments of the payee. If the payor elects this option and already has a certificate on file with respect to the payee, the payor is not required to obtain another certificate from the payee.

Many commentators questioned whether the payor or broker must provide the Form W–9 instructions to the payee with respect to new accounts or brokerage relationships where the payor or broker devises a substitute Form W–9. These proposed regulations provide that the instructions or the substance of those instructions do not have to be furnished to the payee. With respect to such accounts, the payee need only be instructed to strike out the language of the certification that relates to payee underreporting if the payee is subject to backup withholding due to notified payee underreporting.

Many commentators questioned whether a payee, who has never furnished a taxpayer identification number with respect to a pre-1984 account or a brokerage account other than a post-1983 brokerage account, must certify, under penalties of perjury, that his number is correct if the payee furnishes his taxpayer identification number for the first time after 1983. These proposed regulations clarify that the payee is not required to certify that his taxpayer identification number is correct if he is furnishing the number with respect to a pre-1984 account or a brokerage relationship other than a post-1983 brokerage account. Clarification has also been requested with respect to how backup withholding applies to accrued interest. The regulations under section 6049 provide that when a bond is purchased between interest payment dates, the portion of the purchase price attributable to accrued interest is not reportable under section 6049. If a broker is involved in the transfer of the obligation, however, the broker is required to report the gross proceeds of the sale. Accrued interest is a portion of the proceeds of the sale. The regulations under section 6045 provide that, in reporting the total gross proceeds, the broker is required to file a Form 1099–INT showing the amount of accrued interest and is required to file a Form 1099–B showing the remainder of the proceeds of the sale. Therefore, backup withholding will apply to the gross proceeds of the sale (including the accrued interest portion) if the payee does not provide a taxpayer identification number in the manner required or the Internal Revenue Service notifies the broker that the payee's number is incorrect.

Based on the questions received relating to the treatment of grantor trusts, these proposed regulations adopt the rule in the temporary regulations in the Federal Register on April 11, 1989 (54 FR 14341) that relate to grantor trusts with ten or fewer grantors. Accordingly, these proposed regulations provide that a grantor trust with ten or fewer grantors is not a payor for purposes of backup withholding. Such grantor trust is not required to impose backup withholding when it receives a reportable payment. However, the trustee of a grantor trust having ten or fewer grantors may not certify, under penalties of perjury, that the trust is not subject to backup withholding due to notified payee underreporting or that the taxpayer identification number provided by the trustee is correct unless each grantor has furnished the trustee with such certifications, and the trustee uses the taxpayer identification numbers provided by the grantors on the Form 1041 filed by the trustee. Grantor trusts that have more than ten grantors are considered payors of such payments to each grantor (payee), in proportion to each grantor's ownership of the trust.

Many commentators requested clarification in the depositing procedures for amounts withheld under backup withholding. These proposed regulations provide that the payor must remit the amounts withheld under backup withholding in the same manner that an employer remits social security and income tax withheld from wages. Thus, the eighth-monthly trigger procedures are used. A payor may aggregate amounts withheld for backup

withholding with amounts withheld from wages to determine when to remit the withheld amounts. Alternatively, a payor may elect to remit amounts withheld under backup withholding separately from amounts withheld from wages. Regardless of the manner in which the payor elects to treat withheld amounts for purposes of determining the time within which such amounts are required to be deposited, a payor must report the amounts withheld under section 3406 on the same Form 941 that the payor uses to report the employment taxes deposited. The Form 941 has been revised to include a Schedule A to report amounts deposited for backup withholding. If the payor decides to treat backup withholding as a separate tax, the payor should mark 945 on the FTD coupon (Federal Tax Deposit coupon) in remitting backup withholding, should complete Schedule A, and should attach the schedule to Form 941 when the payor (employer) reports to the Internal Revenue Service the amounts remitted during the quarter. With respect to a payor who has a paying agent, the Service has issued Rev. Proc. 84–33 explaining the procedures for an agent to use in depositing and reporting withheld amounts.

Clarification also has been requested with respect to the refund of amounts erroneously withheld under section 3406. These proposed regulations provide that a payor may refund the amount erroneously withheld from the payee during the same calendar year. Payors must retain a receipt of the amount refunded. A cancelled check or a notation on the payee's statement will be treated as the required receipt. With respect to erroneous withholding on a payment to a middleman payor, the regulations provide that the middleman payor may adjust deposits of the tax which the middleman payor is required to make, by claiming a credit for the amount of tax withheld by the upstream payor. The middleman payor would pay the full amount to the payee if no condition for imposing backup withholding exists with respect to its payee.

For purposes of information reporting under section 6041 and backup withholding, a reportable gambling winning is any winning (other than from keno, bingo, or slot machines) that is $600 or more and that is based on betting odds of 300 to 1, or higher. Reportable gambling winnings will be subject to backup withholding if tax is not actually withheld under section 3402 (q) and the payee does not provide a taxpayer identification number.

Effect of the Tax Reform Act of 1984 on Backup Withholding. The Tax Reform Act of 1984 (98 Stat. 494) made three material technical corrections relating to backup withholding under section 3406. First, section 6042 was amended to provide that payments made to exempt recipients (as defined in section 6049(b)(4)) are not subject to information reporting under section 6042. Because such payments are not subject to information reporting, backup withholding will not apply to such payments of dividends. These proposed regulations, unlike the, temporary regulations, do not expand the class of payees to which backup withholding will not apply. For example, if the payment is reportable because it is made to a payee who is not an exempt recipient (determined under the applicable reporting section), then backup withholding will apply unless the payment is made to an organization exempt from taxation under section 501 (a) or an individual retirement plan, the United States, a State, a foreign government, an international organization, or any wholly owned agency or instrumentality of the foregoing). Because backup withholding is intended to be the enforcement mechanism of the information reporting system, these regulations do not provide any additional exempt recipients under section 3406(g)(1)(A) for purposes of backup withholding.

Second, the Act contains a technical correction to provide rules under section 643 to deal with the allocation of credit for amounts withheld from reportable payments to trusts, estates, and their beneficiaries.

Finally, the Act has a technical correction to coordinate pension and annuity withholding under section 3405 with information reporting under section 6041 and backup withholding under section 3406. The applicable regulations in this document concerning pension and annuity payments will continue to apply for such payments made prior to December 31, 1984, unless the payor elected otherwise, and to certain distributions made after June 30, 1984. See § 31.3406(g)–2(c)(1).

Effect of the Tax Reform Act of 1986 on Backup Withholding. The Tax Reform Act of 1986 ("the 1986 Act") made two significant changes in the law relating to backup withholding that are reflected in these proposed regulations. First, the 1986 Act added section 6050N to the Internal Revenue Code to require information reporting on royalty payments. Under prior law, royalty payments were reported under section 6041 to the extent the payments totaled $600 or more during a calendar year. These payments were treated as reportable under section 6041 and hence subject to backup withholding if one of the two conditions for imposing backup withholding existed. In addition, royalty payments under section 6041 were treated as "reportable" for backup withholding purposes if the payor was required to make an information return under section 6041 for the immediately preceding calendar year with respect to payments to the payee or if the payor was required to withhold during the preceding calendar year with respect to payments to the payee that were reportable under section 6041. In either of these two events the payor was required to withhold whether or not the payor's payments to the payee equalled or exceeded $600 for the year. After the enactment of section 6050N, however, royalty payments are only subject to information reporting and, hence, to backup withholding if the payments aggregate $10 or more during the calendar year.

The 1986 Act also imposes a statement mailing requirement for payee statements of royalties reportable under section 6050N (a), and it amends the separate mailing provisions under prior law by imposing an identical statement mailing requirement on payee statements of dividends, patronage dividends, and interest under sections 6042(c), 6044(e), and 6049(c). The Internal Revenue Service issued guidance to the public on the statement mailing requirement in Notice 87–17, 1987–1 C.B. 454. That notice specifically provided that the payee statement could not be perforated to a permissible enclosure in a statement mailing. Many commentators objected to this limitation and stated that the purpose of the liberalization of the separate mailing requirement was, in part, to permit a perforated statement.

Upon reconsideration, the Internal Revenue Service issued Notice 87–70, 1987–2 C.B. 380, to permit the statement to be perforated to a check or statement of a payee's account. These proposed regulations reflect the statement-mailing rules in Notice 87–17 as modified by Notice 87–70. The proposed rules in this document containing the statement mailing requirements will amend earlier proposed regulations on information reporting that were published in the **Federal Register** on February 29, 1988 (53 FR 5991).

Effect of the Omnibus Budget Reconciliation Act of 1989 on Due Diligence. These proposed regulations reference the questions and answers in the temporary regulations relating to the

due diligence requirement under section 6676, which imposed a $50 penalty on a payor filing an information return with a missing TIN or an incorrect TIN unless the payor exercised due diligence. However, effective for information returns filed with respect to the 1989 calendar year and thereafter, the Act repealed section 6676. The questions and answers referenced in these proposed regulations thus apply only to information returns with respect to calendar years prior to 1989. These proposed regulations do not provide guidance with respect to the penalty under section 6721 for filing an information return with a missing or an incorrect taxpayer identification number.

Changes from the Temporary and Proposed Regulations Issued under Section 3406 (a)(1)(B), Backup Withholding due to an Incorrect TIN. The rules and regulations section of this issue of the **Federal Register** contains amendments to temporary regulation § 35a.3406–1, which provides rules for backup withholding under section 3406 (a) (1) (B). The substanoe of that regulation, as amended, is included in these proposed regulations.

One amendment made to § 35a.3406–1 exempts certain fiduciary and nominee accounts from backup withholding under section 3406(a)(1)(B) until final regulations are issued. Under these proposed regulations, such accounts would not be exempt from backup withholding under section 3406(a)(1)(B) following receipt of a "B" notice after final regulations are issued. The Service invites comments from payors on how fiduciary and nominee accounts can be formatted on information returns so that the correct name/TIN combination can be identified and backup withholding can be avoided.

Changes from the Temporary Regulations Issued under Section 3406 (a)(1)(C), Notified Payee Underreporting. The proposed regulations on backup withholding due to notified payee underreporting as set forth in § 31.3406 (c)–1 of this document incorporates those rules in the temporary regulations on this subject that were published in the **Federal Register** on April 23, 1987 (52 FR 13430), with several changes. This document clarifies the rules in the temporary regulations and adds examples to illustrate how some of the substantive provisions should apply.

For instance, the Internal Revenue Service received several inquiries concerning how a paying agent must impose backup withholding under section 3406 (a)(1)(C). The inquiry arises because a paying agent may remit reportable interest or dividend payments on behalf of a payor to a payee who also maintains a separate account with the paying agent that pays reportable interest or dividends. Thus, the question that has arisen is whether the paying agent must search its own accounts as well as the accounts of the instructing payor to impose backup withholding on the payee under section 3406(a)(1)(C). The proposed regulations in this document provide that the paying agent is only required to search the accounts of the payor stated on the notice using that payor's taxpayer identification number.

Payors also asked whether they must check their records each time a payee opens a new post-1983 account paying reportable interest or dividends and makes the certification required under section 3406(a)(1)(D). These proposed regulations clarify that payors do not have an affirmative duty to search their records in this circumstance.

Several payors were concerned about which information they should use to locate the accounts of a payee subject to backup withholding under section 3406(a)(1)(C) in those circumstances in which the notice from the Service instructing the payor to commence backup withholding under section 3406(a)(1)(C) lists information from a joint account. Because of this concern, the provisions in § 31.3406(c)–1 of these proposed regulations on joint accounts are clarified. In addition, these proposed regulations provided examples to show the application of backup withholding on a joint account.

Finally, the regulations under proposed § 31.3406(c)–1 provide that a payor who fails to send the notice required under section 3406(a)(4) to a payee subject to backup withholding under section 3406(a)(1)(C) may be subject to civil or criminal penalties.

Certain Reportable Payments Made Outside the United States by Foreign Persons, Foreign Offices of United States Banks and Brokers, and Others. The temporary regulations state that the applicability of the backup withholding rules to certain reportable payments made outside the United States is under consideration. *See* § 35a.9999–3 (A–34), (A–36); § 35a.9999–4 (A–1), (A–5). It has been decided not to require backup withholding with respect to such reportable payments unless the payor has actual knowledge that the payee is a United States person, and the proposed regulations reflect this decision at § 31.3406(g)–1(e).

Concluding Comments

The Internal Revenue Service, in proposing these regulations, has strived to provide as much flexibility as possible to payors in complying with the backup withholding rules. For example, many payors commented that they would need time to process taxpayer identification numbers or certificates that they receive from their payees. The regulations provide them with the needed flexibility by requiring that payors process a number or certificate within 30 days of filing, but permitting payors to process them sooner if they choose.

Many payors requested that they be able to prepare and provide certificates to their payees. The proposed regulations allow payors to devise their own certificates that may be incorporated into account signature cards or other instrument purchase agreements as long as the payor complies with the specifications of Rev. Proc. 83–89, 1983–2 C.B. 613. The Service has also given payors the authority to refuse to accept forms or certificates the payor itself has not prepared, so long as the payor promptly furnishes to the payee an acceptable form.

In response to requests by some payors, the proposed regulations provide that due to the volume of certificates payors receive, payors are permitted to retain only a microfilm or microfiche copy of the certificate and to destroy the paper certificates.

The temporary regulations provide that, with respect to the proceeds of a broker or barter exchange transaction, backup withholding applies on the sale date (*i.e.*, the date the transaction is entered on the books of the broker or barter exchange). Several commentators have indicated that this rule is difficult to administer because payment often occurs after the sale date. Accordingly, the proposed regulations provide that the obligation to backup withholding arises on the sale date, but that the broker or barter exchange is not required to satisfy its backup withholding liability until payment is made.

The proposed regulations describe exempt recipients and allow them to be treated as exempt recipients at the option of the payor even though they have not filed a certificate claiming exempt status with the payor. This rule is provided because some payors explained that they do not have the capability of determining whether the payee is an exempt recipient. Thus, the regulations provide that a payor may refuse to treat a payee as exempt unless the payee files a certificate and may treat a payee who does not file a certificate as a payee who is not an exempt recipient. Further, many payors

commented on the problems that would result if the payor withheld on such an exempt recipient. As a result of these concerns, if a payor withholds on an exempt recipient because the payee fails to provide a certificate, the proposed regulations allow a payor, at its option, to treat the amount as erroneously withheld and refund it to the exempt recipient.

With respect to a payment in property, the proposed regulations allow the payor to withhold from an alternative source. If the alternative account or source is not payable to the person or persons listed on the account subject to backup withholding, then the payor must obtain a written statement from the non-common owner(s) of the alternative source property allowing the payor to withhold from the alternative account or source. Additionally, payors expressed concern about their liability for backup withholding on a payment in property when there is no alternative source of cash available to withhold upon. Thus, these proposed regulations provide that, except with respect to prizes, awards and gambling winnings, the obligation to backup withhold may be deferred, at the payor's option, until the payor makes a cash payment to the account subject to backup withholding or cash is otherwise deposited in the account.

Finally, the Internal Revenue Service recognizes that there may be industry-specific business and regulatory constraints that make it difficult for certain types of payors to comply with certain backup withholding procedures. Accordingly, the Internal Revenue Service requests comments on these and other areas in which payors need additional flexibility. The Internal Revenue Service will attempt to accommodate such needs to the extent that doing so is consistent with the statute and would not unduly burden effective tax enforcement and administration.

Special Analyses

These proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the notice and public procedure requirements of 5 U.S.C. 553 do not apply because the regulations proposed herein are interpretative. Therefore, an initial Regulatory Flexibility Analysis is not required by the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably nine copies) to the Commissioner of Internal Revenue. Interested parties are encouraged to submit written comments by mail and to make oral comments on both the substantive and operational aspects of backup withholding under section 3406 and the penalty under section 6676 at any hearing that might be scheduled. All written comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who has submitted written comments. The Internal Revenue Service anticipates scheduling one hearing to accommodate requests (1) under this notice of proposed rulemaking, and (2) under the amendments to the temporary regulations under section 3406(a)(1)(B) concerning the imposition of backup withholding due to an incorrect taxpayer identification number in this issue of the **Federal Register**. Notice of the time and place of the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Renay France of the Office of the Assistant Chief Counsel (Income Tax and Accounting) Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations on matters of both substance and style.

List of Subjects

26 CFR 1.6001–1—1.6109–2

Income taxes, Administration and procedure, Filing requirements, Reporting and recordkeeping requirements.

26 CFR Part 31

Employment taxes, Income taxes, Lotteries, Railroad retirement, Social security, Unemployment tax, Withholding, Interest and Dividend Tax Compliance Act of 1983.

26 CFR Part 301

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes, Disclosure of information, Filing requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed amendments to the regulations

The proposed amendments to 26 CFR parts 1, 31, 301, and 602 read as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. Authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.6042–5, as proposed on February 29, 1988 (53 FR 5995), is amended by adding the text of paragraph (c)(2) to read as set forth below:

§ 1.6042–5 Official statements to recipients of dividends paid after December 31, 1983.

* * * * *

(c) *Manner of providing the official statement to the recipient.* * * *

(2) *Statement mailing requirement for forms to be filed after October 22, 1986*—(i) *In general.* With respect to a Form 1099 that is required to be filed after October 22, 1986 (without regard to extensions), the mailing of a Form 1099 to a payee-recipient required under section 6042(c) must qualify as a statement mailing. A statement mailing shall contain the required Form 1099 (written statement). In addition, the mailing may contain the following enclosures:

(A) A check with respect to the account reported on the written statement,

(B) A letter explaining why a check with respect to such account is not enclosed with the written statement (for example, because a dividend has not been declared payable),

(C) A statement of the taxpayer's specific account with the payor if payments on such account are reflected on the written statement,

(D) A letter limited to an explanation of the tax consequences of the information set forth on the enclosed written statement,

(E) Payee statements related to other Forms 1099, Form 1098, and Form 5498 (or the account balance on a Form 5498), Forms W–2 and W–2P, and

(F) Any documents concerning the solicitation of the Form W–9 and Form W–8.

Further, to qualify as a statement mailing, the outside of the envelope in

which the written statement is mailed and each nontax enclosure enclosed in the envelope must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Enclosed". For purposes of this paragraph, a nontax enclosure is any item listed in paragraph (c)(2)(i) (A), (B), or (C) of this section. A statement mailing includes a separate mailing as described under paragraph (c)(1) of this section. However, a payor is not required to include the legend on the outside of an envelope containing a separate mailing. The requirement to provide the written statement in person or by first-class mail may be satisfied by sending the written statement and any enclosures described in this paragraph by intra-office mail, provided that intra-office mail is used by the payor in sending account activity, balance information, and other correspondence to the payee. If a payor does not personally deliver the written statement (*i.e.*, Form 1099) to the recipient or mail it to the recipient in a statement mailing as described in this paragraph, the payor shall be considered to have failed to mail the statement required under section 6042(c) and will be subject to the penalty under section 6722.

(ii) *Limitation on enclosures.* No enclosures, other than those permitted under paragraph (c)(2)(i) of this section, and no promotional or advertising material are permitted in the mailing of the written statement. Even a *de minimis* amount of such material violates the statement mailing requirement. However, a logo on the envelope containing the written statement and on nontax enclosures as described in paragraph (c)(2)(i) of this section does not violate the written statement requirement.

(iii) *Perforated written statement.* The written statement required under section 6042(c) and paragraph (c)(2) of this section may be perforated to a check or to a statement of the payee's specific account with the payor as described in paragraph 6042(c)(2)(i) (A) or (C). The enclosure to which the written statement is perforated must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Attached".

* * * * *

Par. 3. Section 1.6044–6, as proposed on February 29, 1988 (53 FR 5996), is amended by adding the text of paragraph (c)(2) to read as set forth below:

§ 1.6044–6 Official statements to recipients for payments after December 31, 1983.

* * * * *

(c) *Manner of providing the official statement to the recipient.* * * *

(2) *Statement mailing requirement for forms to be filed after October 22, 1986*—(i) *In general.* With respect to a Form 1099 that is required to be filed after October 22, 1986 (without regard to extensions), the mailing of a Form 1099 to a payee-recipient required under section 6044(e) must qualify as a statement mailing. A statement mailing shall contain the required Form 1099 (written statement). In addition, the mailing may contain the following enclosures:

(A) A check with respect to the account reported on the written statement,

(B) A letter explaining why a check with respect to such account is not enclosed with the written statement (for example, because a dividend has not been declared payable),

(C) A statement of the taxpayer's specific account with the payor if payments on such account are reflected on the written statement,

(D) A letter limited to an explanation of the tax consequences of the information set forth on the enclosed written statement,

(E) Payee statements related to other Forms 1099, Form 1098, and Form 5498 (or the account balance on a Form 5498), Forms W–2 and W–2P, and

(F) Any documents concerning the solicitation of the Form W–9 and Form W–8.

Further, the outside of the envelope in which the written statement is mailed and each nontax enclosure included in the envelope must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Enclosed". For purposes of this paragraph, a nontax enclosure is any item listed in paragraph (c)(2)(i) (A), (B), or (C) of this section. A statement mailing includes a separate mailing as described under paragraph (c)(1) of this section. However, a payor is not required to include the legend on the outside of an envelope containing a separate mailing. The requirement to provide the written statement in person or by first-class mail may be satisfied by sending the written statement and any enclosures described in this paragraph by intra-office mail, provided that intra-office mail is used by the payor in sending account activity, balance information, and other correspondence to the payee. If a payor does not personally deliver the written statement (*i.e.*, the Form 1099) to the recipient or mail it to the recipient in a statement mailing as described in this paragraph, the payor shall be considered to have failed to mail the statement required under section 6044(e) and will be subject to the penalty under section 6722.

(ii) *Limitation on enclosures.* No enclosures, other than those permitted under paragraph (c)(2)(i) of this section, and no promotional or advertising material are permitted in the mailing of the written statement. Even a *de minimis* amount of such material violates the statement mailing requirement. However, a logo on the envelope containing the written statement and on any enclosure as described in paragraph (c)(2)(i) of this section does not violate the written statement requirement.

(iii) *Perforated written statement.* The written statement required under section 6044(e) and paragraph (c)(2) of this section may be perforated to a check or to a statement of the payee's specific account with the payor as described in paragraph 6044(c)(2)(i) (A) or (C). The enclosure to which the written statement is perforated must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Attached".

* * * * *

Par. 4. Section 1.6049–6(e), as proposed on February 29, 1988 (53 FR 6009), is amended by adding paragraphs (e)(5) (ii), (iii), and (iv) to read as set forth below:

§ 1.6049–6 Statements to recipients of interest payments and holders of obligations as to which there is attributable original issue discount.

* * * * *

(e) *Official statement to recipient for payments made after December 31, 1983.* * * *

* * * * *

(5) *Manner and time of providing the official statement to the recipient.* * * *

* * * * *

(ii) *Statement mailing requirement for forms to be filed after October 22, 1986.* With respect to a Form 1099 that is required to be filed after October 22, 1986 (without regard to extensions), the mailing of a Form 1099 to a payee-recipient required under section 6049(c) must qualify as a statement mailing. A statement mailing shall contain the required Form 1099 (written statement). In addition, the mailing may contain the following enclosures:

(A) A check with respect to the account reported on the written statement,

(B) A letter explaining why a check with respect to such account is not enclosed with the written statement (for example, because interest on the

account has not been paid or credited to the account),

(C) A statement of the taxpayer's specific account with the payor if payments on such account are reflected on the written statement,

(D) A letter limited to an explanation of the tax consequences of the information set forth on the enclosed written statement,

(E) Payee statements related to other Forms 1099, Form 1098, and Form 5498 (or the account balance on a Form 5498), Forms W-2 and W-2P, and

(F) Any documents concerning the solicitation of the Form W-9 and Form W-8.

Further, to qualify as a statement mailing, the outside of the envelope in which the written statement is mailed and each nontax enclosure included in the envelope must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Enclosed". For purposes of this paragraph, a nontax enclosure is any item listed in paragraph (e)(5)(ii) (A), (B), or (C) of this section. A statement mailing includes a separate mailing as described under paragraph (e)(5)(i) of this section. However, a payor is not required to include the legend on the outside of an envelope containing a separate mailing. The requirement to provide the written statement in person or by first-class mail may be satisfied by sending the written statement and any permissible enclosures by intra-office mail, provided that intra-office mail is used by the payor in sending account activity, balance information, and other correspondence to the payee. If a payor does not personally deliver the written statement (*i.e.*, Form 1099) to the recipient or mail it to the recipient in a statement mailing as described in this paragraph, the payor shall be considered to have failed to mail the statement required under section 6049 (c) and will be subject to the penalty under section 6722.

(iii) *Limitation on enclosures.* No enclosures, other than those permitted under paragraph (e)(5)(ii) of this section, and no promotional or advertising material are permitted in the mailing of the written statement. Even a *de minimis* amount of such material violates the statement mailing requirement. However, a logo on the envelope containing the written statement and on any enclosure as described in paragraph (e)(5)(ii) of this section does not violate the written statement requirement.

(iv) *Perforated written statement.* The written statement required under section 6049 (c) and paragraph (e)(5)(ii) of this section may be perforated to a check or to a statement of the payee's specific account with the payor as described in paragraph (e)(5)(ii) (A) or (C). The enclosure to which the written statement is perforated must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Attached".

* * * * *

Par. 5. A new § 1.6050N-1 is added to read as follows:

§ 1.6050N-1 Statement to recipients of royalties paid after December 31, 1986.

(a) *In general*—(1) *Manner of providing the official statement to the payee.* With respect to a Form 1099 that is required to be filed after December 31, 1986 (without regard to extensions), reporting the payment of royalties under section 6050N, the payor making such payments is required under section 6050N (b) to furnish a written statement to each person whose name is required to be shown on the Form 1099 (recipient). The written statement shall be furnished either in person or in a statement mailing by first class mail. The requirement to furnish a written statement shall be met by furnishing an official Form 1099 to the recipient. The official Form 1099 shall be the form prescribed by the Secretary for the calendar year. For purposes of section 6050N (b) and this paragraph (a), a payor may use a form that contains provisions that are substantially similar to those of the official Form 1099 if the payor complies with all applicable revenue procedures relating to substitute Forms 1099. The mailing of a Form 1099 to a recipient required under section 6050N (b) must qualify as a statement mailing.

(i) *Statement mailing requirement.* A statement mailing shall contain the required Form 1099 (written statement). In addition, the mailing may contain the following enclosures:

(A) A check with respect to the account reported on the written statement,

(B) A letter explaining why a check with respect to such account is not enclosed with the written statement (for example, because a royalty payment has not been made),

(C) A statement of the taxpayer's specific account with the payor if payments on such account are reflected on the written statement,

(D) A letter limited to an explanation of the tax consequences of the information set forth on the enclosed written statement,

(E) Payee statements related to other Forms 1099, Form 1098, and Form 5498 (or the account balance on a Form 5498), Forms W-2 and W-2P), and

(F) Any documents concerning the solicitation of the Form W-9 and Form W-8.

Further, to qualify as a statement mailing, the outside of the envelope in which the written statement is mailed and each nontax enclosure included in the envelope must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Enclosed". For purposes of this paragraph, a nontax enclosure is any item listed in paragraph (a)(1)(i) (A), (B), or (C) of this section. However, a payor is not required to include the legend on the outside of an envelope that contains a mailing that would qualify as a separate mailing. See § 1.6042-5(c)(1). The requirement to provide the written statement in person or by first-class mail may be satisfied by sending the written statement and any enclosures described in this paragraph by intra-office mail, provided that intra-office mail is used by the payor in sending account activity, balance information, and other correspondence to the payee. If a payor does not personally deliver the written statement (*i.e.*, the Form 1099) to the recipient or mail it to the recipient in a statement mailing as described in this paragraph, the payor shall be considered to have failed to mail the statement required under section 6050N(b) and will be subject to the penalty under section 6722.

(ii) *Limitation on enclosures.* No enclosures, other than those permitted under paragraph (a)(1)(i) of this section, and no promotional or advertising material are permitted in the mailing of the written statement. Even a *de minimis* amount of such material violates the statement mailing requirement. However, a logo on the envelope containing the written statement and on any enclosure as described in paragraph (a)(1)(i) of this section does not violate the written statement requirement.

(2) *Perforated written statement.* The written statement required under section 6050N(b) and paragraph (a)(1) of this section may be perforated to a check or to a statement of the payee's specific account with the payor as described in paragraph (a)(1)(i) (A) or (C). The enclosure to which the written statement is perforated must contain, in a bold and conspicuous type, the legend: "Important Tax Return Document Attached".

(b) *Penalty.* For provisions relating to the penalty provided for failure to furnish a statement under this section, see section 6722.

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

Par. 6. The authority for part 31 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * section 31.3406(a)–1 also issued under 26 U.S.C. 3406 (a), (b), (c), (e), (g), (h), and (i); 26 U.S.C. 6103(g); and 26 U.S.C. 6302(c).

Par. 7. The following §§ 31.3406–O through 31.3406(i)–1 are added to read as follows:

§ 31.3406–O Outline of the backup withholding regulations.

This section lists paragraphs contained in §§ 31.3406–O through 31.3406(i)–1.

§ 31.3406(a)–1 Withholding requirement on reportable payments made after December 31, 1983.

(a) In general.
(b) Middlemen treated as payors.
(c) Exceptions.
(d) Examples.

§ 31.3406(a)–3 Amounts subject to backup withholding.

§ 31.3406(a)–4 Time when payments are considered to be paid and subject to backup withholding.

(a) Reportable interest or dividend payments.
(b) Other reportable payments.
(c) Middleman payor.
(1) In general.
(2) Special rule for common trust funds.
(d) Special rule for grantor trusts.
(e) Examples.

§ 31.3406(b)(1)–1 Reportable payment.

(a) In general.
(b) Reportable interest or dividend payment defined.
(c) Other reportable payment defined.

§ 31.3406(b)(2)–1 Reportable interest payment.

(a) Interest subject to withholding.
(1) In general.
(2) Special rule for tax-exempt interest.
(3) Examples.
(b) Amount subject to withholding.
(1) In general.
(2) Withholding adjustment for penalty for premature withdrawal.
(i) Special rule.
(ii) Examples.

§ 31.3406(b)(2)–2 Original issue discount.

(a) Original issue discount subject to withholding.
(b) Time and amount subject to backup withholding with respect to short-term obligations.
(1) No payment prior to maturity.
(2) Payment prior to maturity.
(c) Transferred short-term obligations.
(1) Subsequent holder may establish purchase price.
(2) If subsequent holder is unable to establish purchase price.
(3) If obligation is transferred.
(d) Time and amount subject to withholding with respect to long-term obligations.
(1) No payments prior to maturity.
(2) Registered long-term obligations with payments prior to maturity.
(3) Bearer long-term obligations with payments prior to maturity.
(i) Payments prior to maturity.
(ii) Payments at maturity.
(e) Transferred long-term obligations.
(1) Subsequent holder.
(2) If obligation is transferred.
(f) Examples.

§ 31.3406(b)(2)–3 Window transactions.

(a) Requirement to withhold.
(b) Window transaction defined.
(c) Manner of furnishing taxpayer identification number in the case of a window transaction.
(d) Examples.

§ 31.3406(b)(2)–4 Reportable dividend payment.

(a) Dividends subject to withholding.
(b) Examples.
(c) Dividends not subject to withholding.
(d) Amount subject to withholding.
(1) In general.
(2) Reasonable estimate of amount ofdividend subject to withholding.
(3) Reinvested dividends.

§ 31.3406(b)(2)–5 Reportable patronage dividend.

(a) Patronage dividends subject to withholding.
(b) Examples.
(c) Amount subject to withholding.
(1) Failure to provide taxpayer identification number or notification of incorrect taxpayer identification number.
(2) Notified payee underreporting or payee certification failure.
(3) Examples.

§ 31.3406(b)(3)–1 Reportable payments of rents, commissions, nonemployee compensation, etc.

(a) Payments subject to withholding.
(b) Amount subject to withholding.
(1) In general.
(2) Special rule with respect to payments aggregating $600 or more for the calendar year.
(3) Determination of whether payments aggregate $600 or more.
(4) Exceptions.
(5) Examples.

§ 31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers.

(a) Transactions subject to withholding.
(b) Examples.
(c) Amount subject to withholding.
(1) In general.
(2) Foreign currency contracts, forward contracts, or regulated futures contracts.
(3) Security sales made through a margin account.
(4) Security short sales.
(i) Amount subject to backup withholding.
(ii) Time of withholding.
(5) Fractional shares.
(6) Examples.

§ 31.3406(b)(3)–3 Reportable payments by certain fishing boat operators.

(a) Payments subject to withholding.
(b) Examples.
(c) Amount subject to withholding.
(1) In general.
(2) Examples.

§ 31.3406(b)(3)–4 Reportable payments of royalties.

(a) Royalty payments subject to withholding.
(b) Amount subject to withholding.

§ 31.3406(b)(4)–1 Exemption for certain minimal payments.

(a) In general.
(b) Manner of making the election.
(c) Annualization.
(1) Reportable interest or dividend payment.
(2) Window transaction, original issue discount, and broker reporting.
(d) Examples.

§ 31.3406(c)–1 Notified payee underreporting of reportable interest or dividend payments.

(a) Requirement to withhold.
(1) In general.
(2) Definition of notified payee underreporting.
(3) Definition of a payee underreporting.
(b) Notice to payors and brokers reporting backup withholding.
(1) Notice from the Internal Revenue Service.
(2) Notice from a broker.
(3) Accounts subject to backup withholding.
(c) Notice from payors of backup withholding due to a payee underreporting.
(1) In general.
(2) Form of the notice to the payee with respect to notified payee underreporting.
(3) Exceptions.
(4) Penalty for failure to provide notice.
(d) Notice to stop backup withholding.
(1) In general.
(2) Date notice to stop withholding will be provided.
(i) Underreporting corrected or bona fide dispute.
(ii) No underreporting or undue hardship.
(e) Period during which withholding is required.
(1) In general.
(2) Stop date.
(i) Underreporting corrected or bona fide dispute.
(ii) No underreporting or undue hardship.
(iii) Payor election to shorten or eliminate grace period.
(iv) Examples.
(f) Notice to payees from the Internal Revenue Service.
(1) Notice period.
(2) Payee subject to withholding.
(3) Disclosure of names of payors and brokers.

(4) Backup withholding certification.
(g) Determination by the Internal Revenue Service that backup withholding should not start or should be stopped.
(1) In general.
(2) No underreporting.
(3) Correcting any payee underreporting.
(i) Before issuance of a statutory notice of deficiency.
(ii) After issuance of a statutory notice of deficiency.
(4) Undue hardship.
(5) Bona fide dispute.
(h) Requests for determinations.
(1) In general.
(2) Determinations made during the notice period.
(3) Determinations made after the notice period.
(i) Reserved.
(j) Payees filing a joint return.
(1) In general.
(2) Exceptions.
(i) Innocent spouse.
(ii) Examples.
(iii) Divorced or legally separated payee.
(k) Penalties.
(1) Failure to withhold.
(2) False certification.
(i) Criminal penalty under section 7205(b).
(ii) Civil penalty under section 6682.
(A) In general.
(B) Waiver of penalty.
(C) Procedure for seeking a waiver.
(3) Delay of assessment.

§ 31.3406(d)–1 Manner required for furnishing a taxpayer identification number.

(a) Requirement to withhold.
(b) Reportable interest or dividend account.
(1) Manner required for furnishing a taxpayer identification number with respect to a pre-1984 account or instrument.
(2) Determination of pre-1984 account or instrument.
(i) In general.
(ii) Account or instrument automatically acquired on the maturity or termination of an account.
(iii) Special rule for short-term discount instrument acquired before January 1, 1985.
(iv) Insurance policies.
(v) Acquisitions and mergers.
(3) Manner required for furnishing a taxpayer identification number with respect to an account or instrument that is not a pre-1984 account.
(4) Special rule with respect to the acquisition of a readily tradable instrument in a transaction between parties unrelated to the payor if the parties act without the assistance of a broker.
(5) Examples.
(c) Brokerage account.
(1) Manner required for furnishing a taxpayer identification number with respect to a brokerage relationship that is not a post-1983 brokerage account.
(i) In general.
(ii) Definition of a brokerage account that is not a post-1983 brokerage account.
(iii) Definition of a post-1983 brokerage account.
(2) Manner required for furnishing a taxpayer identification number with respect to a post-1983 brokerage account.
(3) Examples.
(d) Rents, commissions, nonemployee compensation, and certain fishing boat operators, etc.
(1) Manner required.
(2) Example.

§ 31.3406(d)–2 Payee certification failure.

(a) Requirement to withhold.
(b) Exceptions.

§ 31.3406(d)–3 Special 30-day rules for certain reportable payments.

(a) Account or readily tradable instrument acquired directly from the payor (including a broker who holds an instrument in street name).
(1) Account or instrument acquired directly from the payor by electronic means.
(2) Account or instrument acquired directly from payor by mail communication.
(3) Examples.
(b) Special rule with respect to the sale of an instrument for a customer pursuant to a telephone or wire instruction.
(1) Special rule.
(2) Example.

§ 31.3406(d)–4 Special rules for readily tradable instruments acquired through a broker.

(a) Readily tradable instruments acquired through a broker who is not a payor.
(1) Instrument acquired through post-1983 brokerage accounts.
(2) Transactions entered into through a brokerage account that is not a post-1984 brokerage account.
(3) Payor must notify payee.
(i) Failure to provide certification.
(ii) Notified payee underreporting and incorrect taxpayer identification numbers.
(b) Notices.
(1) Form of notice by broker to payor.
(2) Form of notice by payor to payee.
(c) Payors' reliance on information from broker.
(1) In general.
(2) Amount subject to withholding.
(3) Examples.

§ 31.3406(d)–5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.

(a) Requirement that a payor backup withhold due to notification of an incorrect taxpayer identification number.
(1) In general.
(2) Definition of reportable payment.
(i) In general.
(ii) Exceptions.
(3) Transitional exclusion for payments to a fiduciary or nominee account.
(4) Definition of incorrect taxpayer identification number.
(5) Definition of account.
(b) Notice regarding an incorrect taxpayer identification number.
(1) Notice from the Internal Revenue Service to payors and brokers.
(2) Notice from a broker to a payor.
(3) Accounts subject to backup withholding.
(4) Joint accounts.
(i) In general.
(ii) Exception.
(iii) Change in order of names.
(5) Payor determination of the account or accounts of the payee that contain the incorrect taxpayer identification number.
(i) Payors.
(ii) Brokers.
(c) Notice from payors of backup withholding due to an incorrect taxpayer identification number.
(1) In general.
(2) Procedures.
(i) In general.
(ii) Two or more notices for a payee in the same calendar year.
(3) Requirements of substitute notice to the payee.
(4) Payor must use newly provided certified number.
(d) Period during which backup withholding is required due to notification of an incorrect taxpayer identification number.
(1) In general.
(2) Grace periods.
(i) Starting backup withholding.
(ii) Stopping backup withholding.
(e) Manner required for payee to furnish certified taxpayer identification number.
(f) Notification of two incorrect taxpayer identification numbers within a 3-year period.
(1) In general.
(2) Notice to payee who has provided two incorrect taxpayer identification numbers within 3 years.
(3) Period during which backup withholding is required due to a second notification of an incorrect number within 3 years.
(4) Grace periods.
(i) Starting backup withholding.
(ii) Stopping backup withholding.
(g) Procedure for furnishing a correct taxpayer identification number to the Internal Revenue Service.
(h) Notice from the Internal Revenue Service to stop backup withholding.
(i) Reserved.
(j) Examples.

Appendix to § 31.3406(d)(5)—("B" Notice)

§ 31.3406(e)–1 Period during which withholding is required.

(a) In general.
(b) Special rule for determining when the payor receives a taxpayer identification number or certificate from a payee.
(c) Failure to furnish taxpayer identification number in the manner required.
(d) Payee certification failure.
(e) Notification of incorrect taxpayer identification number.
(f) Notified payee underreporting.
(g) Examples.

§ 31.3406(f)–1 Confidentiality of information.

(a) Confidentiality and liability for violation—In general.
(b) Permissible use of information.
(1) In general.
(2) Window transactions.
(c) Specific restrictions on the use of information.
(d) Examples.

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

(a) Exempt recipients.
(1) In general.
(2) Payments subject to reporting under section 6041 or 6041A(a).
(3) Determination of whether a person is described in paragraph (a)(1) of this section.
(4) Prepaid or advance premium life-insurance contracts.
(5) Examples.
(b) Middleman.
(c) International organizations.
(d) United States deposits and accounts of foreign payees.
(e) Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.

§ 31.3406(g)–2 Exception for reportable payments for which withholding is otherwise required.

(a) In general.
(b) Payment of wages.
(c) Distribution from a pension, annuity, or other plan of deferred compensation.
(1) In general.
(2) Special rule.
(3) Distributions not subject to backup withholding.
(4) Examples.
(d) Payment with respect to an oil or gas interest.
(e) Gambling winnings.
(1) In general.
(2) Definition of a reportable gambling winning and determination of amount subject to backup withholding.
(f) Real estate transactions.
(g) Limited exception for certain payments immediately after a merger or an acquisition of accounts.
(h) Certain gross proceeds.

§ 31.3406(g)–3 Exemption while payee is awaiting for a taxpayer identification number.

(a) In general.
(1) Withholding not required for 60 days.
(2) Withholding during 60-day period on accounts paying reportable interest or dividends.
(i) Effective for awaiting-TIN certificates received after December 31, 1987, and before July 1, 1988.
(ii) Effective for awaiting-TIN certificates received on or after July 1, 1988.
(b) Special rule for readily tradable instruments.
(c) Exceptions.
(1) In general.
(2) Special rule for amounts subject to reporting under section 6045 other than redemptions of bearer obligations.
(d) Awaiting-TIN certificate.
(e) Form for certificate.
(f) Examples.

§ 31.3406(h)–1 Definitions.

(a) Taxpayer identification number
(1) In general.
(2) Obviously incorrect number.
(b) Examples.
(c) Broker.
(d) Readily tradable instrument.

§ 31.3406(h)–2 Special rules.

(a) Special rule for joint payees.
(1) In general.
(2) Special rule with respect to joint foreign persons.
(3) Examples.
(b) Withholding from an alternative source.
(1) In general.
(2) Payments made in property.
(3) Barter exchanges.
(4) Examples.
(c) Special rules for trusts.
(1) In general.
(2) Grantor trust with ten or fewer grantors.
(3) Grantor trust with more than ten grantors.
(d) Conditions for a trustee of a grantor trust with more than ten grantors to impose backup withholding.
(e) Examples.
(f) Adjustment of prior withholding.
(1) In general.
(2) Example.
(g) Conversion of amounts paid in foreign currency into United States dollars.
(1) Convertible foreign currency.
(2) Nonconvertible foreign currency. [Reserved]
(h) Coordination with other sections.
(i) Penalties.
(j) To whom a payor is liable for amount withheld.

§ 31.3406(h)–3 Certificates.

(a) Prescribed form.
(b) Prescribed form to furnish a noncertified taxpayer identification number.
(c) Forms prepared by payors or brokers.
(1) Substitute forms; in general.
(2) Taxpayer identification number.
(3) Notified payee underreporting.
(4) Substitute form for both certifications.
(5) Form for exempt recipients.
(d) Special rule for brokers.
(e) Reasonable reliance on certificate.
(f) Who may sign the certificate.
(1) In general.
(2) Notified payee underreporting.
(g) Retention of certificate.
(1) Accounts or instruments that are not pre-1984 accounts or instruments and brokerage relationships that are post-1983 brokerage accounts.
(2) Accounts or instruments that are pre-1984 accounts or instruments and brokerage relationships that are not post-1983 brokerage accounts.

§ 31.3406(i)–1 Transitional rules.

§ 31.3406(a)–1 Withholding requirement on reportable payments made after December 31, 1983.

Except as provided in section 3406(g) and §§ 31.3406(g)–1, 31.3406(g)–2, and 31.3406(g)–3, every payor (as defined in section 3406(h)(4) and § 31.3406(a)–2) is required to deduct and withhold 20 percent of—

(a) Any reportable payment as defined in section 3406 (b) and § 31.3406(b)(1)–1 made after December 31, 1983, if—

(1) The payee does not furnish a taxpayer identification number (as defined in § 31.3406(h)–1(a)) in the manner required to the person required to file an information return with respect to such payment (as described in section 3406(a)(1)(A) and § 31.3406 (d)–1), or

(2) The Internal Revenue Service or a broker (as defined in section 3406(h)(5) and § 31.3406(h)–1(c)) notifies such payor that the taxpayer identification number that the payee furnished is incorrect (as described in section 3406(a)(1)(B) and § 31.3406(d)–5, or

(b) Any reportable interest or dividend payment (as defined in section 3406(b)(2) and § 31.3406(b)(1)–1(b)) made after December 31, 1983, if—

(1) The Internal Revenue Service or a broker notifies the payor that there has been payee underreporting (as described in section 3406(a)(1)(C) and § 31.3406(c)–1), or

(2) The payee fails to provide a certification to the person required to file a return with respect to the payment (as described in section 3406(a)(1)(D) and § 31.3406(d)–2).

Persons required to file an information return with respect to reportable payments subject to backup withholding are considered payors for purposes of backup withholding. Paragraph (a)(2) of this section provides a definition of persons considered payors for purposes of backup withholding and who therefore have an obligation to backup withhold if one of the conditions for imposing backup withholding exists with respect to a reportable payment. The payments which are subject to backup withholding are described in section 3406 (b) and § 31.3406(b)(1)–1. See § 31.3406(d)–1 for the rules regarding how a payee may furnish a taxpayer identification number in the manner required and certify that he is not subject to backup withholding due to notified payee underreporting. The period for which backup withholding under section 3406 is required is described in section 3406(e) and § 31.3406(e)–1. Exemptions from and exceptions to backup withholding are described in §§ 31.3406(g)–1, 31.3406(g)–2, and 31–3406(g)–3. Sections 31.3406(h)–1, 31.3406(h)–2, and 31.3406(h)–3 provide certain definitions and special rules relating to backup withholding.

§ 31.3406(a)–2 The obligation of payors to backup withhold.

(a) *In general.* A payor of an instrument or account is required to deduct and withhold the tax imposed by section 3406. The term "payor" means any person who is required to make an information return with respect to any reportable payment under section 6041, 6041A (a), 6042, 6044, 6045, 6049, 6050A,

or 6050N as described in § 31.3406(b)(1)–1(a), including any middleman payor as described in paragraph (b) of this section. Thus, for example, with respect to reportable payments under section 6045, the payor is the broker having the closest contact with the payee (in terms of payments or crediting of gross proceeds) because that broker is required to file an information return with respect to reportable payments made to the payee.

(b) *Middlemen treated as payors.* Except as provided in paragraph (c) of this section, any person who receives or collects a reportable payment on behalf of or for the account of any other person shall be treated as the payor with respect to such payment. Such persons include—

(1) A custodian of a payee's account, such as a bank, financial institution or brokerage firm acting as custodian of an account,

(2) A nominee, including the joint owner of an account or instrument, except if such joint owners are husband and wife or if the payment is actually owned by another person whose name is also shown on the information return filed with respect to such payment,

(3) A broker holding a security (including stock) for a customer in "street name",

(4) A grantor trust with more than ten grantors,

(5) A common trust fund,

(6) Any partnership or S corporation that makes a reportable payment, and

(7) Any other person making a reportable payment and who is required to make an information return under the applicable information reporting section with respect to such payments.

(c) *Exceptions.* The following persons are not treated as payors for purposes of section 3406 if the person is not treated as a middleman, payor, or otherwise does not have a reporting obligation under the section on information reporting to which the payment relates:

(1) An agent of the payor which is acting on behalf of the payor in making the payment and who has not entered into an agreement with the payor pursuant to Revenue Procedure 84–33, 1984–1 (Part 1) C.B. 502, such as a bank that acts as a paying agent in making a payment of dividends on behalf of a corporation (although payments made by the agent are considered to be payments made by the payor, and thus are subject to backup withholding, reporting, and the depositing requirements pertaining to section 3406 as if they were made by the payor itself),

(2) A trust (other than a grantor trust with ten or more grantors) that files a Form 1041 and furnishes a beneficiary a Form K–1 containing information required to be shown on an information return, including amounts withheld under section 3406, or shown on an information return, including amounts withheld under section 3406, or

(3) A partnership making a distributive share to a partner of the partnership.

(d) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). Individual A presents a United States savings bond to be cashed at Bank M and fails to provide a social security number to M. Bank M is required to make an information return under section 6049. M is considered the payor with respect to such interest and is required to withhold under section 3406 because A has failed to provide M with a social security number.

Example (2). Bank N pays interest on a savings account held by Trust O which is an irrevocable trust required to include its items of income, deduction, and credit on a Form 1041. O is not an exempt recipient described in § 1.6049–4 (c)(1)(ii). N is required to make an information return under section 6049. N is considered the payor and is required to withhold if any condition for imposing backup withholding exists with respect to O. O as record owner is required to file a fiduciary return and furnishes a Schedule K–1 to each beneficiary. Therefore, O is not required to make an information return under § 1.6049–4 (c) (2). Thus, O is not considered a payor and is not required to withhold when O distributes income to a beneficiary because the payment does not constitute a reportable payment.

Example (3). In 1984, Corporation P pays dividends to Broker Q, a dealer in securities and registered as such under the laws of the United States. Q holds stock as nominee for Individual B. Q is considered an exempt recipient under section 6042 (b) (2) and does not provide its employer identification number to P. Thus, P is not required to make an information return under section 6042 showing the amount of dividends P pays Q. B has not furnished a social security number to Q. When Q pays or credits B's account with the dividends, Q is required to make an information return under section 6042 and § 1.6042–2 (a) (1) (ii). Q is considered the payor and is required to withhold under section 3406 since B failed to provide Q with a social security number.

Example (4). Individual C instructs Broker R to sell securities. C is a customer of R and has furnished R with an obviously incorrect social security number. R instructs Broker S to sell the securities. R is required to make an information return under section 6045 since R is the initiating broker who receives the instructions from C to sell the securities. Thus, R is considered the payor and is required to withhold on the gross proceeds under section 3406.

Example (5). Issuer T pays interest to Bank V with respect to obligations that Bank V holds in a custodial account for Individual D who has failed to furnish a social security number to V. T is not required to make an information return under section 6049 because it is making payment to an exempt recipient described in § 1.6049–4 (c) (1) (ii). Consequently, T is not considered a payor. V is required to make an information return under section 6049 with respect to the interest it receives for D's custodial account. V is considered the payor and is required to withhold under section 3406 since D failed to provide a social security number to V.

Example (6). W, a partnership, holds debentures of Corporation X. On June 30, 1984, X makes a payment of stated interest on the bonds held by W. X is required to make an information return under section 6049 showing the interest paid to W. X is considered a payor and is required to withhold if any of the four conditions for imposing backup withholding exists with respect to W. W makes a distribution of partnership income to its partners on December 31, 1984. W is not required to make an information return under section 6049. Thus, W is not considered a payor and is not required to withhold when W distributes each partner's distributive share of income on December 31, 1984, because the distribution does not constitute a reportable payment.

Example (7). Individual E owns property that Individual F leases. E has an agreement with Bank Y which provides that Y will collect the rental payments from F on behalf of E and will credit E's account with those amounts. Y's functions are limited solely to the receipt and crediting of those payments to E's account. Y is not required to make an information return under § 1.6041–3 (p); thus, Y is not considered a payor. F is required to make an information return under section 6041 showing the rental payments made to E if F makes the rental payments in the course of F's trade or business. Accordingly, F would be considered a payor and would be required to withhold if one of the two conditions for imposing backup withholding on the reportable payment exists with respect to E (as described in § 31.3406(b)(3)–1).

Example (8). Assume the same facts as in *Example (7)* except that Y not only collects the payment for E but pays other expenses for taxes, repairs, commissions, etc., and credits the net amount to E's account. Y's responsibilities are greater than the performance of a collection agent. Thus, Y is required to make an information return under section 6041 if F's payments to E are made in the course of F's trade or business. Y is considered the payor and is required to withhold if one of the two conditions for imposing backup withholding exists with respect to E (as described in § 31.3406(b)(3)–1).

Example (9). G and H own real estate and hire Z to manage the property. Z is a real estate agent for G and H. Lessees I, J, and K make rental payments to Z, and Z pays costs incidental to the property and pays commissions to L, an independent agent who locates tenants. Z pays the net amount of the rental payments to G and H. I, J, and K are not required to make an information return under § 1.6041–3 (e) with respect to the rental payments to Z because Z is a real estate agent; but Z is required to make an

information return under section 6041 showing payment to G and H. Thus, Z is considered a payor and is required to withhold if one of the two conditions for imposing backup withholding exists with respect to G or H (as described in § 31.3406 (b) (3)–1). Z's payment of commissions to L also is subject to reporting under section 6041, withholding, and the depositing requirements under section 3406 (as described in § 31.3406(a)–2(c)(1)).

§ 31.3406(a)–3 Accounts subject to backup withholding.

A payor who is required to backup withhold under § 31.3406 (a)–1 is required to impose backup withholding on the specific account subject to withholding under § 31.3406 (a)–1(a)(1) or (b)(2) and, with respect to withholding under § 31.3406 (a)–1(a)(2) or (b)(1), on the accounts and according to the manner described respectively under § 31.3406(d)–5 (relating to notification of incorrect TIN) or § 31.3406(c)–1 (relating to notified payee underreporting).

§ 31.3406(a)–4 Time when payments are considered to be paid and subject to backup withholding.

(a) *Reportable interest or dividend payments.* With respect to a reportable interest or dividend payment (as defined in section 3406(b)(2) and § 31.3406(b)(1)–1(b)), backup withholding under section 3406 shall apply when the payor pays interest, dividends, patronage dividends, or original issue discount to an account that is subject to backup withholding. Amounts are paid when they are credited to the account of, or set apart for, the payee. Amounts are not considered paid solely because they are posted (e.g., an informational notation on the payee's passbook) or because they may be withdrawn by the payee, so long as they are not actually credited to the payee's account. They are paid, however, upon withdrawal or crediting to the payee's account. When bonds are sold between interest payment dates, the portion of the sales price representing interest accrued to the date of sale is not considered to be a payment of interest for purposes of section 6049, but is considered as a portion of a reportable payment of gross proceeds under section 6045 (provided that the accrued interest is not tax-exempt as described in section 103(a), relating to certain governmental obligations). In the case of stock for which the record date is earlier than the payment date, the dividends are considered paid on the payment date. In the case of a corporate reorganization, if a payee is required to exchange stock held in the former corporation for stock in the new corporation before the dividends which have been paid with respect to the stock in the new corporation will be provided to the payee, the dividend is considered paid on the date the payee actually exchanges the stock and receives the dividend.

(b) *Other reportable payments.* With respect to any other reportable payment (as defined in section 3406(b)(3) and § 31.3406(b)(1)–1(c)), except amounts reportable under section 6045, backup withholding under section 3406 shall apply at the time the payment is made. In the case of a transaction reportable under section 6045, except in the case of forward contracts, regulated futures contracts, foreign currency contracts, and security short sales, the obligation to backup withhold arises on the date the sale is entered on the books of the broker or the date the exchange occurs as provided in § 1.6045–1(f)(3). However, a broker is not required to satisfy its backup withholding liability until payment is made. See § 31.3406(b)(3)–2(c) for special rules applicable to forward contracts, regulated futures contracts, foreign currency contracts, and security short sales.

(c) *Middleman payor*—(1) *In general.* Any middleman payor (as described in § 31.3406(a)–2(b)) shall withhold under section 3406 at the time the reportable payment is received by or credited to the middleman payor. If the middleman payor makes or credits the reportable payment to the payee prior to the middleman payor's receipt of the corresponding payment, the middleman payor may withhold at the time the reportable payment is made or credited to the payee.

(2) *Special rule for common trust funds.* A common trust fund, as defined in section 584, shall withhold at the time the reportable payment is received by or credited to the common trust fund as provided in paragraph (c)(1) of this section, on the date on which the assets of the common trust fund are valued, or at the time the common trust fund pays or credits the reportable payment to the beneficiary of the common trust fund.

(d) *Special rule for certain grantor trusts.* With respect to certain grantor trusts (as described in § 31.3406(h)–2(c)(3)), reportable amounts (except gross proceeds subject to reporting under section 6045) are treated as paid to the grantor on the date that the distribution is made to the grantor by the trustee. Paragraph (b) of this section applies to a grantor trust with respect to when gross proceeds subject to reporting under section 6045 are subject to withholding.

(e) *Examples.* The application of the provisions of this section may be illustrated by the following examples in which it is assumed that the payee may be subject to backup withholding under section 3406(a)(1)(A):

Example (1). Bank P computes interest on savings account deposits by compounding the interest on a daily basis but credits the amount of interest that has accrued during a calendar quarter to the savings account on the last day of the quarter. Backup withholding under section 3406 applies at the time P credits interest to the accounts (*i.e.*, the end of each quarter).

Example (2). Credit Union Q computes dividends on regular share accounts by compounding the dividends on a daily basis. It credits the amount of dividends accrued during a calendar quarter on the last day of the quarter unless the account is closed, in which case it credits accrued dividends on the date the account is closed. A, an individual, opens a regular share account at Q on July 1, 1984. Backup withholding under section 3406 applies when Q credits accrued dividends to the account on September 30, 1984. If A closes the account on October 21, 1984, a payment would be considered to be made on October 21 when Q credits accrued dividends to A's account and A withdraws the dividends. Thus, backup withholding will apply on October 21.

Example (3). Corporation R declares a dividend on September 1, 1984, to its record holders as of September 15, 1984. The dividend on its stock is payable on October 1, 1984. Trust Company S holds stock of R in trust for Individual B. S credits the dividend to the account of the trust for B on October 1, even though in the normal course of business S may not receive the money until several days thereafter. At the discretion of S, backup withholding under section 3406 will apply when S credits the dividend on October 1, or when the money is actually received by S. See § 31.3406(a)–4(c)(1).

Example (4). Money Market Fund T declares dividends on its shares daily and credits the dividends to the investor's account on the last day of the month regardless of whether any shares have been redeemed during the month. Backup withholding under section 3406 applies to a reportable dividend payment made on the last day of the month when T credits the investor's account.

Example (5). The facts are the same as in *Example (4)* except that T credits the dividends to the investor's account daily. Backup withholding under section 3406 applies daily when T credits the investor's account.

Example (6). On January 1, 1984, Individual C buys a 10-year corporate bond with attached semiannual interest coupons of $500 that may be cashed on January 1 and July 1 of each year. C sells the bond for $12,250 on April 1, 1984, to Bank U. Although $250 of the purchase price is attributable to accrued interest, it is not considered to be a reportable interest payment for purposes of section 6049. If U is a broker required to make an information return under 6045 with respect to a sale of a security, the gross proceeds of $12,250 (including the $250 accrued interest)

are subject to backup withholding on April 1, 1984.

Example (7). On April 1, 1984, Bank U sells the bond it purchased in *Example (6)* to Individual D. On July 1, 1984, D cashes the interest coupon for that date at U. Backup withholding under section 3406 applies on July 1 (the date the interest coupon is presented) to the $500 reportable interest payment.

Example (8). Bank V credits interest to its checking accounts on a quarterly basis. On August 3, 1984, Bank V accepts for payment a check which has been drawn on the account of E. E does not have sufficient funds posted in the account to pay the amount of the check. However, E's account has accrued interest since V's last crediting date which, net of withholding, is sufficient to pay the amount of the check. V pays the check after posting the interest that has accrued since V's last crediting date to E's account. Backup withholding under section 3406 applies on August 3, 1984, when V posts the accrued interest to E's account and before V pays the check. If the interest, net of withholding, were insufficient to pay the amount of the check, V would be required to impose backup withholding prior to paying the check, provided the interest is credited to E's account.

Example (9). F presents a Series E savings bond to Bank W to be cashed on July 1, 1984. Backup withholding under section 3406 applies on that date.

Example (10). On December 1, 1970, G purchases a $500 Series E savings bond. The amount paid for the bond is $375. On August 1, 1985, the bond is reissued by the Bureau of Public Debt by deleting G's name and inserting the name of G's child. At the time of reissue, the redemption value of the bond is $1,015.80. The accrued interest is $640.80 (i.e., $1,015.80–$375). The reissue is a taxable transaction, and G must include in income the accrued interest at the time of reissue. Backup withholding under section 3406 applies on the date of the reissuance (August 1, 1985) to $640.80 (the amount of accrued interest).

Example (11). Assume the same facts as in *Example (10)* except that G exchanges the bond for a Series HH savings bond in the amount of $1,000 issued in G's name. The exchange is tax-deferred under section 1037. A check in the amount of $15.80 is delivered to G. Backup withholding under section 3406 applies on the date of the exchange but only to the extent of $15.80, the amount subject to information reporting under § 1.6049–4(d)(9).

Example (12). Assume the same facts as in *Example (11)* except that the Series HH savings bond is reissued in the name of G's child. Accordingly, the exchange is not a tax-deferred exchange under section 1037 and backup withholding under section 3406 applies to $640.80 (the amount of accrued interest) on the date that the bond is exchanged.

Example (13). Broker H sells stock for Individual I and enters the transaction on H's books on September 24, 1990. Payment is made on September 28, 1990. The sale occurs on the date the sale is entered on the books. Accordingly, the obligation to backup withhold arises on September 24, 1990. However, H is not required to satisfy its backup withholding liability until September 28, 1990.

Example (14). Individual K is the trustee of Trust M, which is not a grantor trust as described in § 31.3406(h)–2(c)(3) or an exempt recipient as described in § 1.6049–4(c)(1)(ii). The corpus of the trust is stock of Corporation N. On August 31, 1984, N pays a dividend to M and is required to withhold 20 percent of the payment. On September 30, 1984, K makes a distribution of M's income to the beneficiaries of M. K is not required to withhold the tax under section 3406 on September 30, 1984, when K distributes M's income, because the payment is not a reportable payment and the trust is not a payor as described in § 31.3406(a)–2.

Example (15). L, an individual trustee of a grantor trust with 150 grantors, holds stock of Corporation T. L has provided the taxpayer identification number of L to T. B, a grantor of the trust, fails to provide a taxpayer identification number to L. T pays dividends on July 1 and is not required to withhold under section 3406 because no condition for imposing backup withholding exists with respect to L. L is required to withhold under section 3406, however, on the date that L distributes the reportable payment to B.

Example (16). O, a partnership, holds bonds of Corporation P. On July 1, 1984, P makes a payment of stated interest on the bonds held by O and is required to withhold 20 percent of the payment. O makes a distribution of income to its partners on December 31, 1984. O is not required to withhold under section 3406 on July 1, 1984, when it receives the payment of interest from P since O is not a middleman payor with respect to any reportable payment; O is the payee. In addition, O is not required to withhold under section 3406 on December 31, 1984, when O distributes income to its partners because the distribution is not a reportable payment.

Example (17). On February 28, 1985, Corporation R declares a dividend on its stock payable on April 1, 1985, to holders of record as of March 3, 1985. On March 1, 1985, Broker Q sells stock in Corporation R which it held in "street name" on behalf of B to Broker S. S purchases the stock on behalf of Individual C. R's stock transfer agent does not record the transfer until March 4, 1985. Accordingly, on April 1, 1985, R's paying agent pays the dividend declared by R to Q. R does not withhold under section 3406 since Q is an exempt recipient described in section 6042(b)(2)(B). Because Q is not able to identify immediately the owner of the dividend, Q places the dividend in a suspense account. On the same date, S credits C's account with the amount of the dividend payable by R on that date. On April 30, 1985, S makes a claim on Q for the amount of the dividend Q received on R's stock and Q pays the dividend to S. Q does not withhold under section 3406 since S is an exempt recipient. Unless C furnishes his social security number to S, S is required to withhold under section 3406 when it receives the dividend from Q on April 30, 1984, or, in its discretion, at the time it credits the dividend to C's account on April 1, 1984.

Example (18). On January 2, 1992, individual D signs an agreement with Insurance Company Z. The agreement specifies that D will make one initial payment on the date the agreement is signed and Z will pay all future premiums when due by using a portion of D's previous payment including interest Z agrees to pay under the agreement. D does not furnish his social security number to Z. The yearly premiums are payable every July 1. Z credits the interest accruing during the year on the policy's anniversary date (July 1). Z is required to withhold 20 percent of the annual increase in value of the "prepaid premium" on July 1 (the date that the interest is credited to pay the premium due).

§ 31.3406(b)(1)–1 Reportable payment.

(a) *In general.* For purposes of backup withholding under section 3406, the term "reportable payment" means—

(1) Any reportable interest or dividend payment (as defined in section 3406(b)(2) and paragraph (b) of this section), and

(2) Any other reportable payment (as defined in section 3406 (b) (3) and paragraph (c) of this section).

The determination of whether a payment is reportable and thus subject to withholding under section 3406 is made without regard to the amount of the payment. A payor may elect under § 31.3406(b)(4)–1, however, not to withhold from certain minimal payments.

(b) *Reportable interest or dividend payment defined.* The term "reportable interest or dividend payment" means—

(1) Interest subject to reporting under section 6049 (as described in § 31.3406(b)(2)–1),

(2) Original issue discount subject to reporting under section 6049 (as described in § 31.3406(b)(2)–2),

(3) Window transactions subject to reporting under section 6049 (as described in § 31.3406(b)(2)–3),

(4) Dividends subject to reporting under section 6042 (as described in § 31.3406(b)(2)–4), and

(5) Certain patronage dividends subject to reporting under section 6044 (as described in § 31.3406(b)(2)–5).

(c) Other reportable payment defined. The term "other reportable payment" means—

(1) Rents, commissions, nonemployee compensation, and other payments subject to reporting under section 6041 or 6041A(a) (as described in § 31.3406(b)(3)–1),

(2) Barter exchange or broker transactions subject to reporting under section 6045 (as described in § 31.3406(b)(3)–2),

(3) Certain payments by certain fishing boat operators subject to reporting under section 6050A (as described in § 31.3406(b)(3)–3), and

(4) Payments of royalties subject to reporting under section 6050N (as described in § 31.3406(b)(3)–4).

§ 31.3406(b)(2)–1 Reportable interest payment.

(a) *Interest subject to withholding*—(1) *In general.* Backup withholding under section 3406 is required with respect to any payment of a kind, and to a payee, that is required to be reported under section 6049 (relating to returns regarding interest and original issue discount), subject to the special rules of § 31.3406(b)(2)–2 (relating to original issue discount), and § 31.3406(b)(2)–3 (relating to window transactions). If the payment is not of a kind subject to reporting because the payment is not defined as "interest" in section 6049(b) and in § 1.6049–5 (a) and (b), then the payment is not subject to backup withholding. Additionally, if the payment is not to a payee subject to reporting under section 6049 because it is made to a person described in section 6049(b)(4) or § 1.6049–4(c)(1)(ii), the payment is not subject to backup withholding. After a determination is made under section 6049 that an information return is required, the payor is required to deduct and withhold the tax under section 3406 if any of the four conditions for imposing backup withholding exists with respect to a payee (as described in § 31.3406(a)–1 (a) and (b)). The amount subject to backup withholding under section 3406 is described in paragraph (b) of this section. Notwithstanding the provisions of this section, a payor is not required to withhold on any payment described in § 31.3406(g)–1.

(2) *Special rule for tax-exempt interest.* When an issuer is required to make an information return under § 1.6049–4(d)(8) because a payee incorrectly provided a signed written statement on the envelope or "shell" claiming that the interest was exempt from taxation under section 103 (a) (as described in § 1.6049–5(b)(2)), the issuer is not required to impose backup withholding under section 3406.

(3) *Examples.* The application of the provisions of this paragraph (a) may be illustrated by the following examples:

Example (1). Bank M pays interest to A, an individual, on a deposit that A maintains with M. Since the payment is of a kind that is subject to reporting under section 6049 and § 1.6049–5(a)(3) and the payee is not an exempt recipient as defined in § 31.3406(g)–1, M is required to withhold under section 3406 if any of the four conditions for imposing backup withholding exists with respect to A.

Example (2). Assume the same facts as in *Example (1)* except that Bank M pays such interest to Corporation X. The payment to X is not subject to information reporting under section 6049 since M is making payment to a person described in § 1.6049–4(c)(1)(ii)(A). Accordingly, M is not required to withhold even if one of the four conditions for imposing backup withholding under section 3406 exists with respect to X.

Example (3). Individual B presents an interest coupon from a tax-exempt obligation to Bank N. B properly completes the "shell" used for processing the coupon (*i.e.*, he includes his name, address, and taxpayer identification number on the shell) and claims that the interest is exempt from taxation (as required by § 1.6049–5(b)(2)). N is not required to make an information return under section 6049 because the payment is not of a kind subject to reporting under section 6049 (as described in § 1.604–5(b)(2)). Accordingly, N is not required to withhold even if one of the four conditions for imposing backup withholding under section 3406 exists with respect to B. In addition, under paragraph (e)(2) of this section, the issuer who receives the shell is not required to withhold even if the interest is not exempt from taxation. If, however, B did not properly complete the shell, by including his taxpayer identification number, N may not treat the interest as tax-exempt and N is required to withhold because B did not include his taxpayer identification number on the shell.

Example (4). Credit Union O pays "dividends" that are considered interest under section 6049 to nonresident alien individual C on a deposit C has with O. C certifies on Form W–8 (or other permissible form as described in § 1.6049–5(g)) that he is not a United States citizen or resident. If O is required to make an information return under section 6049 with respect to the payment to C as required by § 1.6049–5(e)(2), O is not required to withhold under section 3406 as provided in § 31.3406(g)–1(d).

Example (5). Individual D places money in escrow with P to guarantee performance on a contract. P is not a financial institution that pays interest subject to reporting under section 6049(b)(1) (B) or (C) and § 1.6049–5(a) (2) or (3). P is not required to make an information return under section 6049 because the payment is not of a kind subject to reporting under section 6049 (as described in §§ 1.6049–5(b)(3) or 1.6049–5(b)(5)). Accordingly, P is not required to withhold even if one of the four conditions for imposing backup withholding under section 3406 exists with respect to D. If, however, P is a financial institution that pays interest described in section 6049(b)(1) (B) or (C) and § 1.6049–5(a) (2) or (3), P would be required to withhold under section 3406 if any of the four conditions for imposing backup withholding exists.

(b) *Amount subject to withholding*—(1) *In general.* The amount of interest subject to withholding under section 3406 is the amount subject to reporting under section 6049 except as provided in paragraph (b)(2) of this section.

(2) *Withholding adjustment for penalty for premature withdrawal*—(i) *Special rule.* Solely for purposes of computing the amount subject to backup withholding, the payor may elect not to withhold from the portion of any interest payment that is not received by the payee because of the imposition of a penalty for premature withdrawal of funds deposited in a time savings account, certificate of deposit, or similar class of deposit.

(ii) *Examples.* The application of the provisions of this paragraph (b)(2) may be illustrated by the following examples:

Example (1). A, an individual, deposits $10,000 in a 4-year savings account with Bank M on January 2, 1985, which earns 10.75 percent interest per annum payable quarterly. A does not provide M with a social security number. A must pay a penalty equal to the previous 3 months' interest if the funds are withdrawn prior to January 2, 1989. On March 31, 1985, A's funds earn $268.75 in interest. Backup withholding under section 3406 will apply to the amount of interest ($268.75) paid on that date. The fact that M may impose a penalty on A after the interest is paid and the tax is withheld should A prematurely withdraw the funds is irrelevant because M has not, in fact, imposed a penalty.

Example (2). Assume the same facts as in Example (1) except that A withdraws the funds on September 30, 1985. A penalty in the amount of $280.43 (*i.e.*, an amount equal to the previous 3 months' interest earned by A) is imposed on A. M is not required to withhold any amount on that date since the penalty imposed on A is equal to the interest earned by A that quarter. At M's option, however, M may withhold 20 percent of the $280.43 payment of interest. In either event, M is not relieved of the requirement under section 6049 to report the $280.43 of quarterly interest payment made to A.

§ 31.3406(b)(2)–2 Original issue discount.

(a) *Original issue discount subject to withholding.* Under section 6049(d)(6) and § 1.6049–5(k), original issue discount is treated as a payment of interest. The amount of original issue discount subject to backup withholding under section 3406 is the amount subject to reporting under section 6049, but is limited to the amount of cash paid. In addition, if an original issue discount obligation, subject to reporting under section 6045, is sold prior to maturity and a condition exists for imposing backup withholding on such gross proceeds, then backup withholding under § 31.3406(b)(3)–2 applies to the gross proceeds of the sale reportable under section 6045.

(b) *Time and amount subject to backup withholding with respect to short-term obligations*—(1) *No payment prior to maturity.* In the case of an obligation with a fixed maturity date not exceeding 1 year from the date of issue (a "short-term obligation") with respect to which there is no interest payable prior to maturity, backup withholding under section 3406 applies to the amount of original issue discount which is includible in the gross income of the

holder. Backup withholding applies at the maturity of the obligation when the face amount of the obligation is paid.

(2) *Payment prior to maturity.* In the case of a short-term obligation with respect to which there is interest payable prior to maturity, backup withholding under section 3406 applies only to the actual interest payments made prior to maturity and not to any amount of original issue discount. Backup withholding shall be computed on the stated interest payment, and 20 percent of the actual interest payment shall be withheld at the time the interest is paid. At maturity, the amount subject to backup withholding shall be the sum of any interest payment made at that time and the total original issue discount that is includible in gross income of the holder and shall be withheld upon at that time.

(c) *Transferred short-term obligations*—(1) *Subsequent holder may establish purchase price.* At maturity of a short-term obligation, a subsequent holder (*i.e.*, any person who purchased the obligation after the obligation was issued to the original holder) may establish the price at which the subsequent holder purchased the obligation. The purchase price paid by such a subsequent holder shall then be treated as the original issue price for purposes of computing the amount of original issue discount subject to backup withholding under section 3406. The purchase price of an obligation may be established by confirmation receipt or other record of a similar type or, if the obligation is redeemed by or through the person from which the obligation was purchased, by the records of the person from which or through which the obligation was purchased. The subsequent holder is not required to certify under penalties of perjury that the purchase price is correct.

(2) *If subsequent holder is unable to establish purchase price.* If a subsequent holder fails to establish the purchase price of the obligation (as provided in paragraph (c)(1) of this section), then the person redeeming the obligation shall determine the amount subject to backup withholding under section 3406 as though the obligation had been purchased by the holder on the date of issue. If the person redeeming the obligation is the issuer of the obligation, then the issuer shall determine the amount subject to backup withholding through its records. If the person redeeming the obligation is a person other than the issuer of the obligation, then the person shall determine the amount subject to backup withholding by using the issue price indicated in the Internal Revenue Service publication of publicly-traded original issue discount obligations or in standard financial sources. (See § 1.6049–5(k)). In the case of a Treasury bill, the purchase price shall be assumed to be the noncompetitive price of a Treasury bill having the earliest issue date of all Treasury bills with the same CUSIP number and the same maturity date as the bill being redeemed.

(3) *If obligation is transferred.* If a short-term obligation is transferred, no part of the purchase price is considered a reportable interest payment under section 6049. Backup withholding under section 3406 applies, however, to the gross proceeds of the sale of the obligation if the transfer is subject to reporting under section 6045 and a condition exists for imposing backup withholding. For the rules regarding backup withholding where an amount is subject to reporting under section 6045, see § 31.3406(b)(3)–2.

(d) *Time and amount subject to withholding with respect to long-term obligations*—(1) *No payments prior to maturity.* In the case of an obligation with a fixed maturity date that is more than 1 year from the date of issue (a "long-term obligation") with respect to which there are no cash payments (whether consisting of interest or principal) prior to maturity, backup withholding applies only at maturity and only with respect to the original issue discount includible in the income of the holder during the calendar year in which the obligation matures. For purposes of this section, the term "cash payments" includes checks and other monetary media of exchange.

(2) *Registered long-term obligations with payments prior to maturity.* In the case of a long-term obligation that is in registered form and that provides for cash payments (whether consisting of interest or principal) prior to maturity, the amount subject to backup withholding under section 3406 shall be the sum of the amount of stated interest paid and the amount of original issue discount that is includible in the gross income of the holder for that calendar year in which the cash payments are made. Backup withholding applies at the time the cash payments are made. The amount required to be withheld at the time of any cash payment, however, shall not exceed the amount of the cash payment made. If more than one payment is made during a calendar year, the tax that is required to be withheld with respect to original issue discount shall be allocated among all the cash payments in the ratio that each cash payment bears to the total of the cash payments. Thus, if two equal cash payments of stated interest are made during the calendar year, one-half of the original issue discount includible in gross income of the holder for that calendar year shall be taken into account in computing the tax which must be withheld from each cash payment.

(3) *Bearer long-term obligations*—(i) *Payments prior to maturity.* In the case of a long-term obligation that is in bearer form and with respect to which there is stated interest payable prior to maturity, backup withholding applies only to the stated interest payment and not to any amount of original issue discount. Backup withholding applies to the stated interest payment at the time the stated interest is paid.

(ii) *Payments at maturity.* Backup withholding applies to the sum of any stated interest payment made at maturity and the total amount of original issue discount that is includible in the gross income of the holder during the calendar year of maturity.

(e) *Transferred long-term obligations*—(1) *Subsequent holder.* In the case of a long-term obligation that is transferred after its issuance from the original holder, the amount subject to backup withholding is the amount of original issue discount includible in the gross income of all holders during the calendar year (without regard to any amount paid by a subsequent holder at the time of transfer). If the person redeeming the obligation at maturity is the issuer of the obligation, then the issuer shall determine the amount subject to backup withholding through its records by treating the holder as if he were the original holder. If the person redeeming the obligation at maturity is a person other than the issuer of the obligation, then the person shall determine the amount subject to backup withholding by using the original issue price indicated in the Internal Revenue Service publication of publicly-traded original issue discount obligations or in standard financial sources. (See § 1.6049–5(k)).

(2) *If obligation is transferred.* If a long-term obligation is transferred after original issuance, no part of the purchase price is considered a reportable interest payment under section 6049. Backup withholding under section 3406 applies, however, to the gross proceeds of the sale of the obligation if the transfer is subject to reporting under section 6045 and a condition exists as described in § 31.3406(a) for imposing backup withholding on such gross proceeds. For the rules regarding backup withholding

where an amount is subject to reporting under section 6045, see § 31.3406(b)(3)–2.

(f) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). On January 1, 1980, Individual A purchases at original issue, for $7,000 cash, X Corporation's 5-year bond which has a stated redemption price at maturity of $10,000. A does not furnish a social security number to X. The bond does not provide for any interest or principal payments prior to maturity. The ratable monthly portion of original issue discount determined under section 1272(a)(1) is $50. If A holds the bond for 12 months of his taxable year, A must include $600 (i.e., $50×12 months) in his gross income for that year and in each subsequent year that he holds the bond for the entire 12 months. No amount of the $600 of original issue discount includible in A's gross income each year is subject to backup withholding under section 3406 since no amount of cash has been paid. Assume that A holds the bond until maturity on December 31, 1984, and the bond is redeemed for $10,000 on that date. Since A has not furnished a social security number to X, backup withholding applies to the amount of original issue discount includible in A's gross income during the calendar year ($600). X is not required to make an information return under section 6045 (*i.e.*, the retirement is described in § 5f.6045–1(c)(3)(x)). X is required to withhold only on the $600 (the amount of original issue discount includible in A's gross income).

Example (2). Assume the same facts as in *Example (1)* except that A does not hold the bond until maturity but rather sells it to B on January 1, 1984, for $9,540. The gross proceeds of the sale are subject to backup withholding if the sale is required to be reported under section 6045. See § 31.3406(b)(3)–2. When X redeems the bond at maturity, the amount subject to backup withholding is the $600 of original issue discount accrued during 1984 even though B paid more for the bond than the sum of the original issue price and the amount of the original issue discount includible in A's gross income. Under paragraph (e)(1) of this section, B, as a subsequent holder, is treated the same as the original holder for purposes of determining the amount subject to withholding on redemption.

Example (3). Assume the same facts as in *Example (2)* except that the sale occurs on March 1, 1984, and B provides a social security number to X. Even though $100 (*i.e.*, $50 x 2 months) of original issue discount has accrued with respect to A (who has not provided a social security number to X) during 1984, no amount of original issue discount is subject to backup withholding at maturity since B has provided a social security number to X.

Example (4). On January 1, 1984, Individual D purchases a Treasury bill with a maturity of 52 weeks at the original issue price of $8,736. At maturity on December 31, 1984, D redeems the bill for $10,000 but fails to furnish a social security number. The amount subject to backup withholding on the date of maturity is $1,264 (the difference between the stated redemption price at maturity, $10,000, and D's purchase price for the obligation, $8,736).

Example (5). Assume the same facts as in *Example (4)* except that D sells the Treasury bill on March 1, 1984, to Individual E through Broker Y. E does not furnish a social security number to Y. E pays $8,940 for the bill. Although no part of the purchase price is a reportable interest payment under section 6049, Y is required to report the sales proceeds under section 6045. Consequently, Y is required to withhold 20 percent of the $8,940 gross proceeds paid to D under § 31.3406(b)(3)–2 if D does not furnish a social security number to Y. E redeems the Treasury bill through Y at maturity. E establishes through Y's records that E paid $8,940 for the Treasury bill on March 1, 1984. The amount subject to backup withholding at maturity is $1,060 (the difference between the stated redemption price at maturity, $10,000, and E's purchase price of $8,940).

Example (6). On January 1, 1985, F, an individual, purchases at original issue, for $7,500 cash. Z Corporation's 30-year bond which has a stated redemption price at maturity of $10,000. The bond provides for annual interest payments of $1,000. F does not furnish Z with a social security number. Assuming F holds the bond for all of calendar year 1985, the amount of original issue discount which is includible in F's gross income during 1985 is $7.83. On December 31, 1985, Z makes its $1,000 interest payment to F. Z must withhold $201.56 (i.e., 20 percent of $1,007.83) on that date.

Example (7). Broker G acquires a bond issued in 1960 by the United States Treasury through the Bureau of Public Debt. Broker G sells interests in the bond to the public after December 31, 1982. A purchaser may acquire an interest in any interest payment falling due under the bond or an interest in the principal of the bond. Under section 1273, each bond component is treated as an obligation issued with original issue discount equal to the excess of the stated redemption price at maturity over the purchase price of the bond component. The interests sold by G are obligations of a type offered to the public. The bond is held by Custodian H for the benefit of the persons acquiring these interests. On receipt of interest and principal payments under the bond, Custodian H transfers the amount received to the person whose ownership interest corresponds to the bond component giving rise to the payment. On January 1, 1984, Individual J, a calendar year taxpayer, purchases from G, for $826.45 cash, a $1,000 interest coupon payable on December 31, 1985. J does not provide G or H with a social security number. During 1984, J must include $82.65 in income (i.e., the amount of original issue discount accruing during 1984). No amount, however, is subject to backup withholding under section 3406 since no cash payment is made. During 1985, J must include $90.90 in income (i.e., the amount of original issue discount accruing during 1985). On December 31, 1985, H is required to withhold $18.18 (20 percent of $90.90) and then pays J $981.82 ($1,000 minus $18.18).

§ 31.3406(b)(2)–3 Window transactions.

(a) *Requirement to withhold.* Backup withholding under section 3406 applies to a "window transaction" as defined in section 3406(b)(7) and paragraph (b) of this section only where the payee does not furnish a taxpayer identification number to the payor in the manner required in paragraph (c) of this section. Backup withholding does not apply to a "window transaction" when the Internal Revenue Service notifies the payor of an incorrect taxpayer identification number or notified payee underreporting. The payee in a window transaction also is not required to certify under penalties of perjury that the payee is not subject to backup withholding due to notified payee underreporting (as described in § 31.3406(d)–2(b)(2)).

(b) *Window transaction defined.* The term "window transaction" means a payment of interest with respect to any of the following obligations:

(1) An interest coupon which is subject to taxation (*i.e.*, other than interest described in § 1.6049–5(b)(2)),

(2) A United States savings bond, or

(3) A discount obligation having a maturity at issue of 1 year or less, including commercial paper and bankers' acceptances that are in definitive form (*i.e.*, evidenced by a paper document other than a confirmation receipt) but not including short-term government obligations (as defined in section 1271 (a) (3) (B)).

(c) *Manner of furnishing taxpayer identification number in the case of a window transaction.* A payee must furnish his taxpayer identification number to the payor with respect to a window transaction either orally or in writing. The payee is not required to certify, under penalties of perjury, that the taxpayer identification number provided is correct. The number must be furnished at the time that the window transaction occurs. See § 31.3406(g)–3(c)(1)(i), which provides that a payee may not claim he is awaiting receipt of a taxpayer identification number with respect to a window transaction. Thus, a payor is required to withhold 20 percent of a reportable interest payment paid in a window transaction as described in this paragraph only if the payee fails to furnish a taxpayer identification number or furnishes an obviously incorrect number as described in § 31.3406(h)–1(a)(2).

(d) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). Individual A presents five Series EE savings bonds to Bank X for payment on January 3, 1984. Bank X is required to make an information return under section 6049 if $10 or more of interest is paid. A provides orally to X a social security number containing nine digits. A does not

certify under penalties of perjury that the number provided is his correct social Security number. X is not required to withhold on such payment because payments of interest on United States savings bonds are window transactions and A has furnished a taxpayer identification number to X.

Example (2). Assume the same facts as in *Example (1)* except that A has other accounts with X and the Internal Revenue Service has notified X that the taxpayer identification number that A furnished on a savings account A maintains with X is incorrect (pursuant to section 3406(a)(1)(B)). X is not required to withhold on the payment on the savings bonds. X is not required to check its records to determine whether A has provided the taxpayer identification number which it has been notified is incorrect. X is only required to withhold if A does not provide a taxpayer identification number or provides an obviously incorrect number.

Example (3). Individual B presents a taxable interest coupon to Bank Y for payment. Bank Y is required to make an information return under section 6049 if the coupon represents $10 or more of interest. B maintains other accounts with Y and requests Y to deposit the amount of the interest coupon to his account. The Internal Revenue Service has notified Y that B is subject to backup withholding pursuant to section 3406(a)(1)(C). B furnishes a social security number to Y at the time of the window transaction. Because payments on interest coupons are window transactions, B is not required to certify that his taxpayer identification number is correct or that he is not subject to backup withholding due to notified payee underreporting. Y is also not required to check its records to see whether B is subject to backup withholding. Consequently, Y is not required to withhold on the coupon because B furnished his social security number in the manner required in paragraph (c) of this section.

Example (4). Partnership M requests that Bank Z redeem an interest coupon at maturity that Z is holding as a custodian for M and deposit the funds into M's account. Z is required to make an information return under section 6049 if $10 or more of interest is paid. Z asks M for its employer identification number, and M provides a nine-digit number. M does not certify its taxpayer identification number or certify that it is not subject to backup withholding due to notified payee underreporting. Z is not required to withhold since M has furnished its taxpayer identification number to Z. The payment on the interest coupon is considered a window transaction even though M does not present the interest coupon at a bank window for payment.

§ 31.3406(b)(2)–4 Reportable dividend payment.

(a) *Dividends subject to withholding.* Except as provided in paragraph (c) of this section, backup withholding under section 3406 is required with respect to any payment of a kind, and to a payee, that is required to be reported under section 6042 (relating to returns regarding payments of dividends and corporate earnings and profits). If the payment is not of a kind subject to reporting under section 6042 because it is not defined as a "dividend" under section 6042 (b) or § 1.6042–3, then the payment is not subject to backup withholding. Additionally, if the payment is not to a payee subject to reporting under section 6042 because, for example, it is made to a payee that is excluded from the definition of a person (as described in § 1.6042–2(a)(2)) to whom a payment is subject to reporting under section 6042, the payment is not subject to backup withholding. After the determination is made under section 6042 that an information return is required, the payor is required to deduct and withhold the tax under section 3406 if any of the four conditions for imposing backup withholding exists (as described in § 31.3406(a)–1 (a) and (b)). The amount subject to backup withholding under section 3406 is described in paragraph (d) of this section. Notwithstanding the provisions of this section, a payor is not required to withhold on any payment made to a payee described in § 31.3406(g)–1(a) (relating to exempt recipients).

(b) *Examples.* The application of the provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). Corporation Z makes a distribution to individual shareholder E who has not furnished a social security number to Z. The distribution is a dividend as defined in section 316 and is subject to reporting under section 6042(b)(1)(A) and § 1.6042–3(a)(1). Since Z is required to make an information return under section 6042 and E has not provided a social security number, Z is required to withhold under section 3406.

Example (2). Assume the same facts as in *Example (1)* except that Z makes payment to State Q. State Q is not a person (as defined in § 1.6042–2(a)(2)) a payment to whom is subject to reporting under section 6042. Since Z is not required to make an information return under section 6042, Z also is not required to withhold under section 3406 even if one of the four conditions for imposing backup withholding under section 3406 exists with respect to Q.

Example (3). Assume the same facts as in *Example (1)* except that the distribution is not from current or accumulated earnings and profits but rather a return of capital. Because the distribution is not a dividend subject to reporting under section 6042, Z is not required to make an information return under section 6042. Accordingly, Z is not required to withhold even if one of the four conditions for imposing backup withholding under section 3406 exists with respect to E.

Example (4). Corporation S makes payment to foreign Corporation T. The payment is subject to withholding under section 1442 or would be subject to withholding under section 1442 but for the provisions of a treaty. The payment is not subject to reporting under section 6042 because it is excepted from the definition of a dividend subject to reporting under § 1.6042–3(b)(2). Because S is not required to make an information return under section 6042, S is not required to withhold even if one of the four conditions for imposing backup withholding under section 3406 exists.

(c) *Dividends not subject to withholding.* Except as provided in § 31.3406(b)(3)–2 (relating to transactions reportable under section 6045), backup withholding under section 3406 shall not apply to—

(1) Any amount treated as a taxable dividend by reason of section 302 (relating to redemptions of stock);

(2) Any amount treated as a taxable dividend by reason of section 306 (relating to disposition of certain stock);

(3) Any amount treated as a taxable dividend by reason of section 356 (relating to receipt of additional consideration in connection with certain reorganizations);

(4) Any amount treated as a taxable dividend by reason of section 1081(e)(2) (relating to certain distributions pursuant to an order of the Securities and Exchange Commission);

(5) Any exempt-interest dividend, as defined in section 852(b)(5)(A), paid by a regulated investment company;

(6) Any amount paid or treated as paid during a year by a regulated investment company provided that the payor reasonably estimates, as provided in paragraph (d)(2) of this section, that 95 percent or more of all dividends paid or treated as paid during the year are exempt-interest dividends; or

(7) Effective for distributions before 1986, any dividend that is reinvested pursuant to a qualified plan in stock of a public utility. For this purpose, the amount of the reinvested dividend paid to any person, the identity of the recipient, and whether the recipient makes the election required by section 305(e)(2)(B) are irrelevant.

(d) *Amount subject to withholding*—(1) *In general.* The amount of a dividend subject to withholding under section 3406 is generally the amount subject to reporting under section 6042, including any dividend which is reinvested pursuant to a plan under which a shareholder may elect to receive stock as a dividend instead of property. Except as otherwise provided in this paragraph (d), backup withholding applies to the entire amount of the distribution.

(2) *Reasonable estimate of amount of dividend subject to withholding.* Pursuant to section 6042(b)(3) and § 1.6042–3(c), if the payor is unable to determine the portion of a distribution

that is a dividend, the entire amount of the distribution shall be treated as a dividend for information reporting under section 6042. Hence, backup withholding applies to the entire amount of the distribution. If a payor is able reasonably to estimate under section 6042 and § 1.6042–3(c) the portion of a distribution that is not a dividend, however, the payor shall not withhold on that portion (which is not considered a dividend). A payor making a payment, all or a portion of which may not be a dividend, may use previous experience to estimate the portion of the payment which is not a dividend. An estimate of the portion of a distribution that is not a dividend shall be considered reasonable if:

(i) The estimate does not exceed the proportion of the distributions made by the payor during the most recent calendar year for which Form 1099 was required to be filed which was not reported by the payor as a dividend, and

(ii) The payor has no basis to expect that the proportion of the distribution that is not a dividend will be substantially different for the current year.

(3) *Reinvested dividends.* In the case of a dividend paid pursuant to a dividend reinvestment plan (other than a dividend described in paragraph (c)(7) of this section), backup withholding under section 3406 shall apply, pursuant to § 31.3406(a)–4(a), at the time the dividend is made available to the shareholder or credited to the shareholder's account. Backup withholding applies to the amount made available to the shareholder or credited to the shareholder's account. At the discretion of the payor, backup withholding under section 3406 need not be applied to any excess of the fair market value of the shares of stock received by the shareholder or credited to the shareholder's account over the purchase price of such shares (including shares acquired by the shareholder at a discount in connection with the dividend distribution) or to any fee that is paid by the payor in the nature of a broker's fee for purchase of the stock or service charge for maintenance of the shareholder's account. Thus, the payor is not required to impose backup withholding on any amount in excess of the actual cash value of the dividend declared that the payee would have received had the payee not been a participant in the dividend reinvestment plan.

The payor must, however, treat any excess amounts and fees on a consistent basis for each calendar year.

§ 31.3406 (b)(2)–5 Reportable patronage dividend.

(a) *Patronage dividends subject to withholding.* Except as otherwise provided in paragraph (c) of this section, backup withholding under section 3406 is required with respect to any payment of a kind, and to a payee, that is required to be reported under section 6044 (relating to returns regarding patronage dividends). If the payment is not of a kind subject to reporting under section 6044 because it is not described in section 6044 (b) and § 1.6044–3, then such payment is not subject to backup withholding. Additionally, if the payment is not subject to reporting under section 6044 because it is made to a payee that is excluded from the definition of a person (as described in § 1.6044–2 (a)(2)) to whom a payment is subject to reporting under section 6044, the payment is not subject to backup withholding. After the determination is made under section 6044 that an information return is required, the payor is required to deduct and withhold the tax under section 3406 if any of the four conditions for imposing backup withholding exists with respect to the payee (as described in § 31.3406 (a)–1 (a) and (b)). The amount subject to withholding under section 3406 is described in paragraph (c) of this section. Notwithstanding the provisions of this section, a payor is not required to withhold on any payment made to a payee described in § 31.3406 (g)–1 (a) (relating to exempt recipients).

(b) *Examples.* The application of the provisions of paragraph (a) of this section may be illustrated by the followinq examples:

Example (1). Cooperative K pays Individual F a patronage dividend (as defined in section 1388 (a)). The payment is an amount subject to reporting under section 6044 and § 1.6044–3 (a) (1) (i). Since K is required to make an information return under section 6044, K is required to withhold 20 percent of the amount described in paragraph (c) of this section if any of the four conditions for imposing backup withholding exists with respect to F.

Example (2). Assume the same facts as in *Example (1)* except that the payment is made to a political subdivision of the United States, which is not a person (as defined in § 1.6044–2 (a) (2)) a payment to whom is subject to reporting under section 6044. K is not required to make an information return under section 6044 because K does not make payment to a payee subject to reporting. Accordingly, K is not required to withhold under section 3406 even if one of the four conditions for imposing backup withholding exists with respect to the political subdivision.

(c) *Amount subject to withholding—* (1) *Failure to provide taxpayer identification number or notification of incorrect taxpayer identification number.* Except as provided in paragraph (c) (2) of this section, the amount of a payment of a kind and to a payee that is subject to withholding under section 3406 is the amount subject to reporting under section 6044, but only to the extent such payment is made in money. For purposes of this paragraph, money includes cash or a qualified check (as defined in section 1388 (c)(4)). Thus, the payor shall, when required, withhold 20 percent of the amount required to be reported under section 6044, but only if it is paid in cash or by qualified check.

(2) *Notified payee underreporting or payee certification failure.* For purposes of section 3406 (a)(1) (C) and (D), the amount of a payment that is subject to backup withholding under section 3406 is the amount subject to withholding under paragraph (c)(1) of this section, but only if 50 percent or more of that reportable amount is paid in money. Therefore, in the case where there has been a notified payee underreporting described in section 3406 (c) or § 31.3406 (c)–1 or there has been a payee certification failure described in section 3406 (d) or § 31.3406 (d)–2 and the payor makes a payment subject to reporting under section 6044 of which 50 percent or more is made in cash or by qualified check, the payor is required to withhold 20 percent of the cash or qualified check. If less than 50 percent of the payment is made in cash or by qualified check, no amount is subject to backup withholding.

(3) *Examples.* The application of the provisions of paragraph (c) of this section may be illustrated by the following examples:

Example (1). Cooperative L pays Individual G a $500 patronage dividend consisting of $100 in cash and $400 in a qualified written notice of allocation (as defined in section 1388 (c) (1) (B)). G does not furnish his taxpayer identification number to L. L is required to withhold $20 (20 percent of $100, the amount paid in cash or by qualified check).

Example (2). Assume the same facts as in *Example (1)* except that Individual G fails to certify with respect to a membership established on or after January 1, 1984, that he is not subject to backup withholding due to notified payee underreporting. In the case where there has been a payee certification failure, L is not required to withhold under section 3406 because less than 50 percent of the reportable payment is made in cash or by qualified check.

Example (3). Assume the same facts as in *Example (1)* except that G receives a $500 per-unit retain (as defined in section 1388 (f)) as a qualified per-unit retain certificate (as defined in section 1388 (g)) instead of cash or

a qualified written notice of allocation. L is not required to withhold even though G failed to furnish his taxpayer identification number because backup withholding is limited to the amount paid in cash or by qualified check.

Example (4). Cooperative M pays Individual H a patronage dividend consisting of $350 in cash, $250 by a qualified check, and $400 in a qualified written notice of allocation. H fails to certify with respect to a membership established on or after January 1, 1984, that he is not subject to backup withholding due to notified payee underreporting. Accordingly, M is required to withhold $120 (20 percent of $600, the amount paid in cash or by qualified check).

Example (5). Assume the same facts as in *Example (4)* except that the patronage dividend consists of $100 in cash, $250 by a qualified check, and $650 in a qualified written notice of allocation. M is not required to withhold even though there is a payee certification failure because less than 50 percent of the patronage dividend is paid in cash or by qualified check.

§ 31.3406(b)(3)–1 Reportable payments of rents, commissions, nonemployee compensation, etc.

(a) *Section 6041 and 6041A (a) payments subject to withholding.* Backup withholding under section 3406 is required with respect to any payment of a kind, and to a payee, that is required to be reported under section 6041 (relating to information reporting of rents, salaries, commissions, etc.) or with respect to any payment of a kind, and to a payee, that is required to be reported under section 6041A(a) (relating to information reporting of payments to nonemployees for services). If the payment is not subject to reporting under section 6041A(b) (relating to information reporting of direct sales), the payment is not subject to backup withholding. If the payment is not of a kind subject to reporting under section 6041 as described in § 1.6041–3, then the payment is not subject to backup withholding. Additionally, if the payment is not to a payee that is subject to reporting under section 6041 or 6041A(a), then the payment is not subject to backup withholding. See § 31.3406(g)–1(a)(3) for provisions relating to how a payor determines that a payee is exempt from information reporting under section 6041 or 6041A(a). Except as provided in paragraph (b)(2) of this section, after the determination is made that an information return is required under section 6041 or 6041A(a), the payor is required to deduct and withhold the tax under section 3406 if the payee does not furnish his taxpayer identification number to the payor in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies the payor that the taxpayer identification number that the payee furnished the payor is incorrect as described in § 31.3406 (d)–5. The amount subject to withholding under section 3406 is described in paragraph (b) of this section. Notwithstanding the provisions of this section, a payor is not required to withhold on any payment made to a payee described in § 31.3406(g)–1(a) (relating to exempt recipients).

(b) *Amount subject to withholding*—(1) *In general.* Except as otherwise provided in paragraph (b) of this section, the amount subject to backup withholding under section 3406 is the amount subject to reporting under section 6041 or section 6041A(a). For purposes of this paragraph, any amount that is specifically excluded from information reporting under section 6042(a)(1), 6047(a), 6049(a), or 6050N(a) and the regulations issued thereunder is not thereby subject to backup withholding under § 31.3406(b)(3)–1.

(2) *Special rule with respect to payments aggregating $600 or more for the calendar year.* In making the determination of whether an information return is required to be made under section 6041 or 6041A(a), the payor shall determine whether the aggregate amount of the current payment and all previous payments to the payee during the calendar year aggregate $600 or more. See paragraph (b)(3) of this section for determining whether reportable payments aggregate $600. If payments to any person that are subject to reporting under section 6041 or 6041A(a) aggregate $600 or more during the calendar year, the payor is required to make an information return and correspondingly may be required to deduct and withhold 20 percent under section 3406. The amount subject to withholding is the entire amount of the payment that causes the total amount paid to the payee to equal $600 or more and the amount of any subsequent payments made to the payee until the payee furnishes or corrects the taxpayer identification number. If, however, the payor was required to make an information return under section 6041 or 6041A(a) for the preceding calendar year with respect to payments to the payee or the payor was required to withhold under section 3406 during the preceding calendar year with respect to payments to the payee that were reportable under section 6041 or 6041A(a), then the payor shall deduct and withhold 20 percent of any payment made to the payee during the calendar year, regardless of whether the payor's payments to the payee equal or exceed $600 for the year, until the payee furnishes or corrects the taxpayer identification number. See § 31.6051–4 for the requirement to furnish a statement to the recipient in all cases where tax is withheld under section 3406. The $10 minimal payment exception described in § 31.3406(b)(4)–1 does not apply with respect to payments subject to reporting under section 6041 or 6041A(a). This paragraph (b)(2) does not apply to gambling winnings (as provided in § 31.3406(g)–2(e)(1)).

(3) *Determination of whether payments aggregate $600 or more.* In making the determination of whether payments to a payee aggregate $600 or more during a calendar year for purposes of backup withholding, the payor must aggregate *only* payments of the same kind made to the same payee. For this purpose, payments are of the same kind if they are of the same type, not if they are reportable under the same section, For example, a payor is not required to aggregate rental payments to a payee with premium payments to the same payee even though both payments are reportable under section 6041. In addition, a payor with different paying departments making reportable payments of the same kind is not required to aggregate payments made by all the departments unless it is the payor's customary method to aggregate those payments, A payor may, in its discretion, aggregate—

(i) Payments not of the same kind to the same payee, reportable under either section 6041 or 6041A(a), and/or

(ii) Payments reportable under section 6041 with payments reportable under section 6041A(a).

(4) *Exceptions.* Backup withholding does not apply to net commissions paid to unincorporated special agents with respect to insurance policies that are subject to reporting under section 6041, provided that no cash is actually paid by the payor to the special agent.

(5) *Examples.* The application of the provisions of this paragraph (b) may be illustrated by the following examples:

Example (1). A, in the course of his trade or business, pays rent to B, an individual who is not a real estate agent. A pays B $200 on June 30, 1984, and $200 on December 31, 1984. B does not furnish his taxpayer identification number to A. A has not made any rental payments to B in the preceding year. A is not required to make an information return under section 6041 since the aggregate payments to B do not exceed $600 during the calendar year. A is not required to withhold 20 percent of the payments under section 3406 because A is not required to make an information return under section 6041 and A did not make any payments to B in the preceding year that would have required A to withhold in 1984.

Example (2). Assume the same facts as in *Example (1)* except that A also pays $400 to B during 1984 as nonemployee compensation which is reportable under section 6041A (a). A is not required to aggregate the payments made to B under section 6041 with the payments made to B under section 6041A (a).

Thus, the result is the same as in *Example (1)* because A did not pay B $600 or more during 1984 in payments of a type which are reportable under the same section. A may, however, aggregate the payments. If A aggregates the payments, A would be required to withhold under section 3406.

Example (3). Assume the same facts as in *Example (1)* except that A paid B over $600 of rental payments during 1983 (the preceding calendar year). A was required to make an information return for 1983. Even though A did not pay B $600 or more during calendar year 1984, A is required under section 3406 to withhold 20 percent of each $200 payment made to B in 1984 because A did not receive B's taxpayer identification number. A is required to continue to withhold on the rental payments made to B, including payments made in the subsequent calendar year, until A receives B's taxpayer identification number. A is required to file an information return with respect to the payments made to B in 1984 (even though such payments do not equal or exceed $600) because A backup withheld on those amounts.

Example (4). C, in the course of his trade or business, pays D $200 for machine hire on January 1, $100 on February 1, $50 on March 1, $75 on April 1, $115 on May 1, $60 on June 1, and $150 a month on the first day of each month from July through December of 1984. D does not furnish a taxpayer identification number to C at any time during 1984. C did not make any machine hire payments to D in the preceding calendar year. C is required to withhold 20 percent of the $60 payment made on June 1 (*i.e.*, the payment that causes the aggregate payments to D to equal or exceed $600) and of every payment made thereafter until C receives D's taxpayer identification number.

Example (5). Assume the same facts as in *Example (4)* except that C receives D's taxpayer identification number on March 19, 1984. C is not required to withhold 20 percent of the payments made during the year since C receives D's taxpayer identification number before C paid $600 of machine hire payments to D.

Example (6). Assume the same facts as in *Example (4)* except that C receives D's taxpayer identification number on June 15, 1984. C is required to withhold 20 percent of the payment on June 1 because D does not receive D's taxpayer identification number prior to the time that C's payments to D equal $600 for the calendar year. C is not required to withhold under section 3406 on any subsequent payments to D during the calendar year.

§ 31.3406(b)(3)–2 Reportable barter exchanges and gross proceeds of sales of securities or commodities by brokers.

(a) *Transactions subject to withholding.* Backup withholding under section 3406 is required with respect to any amount of a kind, and to a payee, that any broker (as defined in section 6045(c) and § 1.6045–1(a)(1)) or any barter exchange (as defined in section 6045(c) and § 1.6045–1(a)(4)) is required to report under section 6045. If the amount is not of the kind subject to reporting under section 6045 (as described in § 1.6045–1(c)(3)), then that amount is not subject to backup withholding. Additionally, if the amount is not subject to reporting under section 6045 because it is made with respect to an exempt recipient (as described in § 5f.6045–1(c)(3)(i)) or it is made with respect to an exempt foreign person (as described in § 1.6045–1(g)), that amount is not subject to backup withholding. After the determination is made under section 6045 that an information return is required, the broker or barter exchange is required to deduct and withhold the tax under section 3406 if the payee does not furnish his taxpayer identification number to the broker or the barter exchange in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies the broker or barter exchange that the taxpayer identification number the payee furnished to the broker or barter exchange is incorrect as described in § 31.3406(d)–5. The amount subject to withholding under section 3406 is described in paragraph (c) of this section. See § 31.3406(1)–1 for a special rule regarding the furnishing of taxpayer identification numbers after January 1, 1984, with respect to certain accounts.

(b) *Examples.* The application of the provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). Broker M effects the sale of a security for Individual E who is M's customer. M is required to make an information return under section 6045 showing the gross proceeds of the sale because E is a payee with respect to whom an information return is required. Since M is required to make an information return under section 6045, M is required to withhold 20 percent of the gross proceeds under section 3406 if E does not furnish a taxpayer identification number to M in the manner required in § 31.3406 (d)–1 or the Internal Revenue Service notifies M that E's taxpayer identification number is incorrect.

Example (2). Assume the same facts as in *Example (1)* except that M effects a sale for Corporation O which is M's customer. M is not required to make an information return under section 6045 showing the gross proceeds since O is an exempt recipient for purposes of broker reporting under § 5f.6045–1(c)(3)(i). Because M is not required to make an information return under section 6045, M is not required to withhold 20 percent of the gross proceeds even if one of the conditions for imposing backup withholding under section 3406 exists.

Example (3). Assume the same facts as in *Example (1)* except that Individual E is a person who has signed a statement as required in § 1.6045–1 (g) (3) (i), effective for the calendar year in question, that he is an exempt foreign person. M is not required to make an information return under section 6045 because the amount is not paid to a payee subject to information reporting. Because M is not required to make an information return under section 6045, M is not required to withhold 20 percent of the gross proceeds even if one of the conditions for imposing backup withholding under section 3406 exists.

Example (4). Broker N retires a Treasury bill (*i.e.*, a short-term government discount obligation as defined in section 1271 (a) (3) (B)) for Individual F. N is not required to make an information return under section 6045 showing the gross proceeds because that amount is a kind of payment excepted from broker reporting under § 5f.6045–1 (c) (3) (vi) (C). The amount of the original discount included in the income of the holder is subject to reporting at maturity, however, under section 6049. See § 31.3406 (b) (2)–2 for the requirement to withhold on the amount subject to reporting at maturity under section 6049.

Example (5). Assume the same facts as in *Example (4)* except that F instructs Broker N to sell F's Treasury bill before maturity for $9,800. Broker N is required to make an information return under section 6045 showing $9,800 as the gross proceeds of the sale since that amount is of a kind subject to reporting under section 6045. Because N is required to make an information return under section 6045, N is required to withhold 20 percent of $9,800 (the gross proceeds) under section 3406 if F does not furnish a taxpayer identification number to N in the manner required in § 31.3406 (d)–1 or the Internal Revenue Service notifies N that F's taxpayer identification number is incorrect.

Example (6). Individual G asks Broker O to redeem shares of a mutual fund (other than a redemption at issue price described in § 5f.6045–1 (c) (3) (v)). O is required to make an information return under section 6045 and, accordingly, is required to withhold 20 percent of the gross proceeds if G does not furnish a taxpayer identification number to O in the manner required in § 31.3406 (d)–1 or the Internal Revenue Service notifies O that G's taxpayer identification number is incorrect.

Example (7). Individual H asks Broker P to redeem a tax-exempt municipal bond at maturity with a redemption value of $10,000. A $500 interest coupon is also attached to the bond that is payable on the date of maturity. P is required to make an information return under section 6045 showing gross proceeds of $10,000. Correspondingly, P is required to withhold 20 percent of the gross proceeds ($10,000) if a condition for imposing backup withholding exists with respect to the gross proceeds under paragraph (a) of this section. If H properly completes the "shell" or envelope (*i.e.*, he includes his name, address, and taxpayer identification number) used for processing the coupon and states that the interest is exempt from taxation under section 103 (a) (as provided in § 1.6049–5 (b) (2)), P is not required to make an information return showing the tax-exempt interest portion ($500) of the gross proceeds because that amount is not required to be reported under either section 6045 or 6049. Accordingly, P is not required to withhold 20

percent of the $500 tax-exempt interest payment.

Example (8). Individual I instructs Broker Q to transfer a corporate debenture to J for $15,000 (of which $2,000 represents accrued interest). Q is required to make an information return under § 1.6045–1 (d) (5) on Form 1099–B showing $13,000 of gross proceeds. Q is also required to make an information return under § 1.6045–1 (d) (3) on Form 1099–INT showing $2,000 of interest. Both the $13,000 of gross proceeds and the $2,000 of interest are subject to backup withholding if I does not furnish his taxpayer identification number to Q or the Internal Revenue Service notifies Q that I's taxpayer identification number is incorrect. Because the accrued interest element is not a reportable interest payment under section 6049, Q is not required to withhold if the Internal Revenue Service notifies Q under section 3406 (a) (1) (C) relating to notified payee underreporting or if I fails to make the certification required in § 31.3406 (d)–2. The interest component of the gross proceeds is reportable as interest pursuant to § 1.6045–1 (d) (8) but in the manner and at the time required by Form 1099 and section 6049.

Example (9). Individual K requests Bank R to redeem a nontransferable certificate of deposit issued by R. The certificate of deposit is a book entry obligation with respect to which the relevant books and records indicate that no interim transfers have occurred. R is not required to make an information return under § 5f.6045–1 (c) (3) (x), and, accordingly, R is not required to withhold on the gross proceeds at maturity. R, however, is required to make an information return under section 6049 with respect to the interest on the obligation and is required to withhold on the reportable interest payment if any of the four conditions for imposing backup withholding under section 3406 exists (as described in § 31.3406 (a)–2 (a) and (b)).

Example (10). Depositary Trust S, which regularly acts as an escrow agent in corporate acquisitions, is the agent for Corporation W in a tender offer by W for the stock of Corporation T. Partnership L tenders T stock to S and is paid the tender offer price by S. Under section 6045, S is required to make an information return showing the gross proceeds paid by S to L for T stock. Consequently, S is required to withhold 20 percent of the gross proceeds under section 3406 if L does not furnish a taxpayer identification number in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies S that L's taxpayer identification number is incorrect.

Example (11). Issuer A arranges for Transfer Agent X to act as its disbursing agent with respect to dividends paid on its stock under its dividend reinvestment plan. The issuer has the reporting obligation for the dividends paid to the plan because it has the legal obligation to make those payments and hence any backup withholding liability that might exist. Thus, upon the reinvestment of the dividends to the plan by the holder, X has no reporting obligation under section 6042. Nor does X have a reporting obligation under section 6045. Although X is a broker under § 1.6045–1(a)(1) of the regulations, since it stands ready to purchase or redeem shares of Issuer A's stock there is no "sale" with respect to the holder of Issuer A's stock on the reinvestment of the dividends. However, if Issuer A's stock is redeemed by instruction from the holder to X and X will pay the holder redeemed, then X must report the gross proceeds under section 6045.

Example (12). Individual AA instructs Broker V to redeem shares of a qualified dividend reinvestment plan of a public utility. Although reinvested dividends of that plan are not subject to backup withholding under § 31.3406(b)(2)–4(c)(7) (with respect to distributions before 1986), V is required to make an information return under section 6045 showing the gross proceeds of the shares redeemed. Correspondingly, V is required to withhold 20 percent of the gross proceeds if AA does not furnish a taxpayer identification number to V in the manner required in § 31.3406(d)–1 or the Internal Revenue Servioe notifies V that AA's taxpayer identification number is incorrect.

(c) *Amount subject to withholding*—(1) *In general.* Except as provided in paragraph (c) (2), (3), (4), and (5) of this section and § 31.3406(b)(4)–1, the amount subject to withholding under section 3406 is the amount subject to reporting under section 6045. The amount subject to withholding with respect to broker reporting is the amount of gross proceeds (as determined under § 1.6045–1(d)(5)). The amount subject to withholding with respect to barter exchanges is the amount received by any member or client (as determined under § 1.6045–1(f)(4)).

(2) *Foreign currency contracts, forward contracts, or regulated futures contracts.* If a customer is subject to backup withholding with respect to foreign currency contracts (as defined in section 1256(g) and reportable under § 1.6045–1(c)(5)) or with respect to an account through which forward contracts or regulated futures contracts are disposed of or acquired, the broker must withhold 20 percent of both of the following amounts:

(i) All cash or property withdrawn from the account by the customer during the relevant year. A withdrawal includes the use of money (including both gross proceeds and variation margin) or property in the account to purchase any property other than property acquired in connection with the closing of a contract. For this purpose, the acceptance of a warehouse receipt or other taking of delivery to close a contract is in connection with the closing of a contract only if the property acquired is disposed of by the close of the seventh trading day following the trading day that the customer takes delivery under the contract. In addition, making delivery to close a contract is in connection with the closing of a contract only if the broker is able to determine that the property used to close the contract was acquired no earlier than the seventh trading day prior to the trading day on which delivery is made. Withdrawals do not include repayments of debt incurred in connection with making or taking delivery that meets the requirements of this paragraph (c)(2). Withdrawals also do not include payments of commissions, fees, transfers of cash from the account to another futures account that is subject to this paragraph (c)(2) or cash withdrawals traceable to dispositions of property other than futures (not including profit on the contract separately reportable under § 1.6045–1(c)(5)(i)(*b*)); and

(ii) The amount of cash in the account available for withdrawal by the customer at the relevant year-end (including both gross proceeds and variation margin).

The determination of whether the customer is subject to backup withholding with respect to an account containing forward contracts or regulated futures contracts shall be made at the time of the cash or property withdrawals or the relevant year-end, whichever is applicable.

(3) *Security sales made through a margin account.* The amount subject to backup withholding in the case of a security sale made through a margin account (as defined in 12 CFR section 220 (Regulation T)) is the gross proceeds (as defined in § 1.6045–1(d)(5)) of such sale. The amount required to be withheld with respect to such a sale, however, is limited to the amount of cash available for withdrawal by the customer immediately after the settlement of the sale. For this purpose, the amount available for withdrawal by the customer does not include amounts required to satisfy margin maintenance under: Regulation T, rules and regulations of the National Association of Securities Dealers and national securities exchanges, and generally applicable self-imposed rules of the margin account carrier.

(4) *Security short sales*—(i) *Amount subject to backup withholding.* The amount subject to backup withholding with respect to a short sale of securities is the gross proceeds (as defined in § 1.6045–1 (d)(5)) of such short sale. At the option of the broker, however, the amount subject to backup withholding may be the gain upon the closing of the short sale (if any); consequently, the obligation to withhold would be deferred until the closing transaction. A broker may use this alternative method of determining the amount subject to backup withholding with respect to a

short sale only if at the time the short sale is initiated the broker expects that the amount of gain realized upon the closing of the short sale will be determinable from the broker's records. If, due to events unforeseen at the time the short sale was initiated, the broker is unable to determine the basis of the property used to close the short sale, the property shall be assumed to have a basis of zero.

(ii) *Time of withholding.* The determination of whether a short seller is subject to backup withholding shall be made on the date of the initiation or closing, as the case may be, or on the date that the initiating or closing, as the case may be, is entered on the broker's books and records.

(5) *Fractional shares.* A broker is not required to withhold under section 3406 with respect to a sale of a fractional share of stock resulting in less than $20 of gross proceeds (as described in § 5f.6045–1 (c)(3) (ix)).

(6) *Examples.* The application of the provisions of this paragraph (c) may be illustrated by the following examples in each of which it is assumed that the payee failed to provide a taxpayer identification number in the manner required by § 31.3406(d)–1:

Example (1). A instructs Broker M to sell 200 shares of Corporation X's stock for $100 per share. The amount of gross proceeds subject to reporting under section 6045 and thus subject to backup withholding under section 3406 is $20,000.

Example (2). B instructs Broker N to retire a long-term bond at maturity where the stated redemption price at maturity is $10,000. The amount of gross proceeds subject to reporting under section 6045 and thus subject to backup withholding under section 3406 is $10,000.

Example (3). Assume the same facts as in *Example (2)* except that the bond has a $50 final interest coupon attached. The amount of gross proceeds subject to reporting under section 6045 and thus subject to withholding under section 3406 is $10,000. The $50 interest coupon is subject to reporting under section 6049 and, accordingly, is subject to backup withholding as described in § 31.3406(b)(2)–1.

Example (4). On March 1, 1984, C enters into a futures contract through O, a futures commission merchant. C deposits initial margin with O in the form of a $10,000 Treasury bill. The futures contract is closed on September 1, 1984, at a net profit of $5,000. In addition, on October 1, 1984, the Treasury bill matures, and O credits C's account with $10,000. C seeks to withdraw the $15,000 from the account on November 1, 1984. The amount subject to backup withholding is $5,000 (i.e., the amount which is a withdrawal under paragraph (c)(2)(i) of this section). The $10,000 proceeds from the redemption of the Treasury bill is not considered a withdrawal because the proceeds are traceable to the disposition of property other than futures contracts. The amount paid with respect to the maturity of the Treasury bill is subject to reporting under section 6049. See § 31.3406(b)(2)–2 for the amount subject to backup withholding at maturity of the Treasury bill.

Example (5). Assume the same facts as in Example (4) except that the futures contract is not closed on September 1. On December 31, 1984 (the end of C's taxable year), the cash available for C's withdrawal from the account is $2,000 due to a positive balance in the variation margin account. The amount subject to backup withholding is $2,000 under paragraph (c)(2)(ii) of this section.

Example (6). D maintains an account with Broker P through which D enters into forward contracts. D authorizes P to withdraw $50,000 cash from the account on April 1, 1984, in order to take delivery to close a forward contract. The amount subject to backup withholding is $50,000 under paragraph (c)(2)(i) of this section if the property delivered pursuant to the contract is not disposed of by the close of the seventh trading day following the trading day that the customer took delivery under the contract. Thus, for example, in a case where the property delivered pursuant to the contract is not disposed of until the tenth trading day following the trading day that the customer took delivery under the contract, Broker P must withhold $10,000 (20 percent of $50,000, the amount subject to backup withholding). If, however, property was disposed of by the close of the seventh trading day following the trading day that the customer took delivery under the contract, the total amount withdrawn would not have been subject to backup withholding.

Example (7). E maintains an account with Broker Q through which E engages in margin transactions. In order to satisfy the applicable margin requirements, Q sells $500 worth of stock for E's account. No amount of the $500 proceeds is subject to backup withholding under paragraph (c)(3) of this section since the entire amount of the proceeds is necessary to meet the margin requirement. Q would be required to withhold, however, to the extent, if any, that the proceeds of such a forced sale exceeded the amount needed to meet the margin requirements.

Example (8). F enters into a short sale through Broker R with respect to 100 shares of Corporation Y's stock for $50 a share. The amount subject to backup withholding is $5,000 under paragraph (c)(4) of this section. R may elect, however, to defer withholding until the short sale is closed, if at the time the short sale was initiated, R expected that the gain realized from the sale would be determinable from R's records. If R elects and R's records show the amount of the gain, the amount subject to backup withholding would be the gain realized on closing. If the amount of the gain cannot be determined from R's records at the time of closing, the property used to close the short sale must be assumed to have a basis of zero. Consequently, the amount of gain subject to backup withholding is $ 5,000.

§ 31.3406(b)(3)–3 Reportable payments by certain fishing boat operators.

(a) *Payments subject to withholding.* Backup withholding under section 3406 is required with respect to any amount of a kind, and to a payee, that is required to be reported under section 6050A (relating to information reporting by certain fishing boat operators). If the payment is excepted from the definition of wages subject to wage withholding under section 3402, then that payment is subject to reporting under section 6050A and backup withholding. If the payment is not subject to reporting under section 6050A because the payee is treated as an employee performing services described in section 3121(b)(20) and § 31.3121(b)(20)–1, that payment is not subject to backup withholding because the payment is wages subject to wage withholding under section 3402. After the determination is made under section 6050A that an information return is required, the fishing boat operator is required to deduct and withhold the tax under section 3406 if the payee does not furnish his taxpayer identification number to the fishing boat operator in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies the fishing boat operator that the taxpayer identification number that the payee furnished to the fishing boat operator is incorrect. The amount subject to withholding under section 3406 is described in paragraph (c) of this section.

(b) *Examples.* The application of the provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). K, an owner of a fishing boat, normally operates the boat with a captain and eight others performing services as crew members of the boat solely for cash representing a share of the catch. K is required to make an information return under section 6050A. Accordingly, K is required to withhold 20 percent of the amount described in paragraph (c) of this section if a crew member does not furnish his taxpayer identification number to the fishing boat operator in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies the fishing boat operator that the taxpayer identification number that the crew member furnished the fishing boat operator is incorrect.

Example (2). Assume the same facts as in *Example (1)* except that K does not pay the crew members a share of the catch but rather pays them cash remuneration as wages for services performed. The payment is subject to income tax withholding under section 3402. Thus, K is not required to make an information return under section 6050A and, accordingly, K is not required to withhold under section 3406. K may be required to file a statement under section 6051(d).

(c) *Amount subject to withholding*—(1) *In general.* The amount subject to withholding under section 3406 is the amount subject to reporting under section 6050A, but only to the extent the amount is paid in money and represents a share of the proceeds of the catch. Thus, while the fair market value of the share of the catch that the payee receives generally must be reported under section 6050A, the fishing boat operator shall withhold under section 3406 only on the dollar amount the individual receives as his share of the proceeds of the catch (*i.e.*, the amount required to be included on Form 1099 under section 6050A and § 1.6050A–1(a)(5)).

(2) *Examples.* The application of the provisions of paragraph (c)(1) of this section may be illustrated by the following examples:

Example (1). L, an owner of a fishing boat, normally employs nine people to work as the crew members of the boat. The only remuneration that L pays each crew member is his respective share of the catch in kind. L is required to make an information return under section 6050A showing the type and weight of the crew member's share of the catch and, if ascertainable, the fair market value of the catch. L is not required to withhold under section 3406, however, because backup withholding is limited to the extent of the cash received with respect to amounts subject to reporting under section 6050A.

Example (2). Assume the same facts as in *Example (1)* except that L pays each crew member his share of the proceeds of the catch. L is required to make an information return under section 6050A showing the dollar amount paid to each crew member. L is required to withhold under section 3406 on the dollar amount paid to a crew member who does not furnish a taxpayer identification number to L or with respect to whom the Internal Revenue Service has notified L that an incorrect taxpayer identification number has been furnished.

Example (3). Assume the same facts as in *Example (1)* except that, in addition to receiving a share of the catch, each crew member is entitled to receive $3 per hour for repairing nets, constructing new nets, splicing cable, and other incidental work while in port. Since each crew member is entitled to receive payment other than a share of the catch, he is considered an employee and thus subject to wage withholding under section 3402. Accordingly, none of L's payments to the crew members are reportable under section 6050A. Thus, L is not required to withhold under section 3406.

§ 31.3406(b)(3)–4 Reportable payments of royalties.

(a) *Royalty payments subject to withholding.* Backup withholding under section 3406 is required with respect to any payment of a kind, and to a payee, that is required to be reported under section 6050N (relating to information reporting of payments of royalties). If the payment is not of a kind subject to reporting under section 6050N, then the payment is not subject to backup withholding. Additionally, if the payment is not to a payee that is subject to reporting under section 6050N, then the payment is not subject to backup withholding. See section 6050N(c) for those payees that are not subject to information reporting under section 6050N and thus are not subject to withholding under this paragraph. After the determination is made that an information return is required under section 6050N, the payor is required to deduct and withhold the tax under section 3406 if the payee does not furnish his taxpayer identification number in the manner required in § 31.3406(d)–1 or the Internal Revenue Service notifies the payor that the taxpayer identification number that the payee furnished the payor is incorrect as described in § 31.3406(d)–5. The amount subject to withholding under section 3406 is described in paragraph (b) of this section. Notwithstanding the provisions of this section, a payor is not required to withhold on any payment made to a payee described in § 31.3406(g)–1(a) (relating to exempt recipients).

(b) *Amount subject to withholding.* The amount subject to backup withholding under section 3406 is the amount subject to reporting under section 6050N.

§ 31.3406(b)(4)–1 Exemption for certain minimal payments.

(a) *In general.* A payor is required to withhold under section 3406 with respect to any payment that is of a kind and to a payee that is subject to information reporting if any condition for imposing backup withholding exists (as described in § 31.3406(a)–1). A payor of reportable interest or dividends (as defined in § 31.3406(b)(1)–1(b)) may elect, however, not to withhold from a payment which does not exceed $10 and which on an annualized basis does not exceed $10 (as computed in paragraph (c) of this section). In addition, a broker or barter exchange may elect not to withhold on gross proceeds of $10 or less. The broker or barter exchange is not required to annualize the amount of the gross proceeds. If a payor, broker, or barter exchange elects to withhold on amounts of $10 or less, the payor, broker, or barter exchange is required to make an information return under § 31.6051–1. A payment of more than $10 is subject to withholding under this section, regardless of the period for which the payment is made if any relevant condition for imposing backup withholding under section 3406 exists (as described in § 31.3406(a)–1). Therefore, the annualization computation of paragraph (c) of this section should not be performed for any payment exceeding $10.

(b) *Manner of making the election.* The election not to withhold from payments that do not exceed $10 can be made only for a reportable interest or dividend payment (as defined in § 31.3406(b)(1)–1(b)), for a royalty payment (as defined in § 31.3406(b)(3)–4), or by a broker or barter exchange with respect to gross proceeds (as described in § 31.3406(b)(3)–2). Thus, a payor of any other reportable payment (as defined in § 31.3406(b)(1)–1(c)) except royalty payments is required to withhold regardless of the amount except as provided in § 31.3406(b)(3)–1 with respect to amounts subject to reporting under section 6041 or 6041A(a). The minimal payment election is made with respect to a particular payment by complying with all the requirements of this section. The election not to withhold on payments that do not exceed $10 need not be made consistently, but may be made on a payment-by-payment basis.

(c) *Annualization*—(1) *Reportable interest or dividend payment.* Except as provided in paragraph (c)(2) of this section, with respect to any reportable interest or dividend payment (other than an amount paid in a window transaction or an amount that is original issue discount), the payor *shall* annualize the payments made. With respect to a payor who maintains records which reflect multiple holdings of one payee and the payor makes an aggregate payment with respect to all the payee's holdings (such as a dividend check that reflects payment on all stock owned by the payee), the payor shall annualize the aggregate payment made. To annualize a reportable interest or dividend payment, the payor shall calculate what the amount of the payment would be if it were paid for a 1-year period (instead of the period for which it actually is paid). The annualized amount shall be determined by dividing the amount of the payment by the number of days in the period for which it is being paid and then multiplying that result by the number of days in the year. If the annualized amount is $10 or less, the payor may elect not to apply backup withholding to that payment regardless of whether more than $10 may be or has been paid to the payee in other reportable payments during the calendar year. Conversely, if the annualized amount is more than $10, backup withholding applies even if $10 or less is actually paid to the payee during the

calendar year. For purposes of computing the annualized amount, the payor may assume either that February always consists of 28 days and that the year consists of 365 days or that each month always consists of 30 days and that the year consists of 360 days. For amounts that are deposited with a payor in a new account or certificate between the dates on which the payor customarily pays or credits interest, the payor may assume that the period for which the interest is paid is the payor's customary period for paying or crediting interest.

(2) *Window transactions, original issue discount, and broker reporting.* No annualization is required for window transactions (as defined in § 31.3406(b)(2)–3(b)), original issue discount, or a broker reporting gross proceeds under section 6045. With respect to a window transaction, however, the payor is required to aggregate all payments made in the same transaction (*e.g.*, payments made with respect to coupons or obligations presented for payment at the same time as described in § 1.6049–4(e)(4)). A payor is not required to annualize any amount that is original issue discount on an obligation regardless of the period of time for which the payment is made. Thus, original issue discount (as described in § 31.3406(b)(2)–2) is subject to withholding under section 3406 only if it exceeds $10.

(d) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). A, an individual to whom payments are subject to backup withholding, maintains a savings account at Bank M. M credits interest on the account at the end of each calendar quarter. M credits $2.60 of interest to A's account on March 31, and $2.00 of interest on June 30, September 30, and December 31. The annualized amount for the payment credited on March 31 exceeds $10 determined for a 1-year period (*i.e.*, $2.60 (actual payment) divided by 90 (number of days in the quarter) multiplied by 360 is $10.40). Consequently, the payment to A is not a minimal payment, and M may not elect not to impose backup withholding on the payment. Therefore, M must withhold 52 cents ($2.60 multiplied by 20 percent) from the amount credited to A on March 31. M is not required to withhold on June 30, September 30, or December 31, because the annualized amount for each of the payments does not exceed $10 ($2.00 divided by 90 multiplied by 360 is $8.00).

Example (2). Assume the same facts as in *Example (1)* except that the payments on September 30 and December 31 are $3.00 each. The result is the same as in *Example (1)* with respect to the payments on March 31 and on June 30. M is required to withhold on the payments made on September 30 and December 31 since the annualized amount credited on each date exceeds $10 (*i.e.*, $3.00 divided by 90 multiplied by 360 is $12.00). Even though the total payments made to B during the 1-year period exceed $10, M is not required to withhold on June 30. M is not required to withhold more than 20 percent from the third or fourth quarterly payment to compensate for the earlier payment that was not subject to withholding.

Example (3). Individual C presents two Series EE savings bonds at Bank N to cash, on each of which $3 of interest has accrued. C also presents an interest coupon for a corporate bond on which $10 of interest is payable. Thus, the total amount of interest paid to C in the transaction is $16. N is required to withhold if C does not furnish a taxpayer identification number. If only the two savings bonds were presented, however, N would not be required to withhold since not more than $10 would be paid to C in the transaction. N is not required to annualize the payment under paragraph (b) of this section because it is a window transaction (as defined in § 31.3406(b)(2)–3).

Example (4). Corporation X pays quarterly dividends on shares owned by Individual D. Each quarter X pays D $2.75 of dividends for all the shares D owns. X is required to withhold on each quarterly dividend because the annualized amount of each quarterly dividend exceeds $10 (*i.e.*, $2.75 divided by 90 multiplied by 360 is $11).

Example (5). Individual E opens a new savings account at O Bank on February 2, 1984, and fails to make the certifications required in § 31.3406(d)–1 or § 31.3406(d)–2. O customarily credits interest to accounts of this type at the end of each calendar quarter. On March 31, O credits $2.00 of interest to D's account. O may annualize the payment by dividing $2 by 59 (the number of days in the period for which the interest actually is paid) and multiplying that amount by 360. In that event, the annualized amount would be $12.20, and O would be required to withhold. Alternatively, O may treat the payment as made for the entire calendar quarter. Accordingly, O would annualize the payment by dividing $2 by 90 and multiplying that amount by 360, in which case the annualized amount would be $8.00 and O could elect not to withhold.

Example (6). Q is a middleman payor (as defined in § 31.3406(a)–2(b)(3)) with respect to dividends that are paid quarterly. Q maintains separate records for each instrument of the same issue owned by Individual F, who fails to furnish a social security number. Q pays $9 of dividends to F with respect to Y company stock and $2 of dividends to F with respect to Z company stock. While Q is not required to aggregate the two payments, Q is required to annualize each payment. Thus, Q must withhold on the quarterly dividend of $9 paid with respect to Y stock since the annualized amount exceeds $10 (*i.e.*, $9 divided by 90 multiplied by 360 is $36). Q is not required to withhold on the quarterly dividend of $2 paid with respect to Z stock since the annualized amount does not exceed $10 ($2.00 divided by 90 multiplied by 360 is $8).

Example (7). Assume the same facts as in *Example (6)* except that Q maintains records which reflect F's multiple holdings in Y and Z issues and Q makes an aggregate payment of $11.00 to C. Since the payment is more than $10, backup withholding applies.

§ 31.3406(c)–1 Notified payee underreporting of reportable interest or dividend payments.

(a) *Requirement to withhold*—(1) *In general.* Backup withholding under section 3406(a)(1)(C) is required with respect to any reportable interest or dividend payment (as defined in section 3406(b)(2) and § 31.3406(b)(1)–1(b)) made to a payee if the Internal Revenue Service or a broker (as defined in section 3406(h)(5) and § 31.3406(h)–1(c) and pursuant to section 3406(d)(2)(B)(ii)(III)) notifies a payor (as defined in section 3406(h)(4) and § 31.3406(a)–2) that the payee is subject to backup withholding due to a notified payee underreporting (as defined in paragraph (a)(2) of this section). The payor is required under section 3406(c)(4) and paragraph (c)(1) of this section to inform the payee that backup withholding under section 3406(a)(1)(C) has begun. The requirements for the notice that a payor must send to a payee are set forth in paragraph (c) (2) and (3) of this section. The period for which backup withholding is required due to a notified payee underreporting is described in section 3406(e)(3)(A) and in paragraph (e)(1) of this section. See section 3406(c)(3) and paragraph (g) of this section for the rules regarding how a payee may obtain a determination from the Internal Revenue Service that withholding under section 3406(a)(1)(C) be stopped or not started.

(2) *Definition of notified payee underreporting.* The term "notified payee underreporting" means that the Internal Revenue Service has—

(i) Determined that there was a payee underreporting as defined in paragraph (a)(3) of this section,

(ii) Mailed at least four notices to the payee (over a period of at least 120 days) with respect to the underreporting as prescribed in paragraph (f)(1) of this section, and

(iii) Assessed any deficiency attributable to the underreporting in the case of any payee who has filed a return.

(3) *Definition of a payee underreporting.* The term "payee underreporting" means that the Internal Revenue Service has determined, for a taxable year, that—

(i) A payee failed to include in his return of tax under chapter 1 of the Internal Revenue Code for such year any portion of a reportable interest or dividend payment required to be shown on such tax return, or

(ii) A payee may be required to file a return for such year and to include a reportable interest or dividend payment in such return, but failed to file such return.

Reportable minimal payments (*i.e., small payments described in section 3406(b)(5) to the extent reported on an information return), patronage dividends, original issue discount, and window payments shall be taken into account in determining whether underreporting as defined in paragraph (a)(3) of this section has occurred, even though such payments may not be defined as reportable interest or dividend payments under section 3406(b)(2) and § 31.3406(b)(1)–12(b) or even though backup withholding under section 3406(a)(1)(C) may not apply to such payments.*

(b) *Notice to payors and brokers regarding backup withholding*—(1) *Notice from the Internal Revenue Service.* The Internal Revenue Service will notify:

(i) Payors to begin backup withholding on reportable interest or dividend payments due to a notified payee underreporting pursuant to section 3406(a)(1)(C); and

(ii) Brokers pursuant to section 3406(c)(5) that a payee is subject to backup withholding under section 3406(a)(1)(C).

(2) *Notice from a broker.* A broker who receives a notice from the Internal Revenue Service that a payee is subject to backup withholding due to a notified payee underreporting and through whom the payee subsequently acquires a readily tradable instrument (as defined in section 3406(h)(6)) with respect to which the broker is not the payor is required to notify the payor of that instrument that the payee is subject to backup withholding under section 3406(a)(1)(C) in the time and manner provided in § 31.S406(d)–4(a).

(3) *Accounts subject to backup withholding:*

(i) *Existing Accounts.* After receiving notice from the Internal Revenue Service or from a broker, as provided in section 3406(d)(2)(B) and paragraphs (b)(1)(i) and (2) of this section, that a payee is subject to backup withholding under section 3406(a)(1)(C), payors are required to withhold 20 percent of all reportable interest or dividend payments subject to backup withholding made with respect to all existing accounts of the payee (and all subsequent accounts that are thereafter opened by the payee which the payor treats as under one primary account) with that payor (*i.e.*, with the payor's Taxpayer Identification Number).

(ii) *New accounts; reliance on certification.* If paragraph (b)(3)(iii) of this section does not apply to a new account of a payee, then a payor may rely on a certification made by a payee under penalties of perjury as described in section 3406(a)(1)(D) and § 31.3406(d)–2 that he is not subject to backup withholding due to notified payee underreporting. A payor, however, may not rely on the certification if in the course of processing the certification or in administering the account to which the certification relates, the payor discovers that such certification is false (because the payor was notified by the Internal Revenue Service that the payee is subject to backup withholding under section 3406(a)(1)(C) and no notice was received to stop backup withholding pursuant to section 3406(c)(3) and § 34.3406(c)–1(d)(1) prior to the time the new account is opened). See § 31.3406(d)–2. After discovering that the certification is false, the payor must commence backup withholding on the next interest or dividend payment to the account that is subject to backup withholding. Backup withholding is required under section 3406(a)(1)(C) on the account until the payor receives a notice from the Internal Revenue Service or a copy of the certification provided to the payee pursuant to section 3406(c)(3).

(iii) *Joint accounts.* Payors are required to withhold on joint accounts if the payee subject to backup withholding under section 3406(a)(1)(C)—

(A) Is the first person listed on the account for tax purposes on the date that the payor receives the notice to begin backup withholding,

(B) Effective [DATE THAT IS 60 DAYS AFTER THE DATE THIS DOCUMENT IS PUBLISHED AS A TREASURY DECISION], was the first person listed on the account at any time during the 120-day period prior to the day the payor received the notice described in paragraph (b) (1) or (2) of this section to begin backup withholding, or

(C) Effective [DATE THAT IS 60 DAYS AFTER THE DATE THIS DOCUMENT IS PUBLISHED AS A TREASURY DECISION], should be the first person listed on the account for tax purposes on the date that the payor receives the notice to begin backup withholding and the payor has actual knowledge that the payee should be so listed.

Backup withholding shall apply to reportable interest and dividend payments made to a joint account, if required, even if the order of the names on the account is subsequently changed, so long as the name of the payee subject to backup withholding remains on the account.

(iv) *Withholding exception.* Payors are not required to withhold on reportable interest or dividend payments made with respect to an account of the payee that could not be located with reasonable care. The payor will be considered to have exercised reasonable care—

(A) If the payor uses the name and taxpayer identification number or names and taxpayer identification numbers (if a joint return was filed by the payees) provided on the notice from the Internal Revenue Service or from a broker as prescribed in paragraph (b)(1)(i) and (2) of this section and in certain circumstances identified in this paragraph (b)(3)(iv) any account numbers provided by the Internal Revenue Service in locating all accounts of a payee or payees;

(B) If the payor, using records kept in the ordinary course of business, can associate another surname with the name of the payee provided on the notice and the payor uses both surnames of a payee to locate accounts of a payee (*i.e.*, when the payee uses a different name on the account from the names stated in the notice from the Internal Revenue Service or from a broker, for instance due to marriage or adoption);

(C) If the payor uses any account numbers provided by the Internal Revenue Service or a broker to identify the payee and the payee's taxpayer identification number when the taxpayer identification number is not provided to the payor by the Internal Revenue Service or broker, or when the taxpayer identification number provided by the Internal Revenue Service or a broker does not match the taxpayer identification number of the payee on the records that the payor maintains in the ordinary course of business. The name of the payee and the payee's taxpayer identification number obtained as described in the preceding sentence must be used by the payor to locate other accounts of the payee and by the broker to locate the payors with respect to whom the payee subsequently acquires a readily tradable instrument through the broker; and

(D) If a payor that has several branches or divisions, each of which uses the same Taxpayer Identification Number for information reporting purposes, searches for the accounts of the payee pursuant to the rules described in paragraph (b)(3)(iv) (A), (B), or (C) of this section at all branches or divisions of the payor within a

reasonable geographic area of the mailing address of the payee (*e.g.*, if the payor lives in a city, all branches or divisions within the metropolitan area).

(v) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example (1). Corporation X declares a reportable dividend on its common stock and uses Bank A as its paying agent in making the dividend payments. The Internal Revenue Service notifies X to commence backup withholding under section 3406 (a)(1)(C) due to notified payee underreporting of reportable interest and dividend payments by several of its payees. The notice contains X's employer identification number (EIN) to further identify the payor who has the obligation to impose backup withholding under section 3406 (a)(1)(C). X sends the notice to its paying agent, A, and instructs A to commence backup withholding on the named payees. The payees subject to withholding also maintain savings accounts with A that pay reportable interest. A was not notified by the Internal Revenue Service with respect to the named payees. In determining which accounts are subject to backup withholding, A must review all the accounts it maintains for X with X's EIN. A does not have to review any of its accounts on which it is the payor or other accounts for which it acts as a paying agent.

Example (2). Assume the same facts in *Example (1)* except that A receives the notice to begin backup withholding due to payee underreporting from the Internal Revenue Service and the notice contains A's EIN. In determining which accounts are subject to backup withholding, A must review all of its accounts containing the EIN specified on the notice. A does not have to review other accounts it maintains as a paying agent.

Example (3). Bank B received notice from the Internal Revenue Service to begin backup withholding due to payee underreporting with respect to all accounts of C making reportable interest or dividend payments. The notice specifies C's name, taxpayer identification number, address, and an account number. While searching for other accounts, B discovers that C has a joint account with D, an individual. The account lists D's name first, but contains C's taxpayer identification number. If the account information reflects that C is the primary owner of the account and his name is reported first on information returns filed with the Internal Revenue Service, then B must withhold on that account. If, however, C's name is not reported first for information reporting, then, absent actual knowledge that C should, in fact, be the person listed first on the account, B should not withhold on that account because the name and taxpayer identification number information set forth in the notice from the Internal Revenue Service and such information set forth for the first named person on the account are not the same.

Example (4). Assume the same facts as in *Example (3)* except that the account number specified on the Internal Revenue Service notice concerns the joint account mentioned above. D's name is listed first on the account on B's records, and it is listed first for information reporting. B must withhold on the specified account but review its business records to determine whether the taxpayer identification number corresponds with D's or C's name and then use that information (name and taxpayer identification number) in locating other accounts that should be subject to backup withholding.

(c) *Notice from payors of backup withholding due to a payee underreporting*—(1) *In general.* A payor is required under section 3406 (c)(4) to notify the payee in accordance with paragraph (c)(2) of this section that backup withholding has begun because of a notified payee underreporting. Payors who are notified by a broker that a payee is subject to backup withholding under section 3406 (a)(1)(C) are also required to send the notice in accordance with paragraph (c)(2) of this section. As a result, the notice requirements provided in § 31.3406 (d)–4(b)(2) shall not apply to those payors notified by a broker that a payee is subject to backup withholding under section 3406 (a)(1)(C). The payor must send the notice required by paragraph (c)(2) of this section to the payee no later than 15 days after the date that the payor makes the first payment subject to backup withholding under section 3406 (a)(1)(C). The payor must send the notice of backup withholding by first-class mail to the payee at his last known address.

(2) *Form of the notice to the payee with respect to notified payee underreporting.* The notice to the payee required by paragraph (c)(1) of this section must state—

(i) That the Internal Revenue Service has given notice that the payee has underreported reportable interest or dividends;

(ii) That, as a result of such underreporting, the payor is required under section 3406(a)(1)(C) of the Internal Revenue Code to withhold 20 percent of reportable interest and dividend payments made to the payee no later than the close of the day 30 days after the date that the payor received the notice;

(iii) The date that the payor received the notice to begin backup withholding under section 3406(a)(1)(C);

(iv) Effective [DATE THAT IS SIXTY DAYS AFTER THIS DOCUMENT IS PUBLISHED AS A TREASURY DECISION], the account number(s) that will be subject to backup withholding due to notified payee underreporting;

(v) That the payee must obtain a determination from the Internal Revenue Service in order to stop the backup withholding under section 3406(a)(1)(C); and

(vi) That while the payee is subject to backup withholding due to payee underreporting, the payee may not certify to a payor making reportable interest or dividend payments (or to a broker acquiring a readily tradable instrument for the payee) that the payee is not subject to backup withholding under section 3406(a)(1)(C). (See section 3406(a)(1)(D) and § 31.3406(d)–2 for the backup withholding rules with respect to a payee's failure to make the certification under section 3406(a)(1)(D)).

(3) *Exceptions.* A notice provided to a payee on or before April 23, 1987, will be deemed to satisfy the provisions of paragraph (c)(2) of this section if it informs the payee that the payor has been instructed by the Internal Revenue Service to start backup withholding on reportable interest or dividend payments to the payee. If a payor who has started backup withholding due to notified payee underreporting on or before April 23, 1987, has not provided adequate notice to the payee on or before April 23, 1987, then the payor must provide notice to the payee in the manner prescribed in paragraph (c)(2) of this section by June 8, 1987.

(4) *Penalty for failure to provide notice.* A payor who fails to provide the notice required under section 3406(c)(4) to a payee (as described in paragraph (c)(2) of this section) may be subject to civil or criminal penalties as a result of that failure.

(d) *Notice to stop backup withholding*—(1) *In general.* The Internal Revenue Service will provide written certification to a payee that backup withholding is to stop and will notify payors who were contacted pursuant to paragraph (b) of this section to stop withholding after the Internal Revenue Service has made a determination under paragraph (g) of this section that backup withholding with respect to a payee should stop. The Internal Revenue Service will also notify brokers who were contacted pursuant to paragraph (b) of this section that the payee is no longer subject to backup withholding under section 3406(a)(1)(C) and that the brokers are no longer obligated to provide notices to payors under paragraph (b)(2) of this section. A broker who receives a notice from the Internal Revenue Service or a copy of the certification provided to a payee by the Internal Revenue Service is not required to notify any payors to whom the broker has previously provided the notice required under paragraph (b)(2) of this section that the payee is no longer subject to backup withholding under section 3406(a)(1)(C).

(2) *Date notice to stop withholding will be provided*—(i) *Underreporting corrected or bona fide dispute.* If the Internal Revenue Service makes a determination as set forth in paragraph (g)(1) (ii) or (iv) of this section during the 12-month period ending on October 15 of any calendar year, the Internal Revenue Service will provide the certification and notice required by paragraph (d)(1) of this section no later than December 1 of such calendar year.

(ii) *No underreporting or undue hardship.* If the Internal Revenue Service makes a determination as set forth in paragraph (g)(1) (i) or (iii) of this section, the Internal Revenue Service will provide the notices required by paragraph (d)(1) of this section no later than the 45th day after the day on which the Internal Revenue Service makes its determination.

(e) *Period during which withholding is required*—(1) *In general.* Upon receiving notice from the Internal Revenue Service after April 23, 1987, to begin backup withholding under section 3406 (a)(1)(C) or notification from a broker stating that the payee is subject to backup withholding under section 3406 (a)(1)(C), the payor must impose backup withholding on all reportable interest and dividend payments made to the payee during the period beginning after the close of the 30th day after the day on which the payor receives the notice provided in paragraph (b) (1)(i) or (2) of this section and ending as of the close of the day before the stop date (as described in paragraph (e)(2) of this section). Pursuant to section 3406 (e)(5)(C), the payor may elect to begin backup withholding at any time during the 30-day period described in this paragraph.

(2) *Stop date*—(i) *Underreporting corrected or bona fide dispute.* In the case of a determination that the underreporting has been corrected or that a bona fide dispute exists (as defined in paragraph (g)(1) (ii) or (iv) of this section), the stop date is—

(A) January 1 following the 12-month period ending on October 15th of any calendar year in which the determination has been made or, if later,

(B) The day that is 30 days after the earlier of—

(*1*) The date on which the payor receives written notification from the Internal Revenue Service (under paragraph (d)(2) of this section) that withholding is to stop, or

(*2*) The date on which the payor receives a copy of the written certification provided to the payee by the Internal Revenue Service that withholding is to stop.

(ii) *No underreporting or undue hardship.* In the case of a determination that no payee underreporting occurred or that an undue hardship exists or could exist (as defined in paragraph (g)(1) (i) or (iii) of this section), the stop date is the date specified in paragraph (e)(2)(i)(B) of this section.

(iii) *Payor election to shorten or eliminate grace period.* The payor with respect to any payee may elect to determine the stop date without regard to the grace period provided in section 3406 (e)(5)(B) (*i.e.*, without regard to the words "the day that is 30 days after" in paragraph (e)(2)(i)(B) of this section) or by substituting a shorter grace period.

(iv) *Examples.* The provisions of this paragraph (e)(2) may be illustrated by the following examples:

Example (1). The Internal Revenue Service makes a determination by October 15, 1987, that any underreporting with respect to A has been corrected. X, a payor who has been notified to backup withhold on payments of interest to A due to notified payee underreporting, receives written notice from the Internal Revenue Service on December 1, 1987, informing X that A is no longer subject to backup withholding under section 3406(a)(1)(C) and that X must stop backup withholding as of the close of December 31, 1987, or, if later, the earlier of the close of the day 30 days after receipt of the notice from the Internal Revenue Service or receipt of the copy of the written certification provided to the payee by the Internal Revenue Service. The stop date, as provided in paragraph (e)(2)(i)(A) of this section, is January 1, 1988, and the payor must stop backup withholding as of the close of December 31, 1987.

Example (2). Assume the same facts as in *Example (1)* except that X, due to a change of address or for other reasons, does not receive the notice from the Internal Revenue Service to stop backup withholding until December 15, 1987. In addition, A does not provide X with a copy of the certification that was provided to A by the Internal Revenue Service until December 15, 1987. The stop date, as provided in paragraph (e)(2)(i)(B) of this section, is January 14, 1988 (30 days after December 15, 1987), because that date is later than January 1, 1988. However, if a payor elects pursuant to section 3406(e)(5)(C) and paragraph (e)(2)(iii) of this section to determine the stop date without regard to that 30-day grace period, the stop date is January 1, 1988.

Example (3). Assume the same facts as in *Example (2)* except that on December 10, 1987 (rather than on December 15, 1987), A provides X with a copy of the certification from the Internal Revenue Service. The stop date, as provided in paragraph (e)(2)(i)(B) of this section, is January 9, 1988 (30 days after December 10, 1987), because that date is earlier than January 14, 1988 (30 days after the day X received notice from the Internal Revenue Service), but later than January 1, 1988. However, if a payor elects pursuant to section 3406(e)(5)(C) and paragraph (e)(2)(iii) of this section to determine the stop date without regard to that 30-day grace period, the stop date is January 1, 1988.

(f) *Notice to payees from the Internal Revenue Service*—(1) *Notice period.* After the Internal Revenue Service determines that a payee underreporting exists as defined in paragraph (a)(3) of this section, the Internal Revenue Service, pursuant to section 3406(c)(1)(B), will mail to the payee at least four notices over a period of at least 120 days (the "notice period") before payors and brokers will be notified that the payee is subject to backup withholding due to a notified payee underreporting as provided in paragraph (b)(1) of this section. The notices may be incorporated with other notices provided to the payee by the Internal Revenue Service.

(2) *Payee subject to withholding.* After the Internal Revenue Service provides the notices described in paragraph (f)(1) of this section, the Internal Revenue Service will send the notices required by paragraph (b) of this section unless—

(i) A payee obtains a determination under paragraph (g) of this section, or

(ii) In the case of a payee who has filed a tax return, the Internal Revenue Service has not assessed the deficiency attributable to the underreporting.

(3) *Disclosure of names of payors and brokers.* The Internal Revenue Service pursuant to section 3406(c)(5) may require a payee subject to backup withholding due to a notified payee underreporting to disclose the names of all of his payors of reportable interest or dividend payments and the names of all of the brokers with whom the payee has accounts which may involve reportable interest or dividend payments. To the extent required in the request from the Internal Revenue Service, the payee shall also provide his account numbers and other information necessary to identify the payee's accounts.

(4) *Backup withholding certification.* After a payee receives a final notice from the Internal Revenue Service notifying him that his reportable interest or dividend payments are subject to backup withholding due to notified payee underreporting under section 3406(a)(1)(C), the payee shall not certify to any payor or broker, under penalties of perjury, that he is not subject to backup withholding under section 3406(a)(1)(C). See paragraph (k)(2) of this section for the penalties that will apply to a payee who makes a false certification. The payee may not make the certification until the payee receives the certification provided in paragraph (d)(1) of this section from the Internal Revenue Service advising the payee that he is no longer subject to backup

withholding under section 3406(a)(1)(C) (as provided in § 31.3406(h)–3(f)(2)). See § 31.3406(d)–2 for the rule applicable to a payor who makes reportable interest or dividend payments to a payee who fails to certify that he is not subject to backup withholding due to notified payee underreporting.

(g) *Determination by the Internal Revenue Service that backup withholding should not start or should be stopped*—(1) *In general.* A payee may prevent backup withholding from starting or stop it once it has started if, for the taxable year with respect to which there is a notified payee underreporting and any other taxable years for which there is any payee underreporting, the payee:

(i) Shows that there was no payee underreporting (as provided in paragraph (g)(2) of this section);

(ii) Corrects any payee underreporting (as provided in paragraph (g)(3) of this section);

(iii) Shows that backup withholding will cause or is causing an undue hardship (as defined in paragraph (g)(4) of this section) and that it is unlikely that the payee will underreport interest or dividend payments again; or

(iv) Shows that a bona fide dispute exists as to whether any underreporting has occurred (as provided in paragraph (g)(5) of this section).

(2) *No underreporting.* A payee may show that no underreporting of interest or dividends exists by presenting receipts or other satisfactory documentation to the Internal Revenue Service showing that all taxes relating to such payments were reported or evidence showing that the payee did not have to file a return for the taxable year in question or that the underreporting determination is based upon a factual, clerical, or other mistake.

(3) *Correcting any payee underreporting*—(i) *Before issuance of a statutory notice of deficiency.* Before a statutory notice of deficiency is issued to a payee pursuant to section 6212, the payee may correct underreporting:

(A) By filing a return if one was not previously filed,

(B) By filing an amended return in the event a return was filed, or

(C) By consenting to the additional assessment according to applicable notices and forms sent to the payee by the Internal Revenue Service with respect to such underreporting, and paying taxes, penalties, and interest due with respect to any underreported interest or dividend payments.

(ii) *After issuance of a statutory notice of deficiency.* After a statutory notice of deficiency is issued to a payee, the payee may correct underreporting—

(A) At any time by filing a return if one was not previously filed and paying the entire deficiency and any other taxes including penalties and interest attributable to any payee underreporting of interest or dividend payments, or

(B) After the mailing of the statutory notice of deficiency but before the expiration of the 90-day or 150-day period described in section 6213(a), or, if a petition is filed with the United States Tax Court, before the decision of the Tax Court is final by making a remittance to the Internal Revenue Service of the amounts described in paragraph (g)(3)(ii)(A) of this section specifically designating in writing that the remittance is a "deposit in the nature of a cash bond." The payee will not be deemed to have corrected the payee underreporting under this paragraph (g)(3)(ii)(B) after the remittance is returned to the payee as described in subparagraph 2 of section 4.01 of Rev. Proc. 84–58, 1984–2 C.B. 501. Once the remittance is returned to the payee, the procedures under § 31.3406(c)–1 will apply. However, if the Internal Revenue Service previously contacted payors of the payee to commence backup withholding with respect to the payee underreporting, the Internal Revenue Service will recontact such payors to commence backup withholding under section 3406(a)(1)(C) and § 31.3406(c)–1(b) with respect to such payee underreporting without regard to section 3406(c)(1) and § 31.3406(c)–1 (f) of this section.

For example, under paragraph (g)(3)(ii)(A) of this section a payee may correct underreporting after assessment of a deficiency by paying the entire assessment of all taxes, penalties, and interest with respect to that deficiency for the taxable year and any other taxes including penalties and interest attributable to any payee underreporting of interest or dividend payments for other taxable years.

(4) *Undue hardship.* A determination of undue hardship will be based on the overall impact to the payee of having 20 percent of reportable interest and dividend payments withheld. Factors that will be considered in determining whether backup withholding causes undue hardship include, but are not limited to, the following:

(i) Whether estimated tax payments, and other credits for current tax liabilities, or amounts withheld on employee wages or pensions, in addition to backup withholding, would cause significant overwithholding;

(ii) The payee's health, including the payee's ability to pay foreseeable medical expenses;

(iii) The extent of the payee's reliance on interest and dividend payments to meet necessary living expenses and the existence, if any, of other sources of income;

(iv) Whether other income of the payee is limited or fixed (*e.g.*, social security, pension, and unearned income);

(v) The payee's ability to sell or liquidate stocks, bonds, bank accounts, trust accounts, or other assets, and the consequences of doing so;

(vi) Whether the payee reported and timely paid the most recent year's tax liability, including interest and dividend income; and

(vii) Whether the payee has filed a bankruptcy petition with the United States Bankruptcy Court.

In addition to the above factors, the Internal Revenue Service must conclude that it is unlikely that any payee underreporting will occur again.

(5) *Bona fide dispute.* The Internal Revenue Service may make a determination under this paragraph if there is a dispute between the payee and the Internal Revenue Service on a question of fact or law that is material to a determination under paragraph (g)(1)(i) and, based upon all the facts and circumstances, the Internal Revenue Service finds that the dispute is asserted in good faith by the payee and there is a reasonable basis for the payee's position. See the example provided in paragraph (j)(2)(ii) of this section for an illustration of this provision.

(h) *Requests for determinations*—(1) *In general.* A payee may request a determination under one or more of the provisions of paragraph (g) of this section. Following its review of a request for a determination under paragraph (g) of this section, the Internal Revenue Service will either provide the payee with a written certification as prescribed in paragraph (d) of this section if the evidence presented warrants the requested determination or will provide the payee with a written notice informing him that a determination was not made.

(2) *Determinations made during the notice period.* In general, if a determination is made during the notice period as defined in paragraph (f)(1) of this section, then the payee will not be subject to backup withholding due to a notified payee underreporting with respect to any taxable year for which a determination was made.

(3) *Determinations made after the notice period.* If a determination is made after the notice period, as defined in paragraph (f)(1) of this section, the Internal Revenue Service will provide a

notice to payors and brokers, and a certification to the payee as provided in paragraph (d)(1) of this section.

(i) [Reserved].

(j) *Payees filing a joint return*—(1) *In general.* For purposes of section 3406(a)(1)(C), if payee underreporting is found to exist with respect to a joint return then the provisions of this section shall apply to both payees (*i.e.*, the husband and wife). As a result, both payees will be subject to backup withholding on accounts in their individual names as well as accounts in their joint names. Either or both payees may satisfy the criteria for a determination that no payee underreporting exists, that the underreporting has been corrected, or that a bona fide dispute exists (as provided in paragraph (g)(1) (i), (ii), or (iv) of this section). Both payees, however, must satisfy the criteria for a determination that backup withholding will cause or is causing undue hardship (as provided in paragraph (g)(1)(iii) of this section).

(2) *Exceptions*—(i) *Innocent spouse.* A spouse who files a joint return may obtain a determination that withholding should stop or not start with respect to payments made to his or her individual accounts, if the spouse—

(A) Shows that he or she did not underreport income because he or she is an innocent spouse as described in section 6013(e), or

(B) Shows that there is a bona fide dispute as to whether he or she is an innocent spouse and hence did not underreport income.

(ii) *Example.* The provisions of paragraph (j)(2)(i) may be illustrated by the following example:

Example. H and W filed a joint return in 1986 on which H failed to include $2,000 of interest income. In 1987, the Internal Revenue Service determined that a payee underreporting exists with respect to H and W for the 1986 tax year. After properly notifying H and W of the underreporting and assessing the tax, the Internal Revenue Service sent notices to payors to begin backup withholding on the joint and individual accounts of H and W and to brokers informing them that H and W are subject to backup withholding under section 3406(a)(1)(C) on their joint and individual accounts. W claims that she is an innocent spouse and requests a determination that she did not underreport interest or dividend income so that her individual accounts will not be subject to backup withholding.

The Internal Revenue Service questions her status as an innocent spouse. If the Internal Revenue Service determines, based upon all the facts and circumstances, that there is a reasonable basis for W's claim to be an innocent spouse and that the claim is made in good faith, W will have a bona fide dispute with the Internal Revenue Service. Consequently, the individual accounts of W will not be subject to further backup withholding due to a notified payee underreporting as provided in paragraph (g)(5) of this section.

The Internal Revenue Service will notify W's payors to stop backup withholding under section 3406(a)(1)(C) and will notify brokers that W is no longer subject to backup withholding under section 3406(a)(1)(C) on W's individual accounts. Backup withholding will not restart on those accounts unless the Internal Revenue Service ultimately determines that W is not an innocent spouse. In that event the Internal Revenue Service will notify the payors to start backup withholding under section 3406(a)(1)(C) and will notify the brokers that W is subject to backup withholding under section 3406(a)(1)(C) with respect to the individual accounts of W.

(iii) *Divorced or legally separated payee.* A payee who, at the time of the request for a determination under paragraph (g) of this section, is divorced or separated under State law may obtain a determination that undue hardship exists (or would exist) under paragraph (g)(1)(iii) of this section with respect to reportable interest and dividend payments made to his or her individual accounts if the divorced or legally separated payee satisfies the criteria for a determination under paragraph (g)(4) of this section.

(k) *Penalties*—(1) *Failure to withhold.* See § 31.3406(h)–2(i) for the penalties applicable to a payor who fails to withhold on reportable interest and dividend payments made to a payee subject to backup withholding.

(2) *False certification*—(i) *Criminal penalty under section 7205(b).* If any individual willfully makes a false certification under section 3406(d) (1) or (2), then that individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(ii) *Civil penalty under section 6682*—(A) *In general.* In addition to any criminal penalty provided by law, if any individual makes a statement under section 3406 which results in a decrease in the amounts deducted and withheld under chapter 24 of the Internal Revenue Code and, as of the time the statement was made, there was no reasonable basis for the statement, the individual shall pay a penalty of $500 for the statement. The penalty is due upon notice and demand and pursuant to section 6682 collection is not subject to the deficiency procedures of subchapter B of chapter 63 of the Internal Revenue Code. See section 6682.

(B) *Waiver of penalty.* The payee may obtain a waiver (in whole or part) of the penalty imposed under section 6682(a) and paragraph (k)(2)(ii)(A) of this section if it is established to the satisfaction of the Internal Revenue Service that the taxes imposed under subtitle A of the Internal Revenue Code with respect to the payee for the taxable year in which the false certification was made are equal to or less than the sum of—

(*1*) The credits against taxes allowed by part IV of subchapter A of chapter 1 of the Internal Revenue Code, and

(*2*) The payments of estimated tax which are considered payments on account of such taxes.

(C) *Procedure for seeking a waiver.* To request a waiver under section 6682(b) and paragraph (k)(2)(ii)(B) of this section, the payee must submit to the Internal Revenue Service a written statement with supporting documents to establish all the facts necessary in order to obtain the waiver. The statement must be signed by the person who otherwise would be subject to the penalty imposed by section 6682(a) and paragraph (k)(2)(ii)(A) of this section and must contain a declaration that it is made under penalties of perjury.

(3) *Delay of assessment.* If a payee institutes or maintains a suit with the United States Tax Court primarily to delay assessment and the payee's position is frivolous or groundless, or the payee unreasonably failed to pursue available administrative remedies, the court may award up to $5,000 in damages under section 6673. The damages will be assessed against and collected from the payee in the same manner as the underlying tax.

§ 31.3406(d)–1 Manner required for furnishing a taxpayer identification number.

(a) *Requirement to withhold.* Backup withholding under section 3406(a)(1)(A) is required with respect to any reportable payment (as defined in § 31.3406(b)(1)–1(a)) if the payee does not furnish his taxpayer identification number to the payor in the manner required by this section. The period for withholding is described in § 31.3406(e)–1(c). See § 31.3406(d)–3(a) for special rules when an account is established directly with, or an instrument is acquired directly from, the payor by means of electronic or mail communication or an instrument is sold through a broker by means of electronic transmission (*i.e.*, telephone or wire instruction), and see § 31.3406(d)–4 for special rules relating to the acquisition of a readily tradable instrument through a broker. See also § 31.3406(g)–3 for rules as to when a payee is awaiting receipt of a taxpayer identification

number. See the applicable information reporting sections and section 6109 and the regulations thereunder to determine whose taxpayer identification number should be provided.

(b) *Reportable interest or dividend account*—(1) *Manner required for furnishing a taxpayer identification number with respect to a pre-1984 account or instrument.* A payee shall furnish his taxpayer identification number to the payor with respect to any obligation, deposit, certificate, share, membership, contract, account, or other relationship or instrument established or acquired on or before December 31, 1983 (a "pre-1984 account"). The manner of determining whether an account or an instrument is a pre-1984 account is described in paragraph (b)(2) of this section. The payee of a pre-1984 account may furnish his taxpayer identification number to the payor orally or in writing. The payee is not required to certify under penalties of perjury that the taxpayer identification number is correct.

(2) *Determination of pre-1984 account or instrument*—(i) *In general.* An account that is in existence before January 1, 1984, will be considered a pre-1984 account, regardless of whether additional deposits are made to the account on or after January 1, 1984. Accounts established as an expansion of a credit union prime account in existence prior to January 1, 1984, shall constitute a pre-1984 account. If funds taken from one account in existence prior to January 1, 1984, are used to create a new account on or after such date, however, the new account so created does not constitute a pre-1984 account except as provided in the preceding sentence. For example, with respect to a disposition of shares in a mutual fund and the purchase of shares of another fund within a group of mutual funds which occurs after December 31, 1983, the shares acquired in the second fund may not be treated as a pre-1984 account unless the payee owned shares in the second fund prior to January 1, 1984. An instrument acquired prior to January 1, 1984, is a pre-1984 account. An instrument negotiated in a window transaction as defined in § 31.3406(b)(2)–3(b) after December 23, 1987, is treated as an instrument acquired after December 31, 1983. However, an obligation in bearer form, whenever acquired, that is redeemed after December 31, 1983, and subject to reporting under section 6045, is not a pre-1984 account. Any instrument, whenever acquired, that is held in a brokerage account shall be considered a pre-1984 account if the brokerage account is not a post-1983 brokerage account (as described in paragraph (c)(1) of this section). If shares of a corporation are held before January 1, 1984 (or considered held before such date by operation of this rule), and additional shares are acquired by the holder, irrespective of whether such shares are received by reason of a stock dividend, investing new cash, or otherwise, the new shares, in the discretion of the payor, may be considered a pre-1984 account. In the case of a qualified employee trust that distributes instruments in kind, any instrument distributed from the trust will be considered a pre-1984 account with respect to employees who were participants in the trust before 1984. Similarly, when a payor offers participants in a plan the opportunity to purchase stock of the payor after a specified time, using the money that the payee invested during that period of time, the stock so purchased after December 31, 1983, shall be considered a pre-1984 account with respect to participants in the plan who either owned shares or invested money in the plan before January 1, 1984.

(ii) *Account or instrument automatically acquired on the maturity or termination of an account.* When an account is opened, or an instrument is acquired, automatically on the maturity or termination of an account that was in existence or an instrument that was held before January 1, 1984 (or considered to have been in existence or held before such date by operation of this rule), without the participation of the payee, the new account or instrument will be considered to be a pre-1984 account, in the discretion of the payor. For purposes of the preceding sentence, a payee shall not be considered to have participated in the acquisition of the new account or instrument solely because the payee failed to exercise a right to withdraw funds at the maturity or termination of the old account or instrument.

(iii) *Special rule for short-term discount instruments acquired before January 1, 1985.* Where a discount instrument with a maturity not exceeding one year (a "short-term instrument") is acquired from the same payor immediately upon the maturity of the short-term instrument, the participation of the payee in the acquisition of the newly-acquired instrument shall not be taken into account, and the new instrument shall be considered to have been acquired automatically, unless the new instrument is acquired after December 31, 1984.

(iv) *Insurance policies.* In the case of insurance policies in effect on December 31, 1983, the election of a dividend accumulation option pursuant to which interest is paid (as defined in § 1.6049–5(a)(4)), or the creation of an "account" in which proceeds of a policy are held for the policy beneficiary, may, in the payor's discretion, be treated as a pre-1984 account.

(v) *Acquisitions and mergers.* In the case of any acquisition or merger including a tax-free reorganization under section 368, the acquiring-payor shall treat those persons who (A) held accounts or instruments in another payor immediately before the acquisition or merger of such payor and who (B) receive an account or instrument in the acquiring payor immediately after such acquisition or merger, as having the same status in the acquiring payor for information reporting, backup withholding, andrelated tax provisions as existed with respect to the payor whose accounts or instruments were acquired. In the event that the acquiring payor cannot determine the status of the acquired accounts or instruments from the business records of the payor from whom the accounts or instruments were acquired, then the acquiring payor shall treat such accounts or instruments as pre-1984 accounts or instruments.

(3) *Manner required for furnishing a taxpayer identification number with respect to an account or instrument that is not a pre-1984 account.* Except as provided in (b)(4) of this section, a payee is required to certify under penalties of perjury that the taxpayer identification number the payee furnishes to the payor is the payee's correct taxpayer identification number with respect to any account or instrument that is not a pre-1984 account as described in paragraph (b)(2) of this section. The certificate on which the certification shall be made is described in § 31.3406 (h)–3. With respect to an account or instrument that is not a pre-1984 account, see § 31.3406 (d)–2 for the requirement that the payee must certify under penalties of perjury that the payee is not subject to backup withholding due to notified payee underreporting. See also the special rule in § 31.3406 (d)–3 (a) with respect to an account established directly with, or an instrument acquired directly from, the payor by electronic or mail communication. See also the rules in § 31.3406 (d)–4 applicable to readily tradable instruments acquired through a broker.

(4) *Special rule with respect to the acquisition of a readily tradable*

instrument in a transaction between parties unrelated to the payor if the parties act without the assistance of a broker. When a readily tradable instrument is at any time acquired by a payee without the assistance of a broker, and the payee is unrelated to the payor of reportable payments on the instrument, the payee must furnish his taxpayer identification number to the payor prior to the time reportable payments are made on the instrument, but the payee is not required to certify under penalties of perjury that the number is correct. A broker shall be considered to be involved in the transaction if the person effecting the transaction would be required to make an information return under section 6045 if the instrument were sold. See § 31.3406 (d)–4 for the rules relating to an acquisition of a readily tradable instrument when a broker is involved.

(5) *Examples.* The application of the provisions this paragraph (b) may be illustrated by the following examples:

Example (1). Individual A maintains an interest bearing account with Bank Q that has been in existence since 1981. Because the account was in existence before January 1, 1984, the account is a pre-1984 account under paragraph (b)(2) of this section. A furnishes a taxpayer identification number to Q but does not certify under penalties of perjury that the number is his correct taxpayer identification number. A has furnished his taxpayer identification number in the manner required in paragraph (b)(1) of this section. Thus, withholding under section 3406(a)(1)(A) does not apply to any reportable interest payment on that account.

Example (2). Individual B, a shareholder of Corporation X, enrolls before January 1, 1984, in X's dividend reinvestment program to purchase additional shares of X stock and orally furnishes his taxpayer identification number to X at that time. The shares that B receives after December 31, 1983, may be considered payable to a pre-1984 account, in X's discretion. X decides to treat the account as a pre-1984 account as described in paragraph (b)(2)(i) of this section. Even if B does not certify his number, B has furnished his taxpayer identification number in the manner required in paragraph (b)(1) of this section with respect to a pre-1984 account. Thus, withholding under section 3406(a)(1)(A) does not apply to any reportable payment made with respect to the account.

Example (3). Assume the same facts as in Example (2) except that X does not treat the new shares as a pre-1984 account. B has not furnished his taxpayer identification number in the manner required in paragraph (b)(3) of this section with respect to accounts or instruments that are not a pre-1984 account. Thus, withholding under section 3406(a)(1)(A) applies to any reportable payment on the new shares until B certifies that the taxpayer identification number is correct. See § 31.3406(d)-4(c)(2) for rules applicable to aggregate payments made with respect to certain accounts.

Example (4). Individual C purchased 100 shares of Y Corporation stock directly from Y in 1982. Y did not receive C's certified taxpayer identification number at the time the stock was acquired. On April 16, 1984, C furnished the number orally to Y and did not certify under penalties of perjury that the number is correct. Since the 100 shares of stock are considered a pre-1984 account under paragraph (b)(2) of this section, C has furnished his taxpayer identification number in the manner required. Thus, Y is not required to withhold under section 3406(a)(1)(A) on reportable payments made after April 16, 1984, as described in § 31.3406(e)–1.

Example (5). Public Utility Company Z offers an investment program to consumers to invest in Z's stock. Under the plan, a consumer will invest $100 a month. At the end of the year, the money invested in the plan will be used to purchase shares of Z stock. Individual D participates in the plan during 1983. The shares acquired by D are considered a pre-1984 account under paragraph (b)(2) of this section. Accordingly, D is not required to certify his taxpayer identification number to Y. If D does not provide a taxpayer identification number to Z, however, withholding under section 3406(a)(1)(A) applies to reportable payments made with respect to the account until C furnishes his taxpayer identification number.

Example (6). E, an individual, transfers a bond issued by Corporation N to Individual F without the assistance of a broker (as defined in § 1.6045–1(a)). F furnishes his taxpayer identification number to N, but does not certify under penalties of perjury that it is his correct number. L, a transfer agent for N, is instructed to register the bond in F's name. Since the transaction is effected without the assistance of a broker and the parties are unrelated to the payor, F is not required to certify his taxpayer identification number. Thus, F has furnished his taxpayer identification number in the manner required in paragraph (b)(4) of this section. Consequently, N is not required to withhold under section 3406(a)(1)(A) on reportable payments made on the bond to E.

Example (7). Assume the same facts as in *Example (6)* except that E maintains a custodial account with Bank K that is not a pre-1984 account under paragraphs (b)(2)(i) and (c)(1) of this section. E instructs K to transfer the bond in the custodial account to F. K effects the transfer and instructs L to register the bond in F's name. K is considered a broker under section 6045. Since the transaction is effected with the assistance of a broker, F is required to certify his taxpayer identification number to K who is required to notify L if F fails to certify his number (as described in § 31.3406(d)-4). If F does not furnish his taxpayer identification number in the manner required in paragraph (c) of this section, L is required to withhold under section 3406(a)(1)(A).

(c) *Brokerage account*—(1) *Manner required for furnishing a taxpayer identification number with respect to a brokerage relationship that is not a post-1983 brokerage account*—(i) *In general.* With respect to any instrument, investment, or deposit made through a brokerage account that is not a post-1983 brokerage account, the payee shall furnish his taxpayer identification number to the broker either orally or in writing. The payee is not required to certify under penalties of perjury that the taxpayer identification number is correct. See § 31.3406(d)–1(b)(2)(i) for the rule that any instrument, whenever acquired, that is held in a brokerage account that is not a post-1983 brokerage account, shall be considered held in such account.

(ii) *Definition of a brokerage account that is not a post-1983 brokerage account.* A brokerage account that was established by a payee before January 1, 1984, through which during 1983 the broker either bought or sold securities for the payee or held securities on behalf of the payee as a nominee, is an account that is not a post-1983 brokerage account.

(iii) *Definition of a post-1983 brokerage account.* A brokerage account established after December 31, 1983, (or before January 1, 1984, and through which during 1983 the broker neither bought nor sold securities nor held securities on behalf of the payee in street name) is a post-1983 brokerage account.

(2) *Manner required for furnishing a taxpayer identification number with respect to a post-1983 brokerage account.* Except as provided in § 31.3406 (d)–3(b), the payee is required to certify under penalties of perjury that the taxpayer identification number furnished to a broker is correct with respect to a post-1983 brokerage account as described in paragraph (c)(1) of this section.

(3) *Examples.* The application of the provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). Individual D established an account with Broker K before January 1, 1984, in which K held readily tradable securities in street name for D during 1983. The account is not a post-1983 brokerage account under paragraph (c)(1)(ii) of this section and instruments held in the account, whenever acquired, are pre-1984 accounts under paragraph (b)(2)(i) of this section. D furnishes his taxpayer identification number orally to K before January 1, 1984. D is treated as furnishing his taxpayer identification number in the manner required in paragraphs (c)(1) and (b)(1) of this section. Thus, withholding under section 3406 (a)(1)(A) shall not apply to any sale of any instrument in the account that is subject to reporting under section 6045 nor shall withholding apply to any reportable interest or dividend payment made with respect to any instrument in the account.

Example (2). Individual E established an account with Broker L before January 1, 1984, and furnished his taxpayer identification number to L. L neither bought nor sold instruments for E nor did L act as nominee for

E anytime during 1983. The account is a post-1983 account under paragraph (c)(1)(iii) of this section. Although E furnished a taxpayer identification number to L, E did not certify under penalties of perjury that it was his correct taxpayer identification number. E has not, therefore, furnished his taxpayer identification number to L in the manner required in paragraph (c)(2) of this section. Thus, withholding under section 3406(a)(1)(A) shall apply to *any* sale of an instrument through that account that is subject to reporting under section 6045 unless E certifies to L prior to the sale of any instrument that E's taxpayer identification number is correct. (See § 31.3406 (d)–3(b) for the special rule if the instruction to sell was by means of telephone or wire instruction.) Since L did not act as nominee for E, L would not be making any reportable interest or dividend payments to E that would be subject to withholding under section 3406 (a)(1)(A) because E did not furnish his taxpayer identification number to L in the manner required in paragraphs (b)(1) and (c)(1) of this section. If any instrument was placed in the account after December 31, 1983, *i.e.*, L holds the instrument in street name, the instrument would not be a pre-1984 account under paragraph (b)(2)(i) of this section. Thus, payments made with respect to the instrument would be subject to withholding under section 3406 (a)(1)(A) because E did not furnish his taxpayer identification number to L in the manner required in paragraph (b)(3) of this section.

Example (3). F opens a brokerage account with Broker M on August 1, 1984. F does not certify under penalties of perjury that his taxpayer identification number furnished is correct. The account is a post-1983 brokerage account under paragraph (c)(1)(iii) of this section. F has not furnished his taxpayer identification number in the manner required in paragraph (c) of this section, and withholding under section 3406 (a)(1)(A) shall apply to any gross proceeds that are subject to reporting under section 6045. Thus, if Broker M sold securities for F through the account on August 1, 1984, the gross proceeds would be subject to withholding. (See § 31.3406(d)–3(b) for the special rule if the instruction to sell was by means of telephone or wire instruction.)

Example (4). Assume the same facts as in *Example (3)* except that F opens the account and purchases readily tradable instruments. M holds the instruments in street name for F. The instruments will pay reportable dividends on September 30, 1984. Since M is holding the instruments in street name for F, M is considered the payor of the reportable dividends (as defined in § 31.3406(a)–2). Because the account is a post-1983 brokerage account described in paragraph (c)(1)(iii) of this section, the instruments held in the account are not considered a pre-1984 account under paragraph (b)(2)(i) of this section regardless of when the instrument was acquired. Consequently, if F does not certify under penalties of perjury that his taxpayer identification number is correct before September 30, 1984, M is required to withhold under section 3406 (a)(1)(A) on the reportable dividend payment on such date. (See § 31.3406(d)–3(a) for the special rule if the acquisition is effected by telephone, wire, or mail.)

(d) *Rents, commissions, nonemployee compensation, and certain fishing boat operators, etc.*—(1) *Manner required for furnishing a taxpayer identification number.* With respect to accounts, contracts, or relationships where the payor is required to make an information return under section 6041 (relating to information reporting at source on rents, royalties, salaries, etc.), section 6041A(a) (relating to information reporting of payments for nonemployee services), section 6050A (relating to information reporting by certain fishing boat operators), or section 6050N (relating to information reporting of payments of royalties), the payee shall furnish his taxpayer identification number to the payor either orally or in writing. The payee is not required to certify under penalties of perjury that the taxpayer identification number is correct regardless of when the account, contract, or relationship is established.

(2) *Example.* The application of the provisions of this paragraph (d) may be illustrated by the following example:

Example. E performs services as a nonemployee to Y who pays $1,000 to E. Y's payment to E is reportable under section 6041A(a). E furnishes his taxpayer identification number to Y but does not certify under penalties of perjury that it is his correct number. E has furnished his taxpayer identification number in the manner required in paragraph (d) of this section. It is not relevant whether the relationship is or is not a pre-1984 account. Thus, withholding under section 3406(a)(1)(A) does not apply to the reportable payment to E.

§ 31.3406(d)–2 Payee certification failure.

(a) *Requirement to withhold.* Except as provided in paragraph (b) of this section, § 31.3406(d)–3(a), and § 31.3406(d)–4, backup withholding under section 3406(a)(1)(D) (relating to a payee certification failure) is required with respect to a reportable interest or dividend payment (as defined in section 3406(b)(2) and § 31.3406(b)(1)–1(b)) if, and only if, the payee fails to certify to the payor, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting under section 3406(a)(1)(C). Special rules are provided in § 31.3406(d)–3(a) when an account is established directly with, or an instrument is acquired directly from, the payor through electronic or mail communication. See § 31.3406(c)–1(b)(3)(ii) for rules with respect to a payor's reliance on a payee certification for a new account following notified payee underreporting. See § 31.3406(d)–4 for rules applicable to readily tradable instruments acquired through a broker. The certificate on which the certification should be made is described in § 31.3406(h)–3. The period for which withholding is required is described in § 31.3406(e)–1(d).

(b) *Exceptions.* Backup withholding under section 3406(a)(1)(D) and paragraph (a) of this section does not apply in the case of—

(1) A reportable interest or dividend payment with respect to a pre-1984 account (as defined in § 31.3406(d)–1(b)(1));

(2) A reportable interest payment made in a window transaction (as defined in § 31.3406(b)(2)–3(b)); or

(3) A reportable interest or dividend payment made with respect to a readily tradable instrument that is described in § 31.3406(d)–4(a)(2).

§ 31.3406(d)–3 Special 30-day rules for certain reportable payments.

(a) *Accounts or readily tradable instruments acquired directly from the payor (including a broker who holds an instrument in street name)*—(1) *Account or instrument acquired directly from the payor by electronic means.* In the case of an account established directly with, or a readily tradable instrument acquired directly from, the payor by means of electronic transmission (*e.g.*, telephone or wire), the payor may permit the payee to furnish the certifications required in § 31.3406(d)–1(b)(3) (relating to certification that the payee's taxpayer identification number is correct) and § 31.3406(d)–2 (relating to certification of notified payee underreporting) within 30 days after the establishment or acquisition, provided that the payee furnishes a taxpayer identification number to the payor at the time of the acquisition or establishment and the payee does not make any withdrawals before the certifications are received. For purposes of this section, an account or instrument shall be considered "acquired directly from the payor" if the instrument was acquired by the payee without the assistance of a broker or the instrument was acquired directly from a broker who holds the instrument as nominee for the payee (*i.e.*, in street name) and who is considered a payor under § 31.3406(a)–2. If the payee makes any withdrawals before the certifications are received, the payor must withhold 20 percent of the amounts withdrawn to the extent of any reportable interest or dividend payments made to the payee during the 30-day period. In addition, the payor must commence withholding on all reportable interest or dividend payments made with respect to the account or instrument on and after the

31st day following acquisition or establishment if the payee has not provided the required certifications to the payor by that date. The rules of this paragraph (a)(1) also apply with respect to a payee from whom the payor is required to obtain a Form W–8 or substitute form (as described in § 1.6049–5(g)) or is to obtain other evidence of foreign status (as described in § 1.6049–5(h)), provided the payee represents to the payor, orally or otherwise, before or at the time of the acquisition or establishment that the payee is not a United States citizen or resident. A payee described in the preceding sentence is not required to furnish a taxpayer identification number at the time of establishment of the account or acquisition of the instrument in order for the special rule under this paragraph to apply.

(2) *Accounts or readily tradable instruments acquired directly from payor by mail communication.* The rules of paragraph (a)(1) of this section also apply to accounts established with, or instruments acquired directly from, the payor that are effected by mail before January 1, 1985. With respect to accounts established directly with, or instruments acquired directly from, the payor by mail on or after January 1, 1985, the payor is required to impose backup withholding on the reportable interest or dividend payments if the payee has not provided the required certifications by the time that a reportable payment is made (as described in § 31.3406(a)–4).

(3) *Examples.* The application of the provisions of this paragraph (a) may be illustrated by the following examples:

Example (1). G opens a new interest bearing account at Bank N on March 7, 1984, by appearing at N in person. Bank N will pay interest on the account at the end of each month. G provides his taxpayer identification number at the time that G opens the account but fails to certify under penalties of perjury that he is not subject to backup withholding due to notified payee underreporting as required in § 31.3406 (d)–2. N is required to withhold 20 percent of the payment made on March 31, 1984.

Example (2). Assume the same facts as in *Example (1)* except that G opens the account by calling Bank N and wiring the initial deposit by electronic funds transfer. G provides his taxpayer identification to N during the telephone call. N is not required to withhold on the March 31 payment date since G provided his taxpayer identification number on the date of acquisition (as provided in paragraph (a) (1) of this section). G provides the required certifications on April 6. Thus, N also is not required to withhold on the April 30 payment date since N received G's certifications within 30 days of opening the account and prior to the payment.

Example (3). Assume the same facts as in *Example (2)* except that G closes the account on April 2 and does not provide any certification before withdrawal. Under paragraph (a) (1) of this section, N is required to withhold 20 percent of the reportable interest payment made on March 31 as well as any reportable payment made at the time the account is closed and the funds are withdrawn (April 2).

Example (4). H purchases new shares in Mutual Fund O on February 14, 1984, that will pay reportable dividends daily. H acquires the shares by wiring money from his bank account to the mutual fund. H does not provide his taxpayer identification number at the time of acquisition. O is required to withhold 20 percent of any reportable amounts paid after February 14 until O receives H's certifications. Even if O receives H's taxpayer identification number after February 14, 1984, O is required to withhold from payments made to H because H did not furnish his taxpayer identification number at the time of acquisition as required in paragraph (a) (1) of this section. O may stop withholding only when O receives the required certifications from H.

Example (5). Assume the same facts as in *Example (4)* except that H provides his taxpayer identification number on February 14 (date of acquisition). On March 1, before providing the required certifications, H withdraws $5000. Two hundred dollars of dividends have been paid prior to that date. Four thousand eight hundred dollars are gross proceeds for the shares redeemed. O is required to withhold 20 percent of the reportable amount ($5000) on March 1, the date of withdrawal. The $200 is reportable under section 6042 and the $4800 is reportable under section 6045. O is required to withhold on the $200 under paragraph (a) (1) of this section since the $200 is assumed to be a reportable interest or dividend payment. O is also required to withhold on the $4800 since that amount is subject to reporting under section 6045 and H has not furnished his taxpayer identification number in the manner required in § 31.3406 (d)–1 (c)(2).

(b) *Special rule with respect to the sale of an instrument for a customer pursuant to a telephone or wire instruction*—(1) *Special rule.* In the case of a sale of an instrument through a post-1983 brokerage account (as described in § 31.3406 (d)–1(c)(1)) by means of electronic transmission (*e.g.*, telephone or wire), a broker who is required to report the gross proceeds of the sale under section 6045 (as described in § 31.3406 (b) (3)–2) may permit the customer to furnish the certification described in § 31.3406 (d)–1 (c)(2) (relating to certification that the customer's taxpayer identification number is correct) within 30 days after the sale, provided that the customer furnishes his taxpayer identification number to the broker before the sale and the customer does not withdraw or reinvest more than 80 percent of the proceeds of the sale before the required certification is provided. Thus, if at all times at least 20 percent of all gross proceeds reportable under section 6045 are held in cash by the broker, the gross proceeds of the sale will not be subject to backup withholding for 30 days. If the customer desires to withdraw or reinvest more than 80 percent of the proceeds of the sale before the 31st day and before the certification is received, the broker is required to withhold 20 percent of the reportable gross proceeds at the time of the withdrawal or reinvestment (or, if later, the time the proceeds are paid). If the customer does not provide the required certification within 30 days of the date of the sale, the broker must withhold 20 percent of the reportable gross proceeds on the 31st day after the date of the sale. The rules of this paragraph (b)(1) also apply with respect to a customer from whom the broker is required to obtain a Form W–8 (or substitute form) in accordance with § 1.6045–1(g)(1)(i)(A) or is required to obtain other evidence of foreign status in accordance with § 1.6045–1(g)(1)(i) (B) or (C) provided the customer represents to the broker before the sale, orally or otherwise, that the customer is not a United States citizen or resident.

(2) *Examples.* The application of the provisions of this paragraph (b) may be illustrated by the following examples:

Example (1). Individual G establishes an account with Broker N on August 1, 1984, by calling N and wiring money to the account. N purchases shares of Y Corporation stock that N will hold in street name for G. G provides his taxpayer identification number but does not certify under penalties of perjury that it is his correct taxpayer identification number. The account is a post-1983 brokerage account under § 31.3406(d)–1(c)(2). On October 12, 1984, G telephones N and instructs N to sell all of the Y stock for $10,000 and to send him a check for $5,000. N is required to make an information return under section 6045 showing the $10,000 of gross proceeds. N, at its option, is not required to withhold $2,000 on October 12, 1984, even though G has not provided a certified taxpayer identification number. Under paragraph (b)(1) of this section, N may permit G to furnish the certification within 30 days since G has furnished his taxpayer identification number and G did not withdraw more than 80 percent of the proceeds of the sale. If N does not receive the certification by November 12, N is required to withhold $2,000 from G's account on November 13.

Example (2). Assume the same facts as in *Example (1)* except that G does not provide his taxpayer identification number prior to, or on October 12 (the date of the sale). Because G did not furnish his taxpayer identification number, N is not permitted under paragraph (b)(1) of this section to give G 30 days to furnish the certification. Thus, N is required to withhold $2,000 on October 12.

Example (3). Assume the same facts as in *Example (1)* except that G instructs N to sell the Y stock and reinvest $9,000 of the proceeds in stock of Z Corporation. Even though G has furnished his taxpayer identification number, N is required to withhold on October 12 because under paragraph (b)(1) of this section N may only permit G to furnish the required certification within 30 days of the sale if G does not withdraw more than 80 percent of the proceeds. The reinvestment is a withdrawal under paragraph (b)(1) of this section. Because G desired to withdraw (in the form of reinvestment) more than 80 percent of the gross proceeds, N is required to withhold $2,000 before purchasing Z stock for G. If G desired to withdraw (or reinvest) only $8,000 of the gross proceeds, N would not be required to withhold on October 12.

§ 31.3406(d)–4 Special rules for readily tradable instruments acquired through a broker.

(a) *Readily tradable instruments acquired through a broker who is not a payor*—(1) *Instruments acquired through post-1983 brokerage accounts.* When a readily tradable instrument is acquired through a post-1983 brokerage account (as defined in § 31.3406(d)–1(c)(2)) and the broker is not the payor of the instrument (as defined in § 31.3406(a)–2(b)(3)), the broker must—

(i) Obtain the certifications described in § 31.3406(d)–2(a) and § 31.3406(d)–1(b)(3) and (c)(2) from the payee (relating to certification of payee underreporting and taxpayer identification number, respectively), but the broker is required to obtain the certifications only once with respect to each account;

(ii) Furnish the payee's taxpayer identification number to the payor; and

(iii) Notify the payor to impose backup withholding if the payee fails to make either of the required certifications to the broker or if the broker has been notified by the Internal Revenue Service before the acquisition of the instrument that the payee is subject to backup withholding due to notified payee underreporting under section 3406 (a)(1)(C) or that the payee is subject to backup withholding because the payee's taxpayer identification number is incorrect (as described in § 31.3406(d)–5).

The broker is required to give the information required by paragraph (a)(1)(ii) and (iii) of this section to the payor in connection with the transfer instructions for the acquisition. The term "transfer instructions" includes the "fanfold" documents and account registration instructions transmitted by a broker in the case of acquisitions of shares in a mutual fund. A notice including the information described in paragraph (b)(1) of this section shall satisfy the broker's requirement to give notice to the payor. Once the broker transmits the transfer instructions containing the information required by this section, the broker has no further responsibility to obtain a missing taxpayer identification number or missing certification or to provide additional notices to the payee or payor with respect to the acquisition of the instrument. Upon receiving the notice from a broker, the payor must impose backup withholding on the account pursuant to § 31.3406(a)–1.

(2) *Transactions entered into through a brokerage account that is not a post-1983 brokerage account.* When a readily tradable instrument is acquired through a brokerage account that is not a post-1983 brokerage account (as defined in § 31.3406 (d)–1 (c)(1)) and the broker is not the payor of the instrument (as defined in § 31.3406 (a)–2 (a)), the broker is required to furnish the payee's taxpayer identification number to the payor. In addition, if the broker has been notified by the Internal Revenue Service that the payee is subject to backup withholding under section 3406 either because of an incorrect taxpayer identification number (as described in § 35a.3406–1) or due to notified payee underreporting under section 3406 (a)(1)(C), the broker must notify the payor (in connection with the transfer instructions) to impose backup withholding with respect to that payee. A notice that contains the information described in paragraph (b)(1) of this section shall satisfy the broker's requirement to give notice to the payor. After a payor receives a notice from a broker pursuant to section 3406 (d)(2)(B) and this paragraph, the payor must impose backup withholding on any accounts of the payee paying reportable interest or dividends as defined in § 31.3406 (b) (1)–1 (b) in accordance with § 31.3406 (a)–1.

(3) *Payor must notify payee*—(i) *Failure to provide certifications.* If a payor is notified by a broker, as required in paragraph (a) of this section, that a payee is subject to backup withholding because the payee failed to provide the certifications, as described in § 31.3406 (d)–2 (a) and § 31.3406 (d)–1 (b)(3) and (c)(1), then the payor is required to notify the payee that backup withholding has commenced (or will commence) no later than 15 days after the payor makes the first payment to the payee that is subject to backup withholding under section 3406. A notice that contains the information described in paragraph (b)(2) of this section shall satisfy the payor's requirement to give notice to the payee. If the broker notifies the payor that the payee failed to make a required certification and the payor has received the certification from the payee, the payor may disregard the notice from the broker.

(ii) *Notified payee underreporting and incorrect taxpayer identification number.* The payor is also required to notify the payee under this section when the Internal Revenue Service or a broker notifies the payor to withhold either because of an incorrect taxpayer identification number under section 3406(a)(1)(B) (as described in § 31.3406 (d)–5) or due to notified payee underreporting under section 3406 (a)(1)(C) (as described in § 31.3406 (c)–1). Whenever there is notification including notification from the Internal Revenue Service through a broker with respect to a readily tradable instrument, the payor may not ignore the notice even if the payor has received the required certification from the payee. See § 31.3406 (d)–5 (c) (1) and (2) and (f)(2) for requirements of the notice that a payor must provide to a payee when a payor is notified by the Internal Revenue Service or a broker that a payee is subject to backup with-holding under section 3406 (a) (1) (B) because the payee has furnished an incorrect taxpayer identification number as described in § 31.3406 (d)–5 (a) (4). See § 31.3406 (c)–1 (c)(2) for the requirements of the notice that a payor must provide to a payee when a payor is notified by the Internal Revenue Service or a broker that a payee is subject to backup withholding under section 3406 (a) (1) (C) due to a notified payee underreporting.

(b) *Notices*—(1) *Form of notice by broker to payor.* A broker who is required under paragraph (a) (1) (iii) and (2) of this section to notify the payor with respect to a readily tradable instrument shall include in the notice—

(i) The payee's name, address, and taxpayer identification number (if provided to the broker), and

(ii) A statement that the payee is subject to backup withholding under section 3406(a)(1) (A), (B), (C), or (D) of the Internal Revenue Code, whichever section applies, and

(iii) When applicable, a statement that the broker was notified by the Internal Revenue Service that the payee is subject to backup withholding under section 3406(a)(1) (B) or (C).

The broker may notify the payor in connection with the transfer instructions by means of magnetic media, machine readable document, or any other medium, provided that the notice includes the information described in the preceding sentence.

(2) *Form of notice by payor to payee.* A payor who receives notice from the broker or the Internal Revenue Service that the payee is subject to backup withholding shall notify the payee as required in paragraph (a)(3) of this

section. The notice to the payee shall be substantially similar to the following:

(i) For a notification concerning a failure to provide a taxpayer identification number in the required manner under section 3406(a)(1)(A) or a failure to make the certifications described in section 3406(a)(1)(D):

Recently, you purchased (identify security acquired). Because of the existence of one or more of the following conditions, payments of interest, dividends, and other reportable amounts that are made to you will be subject to backup withholding of tax at a 20 percent rate: (specify the condition or conditions, described below, that are applicable)

(1) You failed to provide a taxpayer identification number, or failed to provide such number under penalties of perjury, in connection with the purchase of the acquired security. (An individual's taxpayer identification number is his or her social security number.)

(2) You failed to certify, under penalties of perjury, that you are not subject to backup withholding due to notified payee underreporting as required under section 3406(a)(1)(D) of the Internal Revenue Code.

If condition (1) applies, you may stop withholding by providing your taxpayer identification number on the enclosed Form W–9, signing the form, and returning it to us. If you do not have a taxpayer identification number, but have (or will soon) apply for one, you may so indicate on the Form W–9. Backup withholding may apply during the 60-day period you are awaiting for your taxpayer identification number. You must provide us with your taxpayer identification number promptly after you receive it in order to avoid withholding after the end of the 60-day period or to stop backup withholding if it has already begun. Certain persons, described on the enclosed Form W–9, are exempt from withholding. Follow the instructions on that form if applicable to you. If condition (2) applies, you may stop withholding by certifying on the enclosed Form W–9 that you are not subject to backup withholding due to notified payee underreporting, signing the form, and returning it to us.

If more than one condition applies, you must remove All applicable conditions to stop withholding.

Please address any questions concerning this notice to: [Insert Payor Identifying Information].

(Do not address questions to the broker who purchased the securities for you.)

(ii) For the form of the notice concerning imposition of backup withholding due to an incorrect taxpayer identification number under section 3406(a)(1)(B), see § 31.3406 (d)–5 and (f)(2).

(iii) For the form of the notice concerning the imposition of backup withholding due to a notified payee underreporting, see § 31.3406(c)–1(c)(2).

(c) *Payors' reliance on information from broker*—(1) *In general.* A payor of an instrument acquired by a payee through a broker may rely on the information that the payor receives from the broker pursuant to paragraphs (a) and (b) of this section. Thus, if the broker's transfer instructions to the payor include a taxpayer identification number and do not inform the payor that the payee failed to make a required certification, the payor is not required to impose backup withholding. If the broker's notice informs the payor that the payee failed to make a required certification, however, and the payor has not received the certification from the payee, the payor is required to impose backup withholding. In addition, if the broker's notice informs the payor that the payee is subject to backup withholding due to notification from the Internal Revenue Service, the payor is required to withhold during the period described in § 31.3406(c)–1 (e) and (f).

(2) *Amount subject to withholding.* The payor is required to withhold depending on the payor's customary method of making payment on an instrument or instruments owned by a payee. For example, if it is the practice of a payor to combine in one account all readily tradable instruments of the same issue owned by a payee and if certain of those instruments are subject to backup withholding and others are not subject to backup withholding, the payor is required to withhold 20 percent of the aggregate payment made with respect to all the instruments in the account. If it is not the practice of the payor to combine in one account all readily tradable instruments of the same issue owned by a payee, the payor is required only to withhold 20 percent of the payment made on the instrument or instruments with respect to which the payee is subject to backup withholding.

(3) *Examples.* The application of the provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). Individual A owns 100 shares of X Corporation stock which were purchased directly from X in 1983. On July 1, 1985, A instructs Broker M to purchase 200 additional shares of X stock and have the shares registered in A's name. The 200 shares are acquired through a post–1983 brokerage account with M. X has received A's social seourity number, but A has not certified under penalties of perjury that the number provided is correct or certified that A is not subject to backup withholding due to notified payee underreporting. A fails to make the required certifications to M, and M notifies X of that fact as required in paragraph (a)(1)(iii) of this section. X, in accordance with its customary practice, combined in one account all 300 shares owned by A and made an aggregate payment with respect to all the instruments. X is required to withhold 20 percent of all reportable amounts under paragraph (c)(2) of this section.

Example (2). Assume the same facts as in *Example (1)* except that X, in accordance with its customary practice, separates the shares into two accounts. Under paragraph (c)(2) of this section, X is only required to withhold 20 percent of the reportable payments made with respect to the 200 shares of stock that A acquired through M because the 100 shares of X stock were acquired before January 1, 1984, directly from X.

Example (3). Assume the same facts as in *Example (1)* except that X received A's certifications that A's social security number was correct and that A was not subject to backup withholding due to notified payee underreporting. Even though M notified X that A failed to make the required certifications, X is not required to withhold since X has received the necessary certifications from A (as described in § 31.3406(d)–2(a)). Under paragraph (a)(3) of this section, because X has received the required certifications from A, X is not required to notify A.

Example (4). Assume the same facts as in *Example (1)* except that M does not notify X that A failed to make any certifications nor does M include A's taxpayer identification number. Since X already has A's taxpayer identification number, X is not required to withhold assuming no other condition for imposing backup withholding exists with respect to A.

§ 31.3406(d)–5 Backup withholding when the Service or a broker notifies the payor to withhold because the payee's taxpayer identification number is incorrect.

(a) *Requirement that a payor backup withhold due to notification of an incorrect taxpayer identification number*—(1) *In general.* Except as otherwise provided in paragraph (a)(2)(ii) of this section, backup withholding under section 3406(a)(1)(B) applies to any reportable payment (as defined in section 3406(b) and paragraph (a)(2) of this section) made to an account (as defined in paragraph (a)(5) of this section) of a payee if, after December 31, 1989, the Internal Revenue Service or a broker notifies a payor that the payee's taxpayer identification number is incorrect (as defined in paragraph (a)(4) of this section) and such incorrect taxpayer identification number is used with respect to such account of the payee. The payor is required under section 3406(h)(8) and paragraph (c) of this section to send a copy of the notice received by the payor (from the Internal Revenue Service or a broker) to inform the payee that he has furnished an incorrect taxpayer identification number and that, as a result, he may be subject to backup withholding under section 3406(a)(1)(B). The requirements for the notice that a payor must send to a payee are set forth in paragraph (c)(3) of this section. An example of the notice required by

paragraph (c)(3) is set forth in the appendix to this section. The period for which backup withholding applies due to notification of an incorrect taxpayer identification number is described in paragraph (d) of this section. See paragraph (e) of this section for the rules regarding how a payee may prevent backup withholding from starting or to stop it once it has begun. See paragraph (f) of this section for the applicable rules when the Internal Revenue Service or a broker notifies a payor twice within 3 calendar years that a payee has furnished an incorrect taxpayer identification number. See section 6721 for the penalty that may be imposed on a payor for providing an incorrect taxpayer identification number on an information return filed with the Internal Revenue Service unless there is reasonable cause for the error.

(2) *Definition of reportable payment*—(i) *In general.* See section 3406(b) and § 31.3406(b)(1)–1 for the definition of reportable payments.

(ii) *Exceptions.* For the payments that are not "reportable payments" for purposes of section 3406(a)(1)(B), see § 31.3406(b)(2)–1 through § 31.3406(b)(4)–1. Also see § 31.3406(g)–1 through § 31.3406(g)–3 for other exceptions.

(3) *Transitional exclusion for payments to a fiduciary or nominee account.* Reportable payments to a fiduciary or nominee account are not subject to backup withholding for purposes of section 3406(a)(1)(B). For purposes of this paragraph (a)(3), a fiduciary or nominee account means an account with respect to which at least one person named in the registration is identified as acting in the capacity as nominee or of administrator, conservator, custodian, receiver, tutor, curator, committee, executor, guardian, trustee, or other fiduciary capacity recognized under governing law. This paragraph (a)(3) does not apply with respect to a notice from the Internal Revenue Service or a broker under paragraph (b) (1) or (2) of this section that is received by a payor after [THE DATE THAT THIS DOCUMENT IS PUBLISHED AS A TREASURY DECISION.]

(4) *Definition of incorrect taxpayer identification number.* An incorrect taxpayer identification number is any number that, at the time the Internal Revenue Service makes a determination that the taxpayer identification number is incorrect—

(i) Is not assigned under section 6109 to any surname of the payee, or

(ii) Is not assigned by the Internal Revenue Service to the name of a non-individual such as a corporation, estate, partnership, or trust, that was provided on an information return filed with respect to a payee.

(5) *Definition of account.* The term "account" means any account, instrument, or other relationship with a payor.

(b) *Notice regarding an incorrect taxpayer identification number*—(1) *Notice from the Internal Revenue Service to payors and brokers.* The Internal Revenue Service will notify—

(i) Payors that a payee's taxpayer identification number is incorrect and that the payor must commence backup withholding as required under section 3406(a)(1)(B) and paragraphs (d) and (f) of this section on reportable payments made to accounts of the payee as defined in paragraph (a)(5) of this section that contain such incorrect taxpayer identification number, and

(ii) Brokers that a payee's taxpayer identification number is incorrect and that the broker must notify a payor that the payee is subject to backup withholding under section 3406(a)(1)(B) on accounts of the payee as defined in paragraph (a) (5) of this section that contain that incorrect taxpayer identification number.

The Internal Revenue Service will furnish the payor or broker with a copy of the notice and the payor shall furnish such copy, or an acceptable substitute copy, to the payee as described in paragraph (c) of this section.

(2) *Notice from a broker to a payor.* A broker who receives a notice from the Internal Revenue Service pursuant to paragraph (b)(1)(ii) of this section that a payee has furnished an incorrect taxpayer identification number and through whom the payee subsequently acquires a readily tradable instrument with respect to which the broker is not the payor must notify the payor of that instrument of the following information:

(i) The fact that the broker was notified by the Internal Revenue Service that the payee furnished an incorrect taxpayer identification number and the date set forth on such notice from the Internal Revenue Service,

(ii) The name and taxpayer identification number of the payee with respect to whom the broker was notified, and

(iii) The fact that the named payee is subject to backup withholding under section 3406(a)(1)(B).

The broker is required to provide this information to the payor of the instrument in the time and manner provided in § 31.3406(d)–4. See paragraph (b)(5)(ii) of this section for accounts of the payee with respect to which the broker is required to notify a payor under this paragraph (b)(2).

(3) *Accounts subject to backup withholding.* After receiving notice from the Internal Revenue Service or from a broker, as provided in paragraph (b) (1) and (2) of this section, the payor is required to notify the payee in accordance with paragraph (c) of this section and to institute backup withholding as prescribed in paragraph (d) of this section on all reportable payments subject to backup withholding that are made to the account or accounts of the payee containing the incorrect taxpayer identification number. See paragraph (f) of this section for the rules that apply when a payor has received two notifications of an incorrect taxpayer identification number with respect to an account of the payee from the Internal Revenue Service or a broker within 3 calendar years. See paragraph (b)(5) of this section for the determination of the account or accounts of the payee containing the incorrect taxpayer identification number.

(4) *Joint accounts*—(i) *In general.* Generally, payors are required to backup withhold on reportable payments made to the account of joint payees if the payee subject to backup withholding under section 3406(a)(1)(B) is the first person listed on the account at the time the payor receives the notice under paragraph (b) (1) or (2) of this section.

(ii) *Exception.* In the case where the first person listed on the account is an exempt foreign person for information reporting purposes under the applicable information reporting provisions and the account contains the names of persons who are not foreign persons, the payor is required to backup withhold on the account if the incorrect taxpayer identification number matches the name and number combination of the person on the account used for information reporting.

(iii) *Change in order of names.* If the account of a payee may be subject to backup withholding as described in paragraph (b)(4) of this section, backup withholding shall apply, if required, even though the order of the names on the account is subsequently changed, provided that the incorrect taxpayer identification number giving rise to backup withholding remains on the account.

(5) *Payor determination of the account or accounts of the payee that contain the incorrect taxpayer identification number*—(i) *Payors.* If an account number or designation is provided in the notice received under paragraph (b) (1) or (2) of this section, the payor need only determine whether

the account or accounts corresponding to that number or designation contain the same name and incorrect taxpayer identification number provided in the notice. If no account number or designation is provided in the notice received under paragraph (b) (1) or (2) of this section, the payor must locate, using reasonable care, all accounts of the payee containing the same name and incorrect taxpayer identification number provided in the notice. A payor who satisfies the following two-part facts-and-circumstances test will be considered to have exercised reasonable care.

(A) Part one of the test is satisfied if a payor identifies and uses the appropriate computer or other record system on which to locate accounts of the payee subject to backup withholding under section 3406(a)(1)(B). A payor with a centralized and fully integrated computer system containing all product lines of the payor that pay reportable payments will have identified and used the appropriate system if the payor searches on such system for all accounts of the payee described in paragraph (a)(5) of this section that are subject to backup withholding. A payor whose product lines paying reportable payments are on separate computer or records systems will have identified and used the appropriate system if the payor searches for accounts of the payee on the computer or record system that contains the product line with respect to which the payor received a notification of an incorrect taxpayer identification number pursuant to paragraph (b) (1) or (2) of this section.

(B) Part two of the test is satisfied if the payor uses or inputs the appropriate data or criteria into the system that is correctly identified under paragraph (b)(5)(i)(A) of this section. In general, a payor who uses or inputs the name and taxpayer identification number, provided on the notice from the Internal Revenue Service or a broker as described in paragraph (b)(1) or (2) of this section will satisfy part two of the test. In some cases the system of a payor cannot utilize the data enumerated in the preceding sentence for locating all accounts of the payee subject to backup withholding under section 3406(a)(1)(B). In such cases the payor must use or input the appropriate data or criteria, as determined by the capability of the payor's computer or record system.

(ii) *Brokers.* Brokers are required to use the information and follow the procedures described in paragraph (b)(5)(i) to locate accounts of the payee with respect to which a broker is required to notify a payor pursuant to paragraph (b)(2) of this section.

(c) *Notice from payors of backup withholding due to an incorrect taxpayer identification number*—(1) *In general.* If the name and taxpayer identification number listed on the notice from the Internal Revenue Service or a broker as described in paragraph (b)(1) or (2) of this section matches the name and taxpayer identification number used on the payee's account at the time the payor receives the notification of an incorrect taxpayer identification number—

(i) The payor who receives a notice from the Internal Revenue Service is required under section 3406(h)(8) to send a copy of the notice required by paragraph (b)(1) of this section or a substitute notice as described in paragraph (c)(3) of this section to the payee of the account in accordance with paragraph (c)(2) of this section (an example of the notice from the Internal Revenue Service required by section 3406(h)(8) and paragraph (b)(1) of this section is set forth in the Appendix to this § 31.3406(d)–5, and

(ii) The payor who receives notification of an incorrect taxpayer identification number from a broker as described in paragraph (b)(2) of this section must send a substitute notice as described in paragraph (c)(3) of this section to the payee in accordance with paragraph (c) (2) of this section.

However, a payor is not required to send a notice as described in this paragraph (nor backup withhold under paragraph (d) of this section) with respect to any account of a payee where, due to an error of the payor, the taxpayer identification number on such account is not the number that was provided to the payor on the applicable Form W–9 (or acceptable substitute form) because, for example, the payor transposed the taxpayer identification number when incorporating it into its business records. If a payor sends a substitute notice, such notice must include all the information set forth in paragraph (c)(3) of this section, or must be identical to the notice set forth in the appendix to this § 31.3406(d)–5, or must be an acceptable substitute of the notice set forth in the Appendix to this § 31.3406(d)–5. In addition to the copy of the notice required by paragraph (b)(1) of this section or the substitute notice described in paragraph (c)(3) of this section, the payor must include a Form W–9 or an acceptable substitute form (as described in § 31.3406(h)–(3)(c)(2)) with the notice for the payee to use to provide his name and taxpayer identification number and to certify that the taxpayer identification number is correct, or to provide his name and taxpayer identification number that was originally furnished and to certify that such taxpayer identification number is correct. The payor is required to include a reply envelope (self-addressed) with the notice to the payee which may be, but is not required to be, postage prepaid. The envelope containing the notice and the Form W–9 (or an acceptable substitute form) must state on the outside in a bold and conspicuous manner: "Important Tax Document Enclosed". The mailing may not include any material other than the notice, the Form W–9 (or an acceptable substitute form), any documents of the payor that are necessary to change the name or taxpayer identification number (or both) on the account of the payee, and the reply envelope of the payor. The notice required by paragraph (c) of this section shall also apply to those payors notified by a broker that a payee is subject to backup withholding under section 3406(a)(1)(B). For purposes of this section, the date set forth on the notice from the Internal Revenue Service (or a broker) shall be considered the date of receipt by and of notification to the payor. However, in the case of a dispute, if the payor demonstrates to the satisfaction of the Internal Revenue Service that the date of actual receipt of the notice is later than the date on the notice, the actual date shall be considered the date of receipt by and of notification to the payor.

(2) *Procedures*—(i) *In general.* The payor must send the notice described in paragraph (c) of this section to the payee within 15 business days after the date that the Internal Revenue Service or a broker notifies the payor pursuant to paragraph (b) (1) or (2) of this section. The payor must mail the notice to the payee's last known address by first-class mail. If it is the customary practice of the payor not to mail any correspondence to a payee, the payor may furnish the notice by personal delivery, by intra-office mail, or by any other means reasonably expected to furnish the notice to the payee promptly. A payor is not required to send the notice to the payee if there is currently a "do not mail" or a "stop mail hold" instruction with respect to the payee's account subject to backup withholding under section 3406(a)(1)(B). However, the payor must handle the notice in the same manner that the payor handles other correspondence of the payee.

(ii) *Two or more notices for a payee in the same calendar year.* A payor who receives, under the same payor employer identification number (or social security number), two or more notices described in paragraph (b) (1) or (2) of this section in a calendar year with respect to a payee may satisfy the requirements of this paragraph (c) with

respect to such notices by sending one notice to the payee that satisfies the requirements of paragraph (c)(3) of this section.

(3) *Requirements of substitute notice to the payee.* If the payor does not send a copy of the notice received from the Internal Revenue Service pursuant to paragraph (b)(1) of this section or if the payor is notified by a broker as described in paragraph (b)(2) of this section that the payee provided an incorrect taxpayer identification number, the payor may send a substitute notice as provided for in this paragraph (c)(3). A notice to the payee will satisfy the requirements of section 3406(h)(8) and paragraph (c)(1) of this section if the notice is identical to the one set forth in the appendix to this § 31.3406(d)-5, is an acceptable substitute thereof, or if the notice—

(i) Informs the payee that the payor has been notified that the taxpayer identification number furnished by the payee is an incorrect taxpayer identification number (as defined in paragraph (a)(4) of this section);

(ii) Advises the payee of the name and taxpayer identification number combination that the Internal Revenue Service has determined to be incorrect;

(iii) Informs the payee that the payee must either—

(A) Correct the surname (or business name) or taxpayer identification number (or both) and certify, under penalties of perjury, that the newly provided taxpayer identification number is correct, or

(B) State—

(*1*) Under penalties of perjury that the taxpayer identification number originally furnished to the payor is correct and provide that number and the corresponding listed surname (or business name),

(*2*) That the Social Security Administration (or the local office of the Internal Revenue Service in the case of an incorrect employer identification number) has been contacted by the payee to resolve the problem giving rise to the notification of an incorrect taxpayer identification number, or

(C) In the case of a notification of an incorrect taxpayer identification number of an individual payee due to a name change by the payee when the payee has not communicated the change of name to the Social Security Administration—

(*1*) Contact the Social Security Administration and reassign the taxpayer identification number to the surname that is used on the account with the payor, certify under penalties of perjury, that the existing taxpayer identification number shown on the account is correct (and provide the corresponding surname used with that number), and provide a statement that the Social Security Administration has been contacted to reassign the taxpayer identification number to the surname shown on the account, or

(*2*) Use both surnames on the account with the payor (the surname currently shown on the account and the surname shown on the payee's Social Security Administration card if the payee is unable to contact the Social Security Administration at this time), provide the surnames, and certify under penalties of perjury that the furnished taxpayer identification number is correct, and

(*3*) Follow either paragraph (c)(3)(iii)(C) (*1*) or (*2*) of this section consistently with respect to all accounts with the payor;

(iv) Advises the payee of other necessary documentation (*i.e.*, account creation documents) that the payee must provide to the payor in order to change the name or taxpayer identification number (or both) on the account and how to provide such information and the information described in paragraph (c)(3)(iii) of this section to the payor;

(v) Advises the payee to contact the Social Security Administration to obtain a social security card if the payee was never assigned a social security number or to obtain a replacement social security card if the payee lost his card and does not remember his social security number;

(vi) Advises the payee that as a result of providing an incorrect taxpayer identification number, the payor is required under section 3406 (a)(1)(B) of the Internal Revenue Code to begin backup withholding 20 percent of the reportable payments made to the account of the payee no later than after the close of the day 30 business days after the date that the payor is notified of the incorrect taxpayer identification number by the Internal Revenue Service or a broker if the payor has not received the required Form W-9 (or an acceptable substitute form) as described in paragraph (e) of this section;

(vii) Gives the payee the date that the payor received the notice that the payee provided an incorrect taxpayer identification number; and

(viii) States that the payee must complete and return the enclosed Form W-9 (or an acceptable substitute form), and, if necessary, other documents of the payor as described in paragraph (c)(3)(iv) of this section, and the statement that the payee contacted the Social Security Administration (or the Internal Revenue Service) before the time described in paragraph (c)(3)(vi) of this section in order to prevent backup withholding under section 3406(a)(1)(B) from starting, or after the time described in paragraph (c)(3)(vi) of this section to stop backup withholding once it has begun and to avoid the imposition of the penalty for failure to provide a correct taxpayer identification number.

(4) *Payor must use newly provided certified number.* If the payor receives a certified Form W-9 (or an acceptable substitute form) from the payee in the manner required in paragraph (e) of this section before the end of a calendar year, the payor shall use the name and certified taxpayer identification number on the Form W-9 (or acceptable substitute form) on information returns that the payor is required to file for reportable payments made with respect to the payee for that year and subsequent calendar years. A payor who uses the name and certified taxpayer identification number on an information return as described in this paragraph will satisfy the requirement to provide this information to the Internal Revenue Service as prescribed in section 3406(h)(9).

(d) *Period during which backup withholding is required due to notification of an incorrect taxpayer identification number*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, upon receiving a notice described in paragraph (b) (1) or (2) of this section, the payor must impose backup withholding on all reportable payments made to the account of the payee that are subject to backup withholding after the close of the 30th business day after the date the payor receives the notice described in paragraph (b) (1) or (2) of this section and on or before the close of the 30th calendar day after the day the payor receives from the payee the certified Form W-9 (or acceptable substitute form) as described in paragraph (e) of this section.

(2) *Grace periods*—(i) *Starting backup withholding.* Pursuant to section 3406(e)(5)(A), the payor may elect, on a payee-by-payee basis or in general, to begin backup withholding at any time during the 30-business-day period described in paragraph (d)(1) of this section.

(ii) *Stopping backup withholding.* Pursuant to section 3406(e)(5)(B), the payor may elect, on a payee-by-payee basis or in general, to treat the certified Form W-9 or acceptable substitute form described in paragraph (e) of this section as having been received at any time within 30 calendar days after it is provided by the payee and to stop backup withholding at any time within such 30-day period. See section

3406(e)(5)(B) and § 31.3406(e)–1(b) for the application of the rules contained in this paragraph (d)(2).

(e) *Manner required for payee to furnish certified taxpayer identification number.* A payee with respect to whom the payor has been notified (as described in paragraph (b) of this section) that the payee's taxpayer identification number is incorrect is required to provide his name and taxpayer identification number and to certify, under penalties of perjury, that the taxpayer identification number being provided to the payor on a Form W–9 (or acceptable substitute form) is correct in order to prevent backup withholding from starting or to stop it once it has begun. Additionally, the payee may be required to state on the notice provided to the payor, as described in paragraph (c)(3)(iii)(C)(*1*) of this section, that the Social Security Administration (or the Internal Revenue Service) was contacted by the payee within 30 calendar days from the date of the notice from the payor. In general, the payee is required to provide the information described in this paragraph for each account, including any pre-1984 account or instrument (as defined in § 31.3406(d)–1 (b)(2) and (c)(1)(ii)) that contains the incorrect taxpayer identification number identified by the Internal Revenue Service pursuant to paragraph (b) (1) or (2) of this section unless § 31.3406(h)(3)(a) applies with respect to the accounts of a payee. See § 31.3406(h)–3 (a), (c), and (f) which respectively provide that the Form W–9 is the prescribed form for the payee to make the certification, permit the use of substitute forms, and explain who may sign the form. See paragraph (f)(1) of this section for the rules on obtaining a certified taxpayer identification number after a payor is notified twice within 3 calendar years that a payee's taxpayer identification number is incorrect.

(f) *Notification of two incorrect taxpayer identification numbers within a 3-year period*—(1) *In general.* If a payor receives a notification as described in paragraph (b) (1) or (2) of this section twice within 3 calendar years, and in each case the payor pursuant to paragraph (b)(5) of this section identifies the same account as containing the incorrect taxpayer identification number, then the payor shall—

(i) Disregard any future certifications (described in paragraph (e) of this section) furnished by the payee with respect to the account;

(ii) Send the notice described in paragraph (f)(2) of this section to the payee (and not the notice required under paragraph (c) of this section) within 15 business days after the date that the payor receives the second notice described in this paragraph (f), and

(iii) Impose backup withholding on the account containing the incorrect taxpayer identification number for the period described in paragraph (f)(3) of this section.

For purposes of this paragraph (f), a payor shall not count any notice as a first notice unless the payor was required to notify the payee about the incorrect taxpayer identification number pursuant to paragraph (c)(1) of this section. Additionally, a payor shall treat the receipt of two or more notices in a calendar year as described in paragraph (b) (1) or (2) of this section with respect to the same payee as the receipt of one notice for purposes of this paragraph. The preceding sentence applies only with respect to a payor who received such two or more notices under the same payor employer identification number (or social security number). The payor who receives such two or more notices may satisfy the requirements of this paragraph (f) by sending one notice to the payee that contains all the information described in paragraph (f)(1) of this section. The payor shall maintain sufficient records to determine whether the payor has received notices described in this paragraph and paragraph (b) (1) or (2) of this section twice within 3 calendar years with respect to a payee as described in this paragraph (f). The envelope containing the notice must state on the outside in a bold and conspicuous manner: "Important Tax Document Enclosed". The payor is not required to include a Form W–9, nor is the payor required to include a reply envelope in the mailing of the notice to the payee. The payor may not include any material in the mailing of the notice described in this paragraph (f). The notice requirements provided in this paragraph (f) shall apply to a payor notified by a broker that a payee is subject to backup withholding under section 3406(a)(1)(B). The mailing procedure described in paragraph (c)(2) of this section shall apply to the mailing of the notice described in paragraph (f) of this section. A payor is not required to send a notice described in paragraph (f)(2) of this section (nor backup withhold under paragraph (f)(3) of this section) with respect to any account of a payee where, due to an error of the payor, the taxpayer identification number on such account is not the number that was provided to the payor on the applicable Form W–9 (or acceptable substitute form) because, for example, the payor transposed the taxpayer identification number when incorporating it into its business records.

(2) *Notice to payee who has provided two incorrect taxpayer identification numbers within 3 years.* The notice to the payee required by paragraph (f)(1) of this section must list, in a bold and conspicuous manner, the date the payor was notified of the second incorrect taxpayer identification number, the payee's name, address (including street, city, state (or country), and zip (or mailing) code), and such other information that may be required by revenue procedures and revenue rulings. In addition the notice must state that—

(i) The payor has been notified that the taxpayer identification number furnished by the payee is incorrect, setting forth the name and taxpayer identification number that the Internal Revenue Service has determined to be incorrect and the specific account number that contains the incorrect taxpayer identification number;

(ii) The payor has been notified twice within 3 calendar years that the payee has furnished an incorrect taxpayer identification number on the account with the payor;

(iii) The payor is required to disregard any future taxpayer identification numbers, whether or not certified under penalties of perjury, received from the payee with respect to the account unless the Internal Revenue Service has notified the payor that such taxpayer identification number is correct;

(iv) As a result of providing an incorrect taxpayer identification number, the payor is required under section 3406(a)(1)(B) to begin backup withholding 20 percent of reportable payments made to the account of the payee no later than after the close of the day 30 business days after the date that the payor is notified of the incorrect taxpayer identification number if the Internal Revenue Service has not notified the payor that the payee provided a correct taxpayer identification number to the Internal Revenue Service as described in paragraph (h) of this section; and

(v) The payee must contact the Internal Revenue Service Center where the payee is required to file his income tax return in order to prevent backup withholding under section 3406(a)(1)(B) from starting or to stop it once it has begun.

(3) *Period during which backup withholding is required due to a second notification of an incorrect number within 3 years.* Upon receiving the second notice of an incorrect taxpayer identification number from the Internal Revenue Service or a broker as described in paragraph (f)(1) of this section, the payor must backup withhold on all reportable payments subject to backup withholding made to the account of the payee after the close of the 30th business day after the day on which the payor receives a notice described in paragraph (b) (1) or (2) of this section and on or before the close of the 30th

calendar day after the payor receives the notification from the Internal Revenue Service as described in paragraph (h) of this section.

(4) *Grace periods*—(i) *Starting backup withholding.* Pursuant to section 3406(e)(5)(A), the payor may elect, on a payee-by-payee basis or in general, to begin backup withholding at any time during the 30-business-day period described in paragraph (f)(3) of this section.

(ii) *Stopping backup withholding.* Pursuant to section 3406 (e)(5)(B), the payor may elect, on a payee-by-payee basis or in general, to treat the notification from the Internal Revenue Service as described in paragraph (h) of this section as having been received at any time within 30 calendar days after such notification is provided by the Internal Revenue Service and to stop backup withholding at any time within 30 calendar days of receiving such notice. See § 31.3406(e)–1(b) for the application of the rule contained in this paragraph (f)(4)(ii).

(g) *Procedure for furnishing a correct taxpayer identification number to the Internal Revenue Service.* The procedure that a payee must follow after the Internal Revenue Service or a broker has notified a payor twice within 3 calendar years that the payee provided an incorrect taxpayer identification number with respect to the same account as described in paragraph (f)(1) of this section will be provided in a revenue procedure published by the Internal Revenue Service.

(h) *Notice from the Internal Revenue Service to stop backup withholding.* A payor who received a notice pursuant to paragraph (f) of this section will be notified by the Internal Revenue Service to stop backup withholding after the Internal Revenue Service receives a correct taxpayer identification number from the payee. A broker who received a notice pursuant to paragraph (b) of this section will be notified by the Internal Revenue Service that the payee is no longer subject to backup withholding under section 3406(a)(1)(B) and that the broker is no longer required to provide notices to payors under paragraph (b)(2) of this section. A broker who receives a notice under this paragraph (h) from the Internal Revenue Service is not required to provide the notice to any payor to which the broker has previously provided the notice required under paragraph (b)(2) of this section. The Internal Revenue Service will notify a payor or a broker pursuant to this paragraph by providing the payee with a Form W–9 on which the payee has certified, under penalties of perjury, that his taxpayer identification number is correct. The Form W–9 will bear an official stamp of the Internal Revenue Service verifying that the taxpayer identification number on the Form W–9 is correct as associated with the listed surname or business name. A payee may provide a copy of the Form W–9 to his payors or brokers in order to prevent backup withholding under paragraph (f)(3) of this section from beginning or to stop it under paragraph (f)(4)(ii) once it has begun. In lieu of receiving a copy of the Form W–9 described in this paragraph, in its discretion, a payor or broker may require the payee to set forth his name and certify, under penalties of perjury, that his taxpayer identification number is correct (as set forth on the Form W–9 verified by the Internal Revenue Service) on the payor's or broker's substitute Form W–9 in order to prevent backup withholding under paragraph (f)(3) from beginning or to stop it under paragraph (f)(4)(ii) once it has begun.

(i) [Reserved]

(j) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). D opened an account with Bank O prior to 1984 and furnished a taxpayer identification number to O at the time he opened the account. O is open for business Monday through Friday. O pays interest on the account at the end of each calendar month, and the account is a pre-1984 account as described in § 31.3406(d)–1 (b) (2) and (c) (1) (ii). On October 1, 1990, the Internal Revenue Service notifies Bank O that the taxpayer identification number provided by D is incorrect. O timely sends the notice information to D as required in paragraph (c)(1) of this section. O does not receive a certified Form W–9 or an acceptable substitute form (hereinafter "certification") from D as described in paragraph (e) of this section. O is required to backup withhold 20 percent of all reportable payments made after November 14, 1990 (which is 30 business days after the date the Internal Revenue Service notified O). Therefore, O is not required to backup withhold on the reportable payment made on October 31, 1990, but is required to backup withhold on the reportable payment made on November 30, 1990. O is required to continue to backup withhold under section 3406 (a) (1) (B) until O receives the certification described in paragraph (e) of this section from D.

Example (2). Assume the same facts as in *Example (1)* except that D furnishes a new taxpayer identification number to O on November 1, 1990, but does not certify, under penalties of perjury, that it is his correct taxpayer identification number as required in paragraph (e) of this section. Even though the account is a pre-1984 account, O is required to withhold 20 percent of all reportable payments made after November 14, 1990 (which is 30 business days after the date the Internal Revenue Service notified O), and before the date O receives the certification as described in paragraph (e) of this section from D.

Example (3). Assume the same facts as in *Example (2)* except that D provides O with the certification described in paragraph (e) of this section on November 20, 1990. D elects pursuant to paragraph (d) (2) (ii) of this section to treat the certification as received on November 20, 1990. Even though D did not provide the certification to O within 30 business days after the Internal Revenue Service notified O that D provided an incorrect taxpayer identification number, O is not required to backup withhold under section 3406 (a)(1)(B) because O did not make any reportable payment to D after 30 business days after notification of an incorrect taxpayer identification number and before O received D's certification in the manner required in paragraph (e) of this section. Pursuant to section 3406 (e)(5)(B), O may elect to treat the certification as having been received at any time within the 30 calendar days after it is provided by D.

Example (4). Individual F has two post-1983 accounts with Bank R that pay reportable interest: a savings account and a money market account. The money market account was opened in 1986, and the savings account was opened on February 1, 1991. R treats each of these accounts as a separate account with the Bank. F provided R with the certifications as described under § 31.3406 (a)–1 at the time each account was opened. On October 1, 1990, the Internal Revenue Service notified R pursuant to paragraph (b)(1) of this section that F furnished an incorrect taxpayer identification number with respect to the money market account. R timely sends F the notice required under paragraph (b)(1) of this section and receives the certification required under paragraph (e) of this section from F on November 1, 1990. On October 1, 1991, the Internal Revenue Service notifies R that F furnished an incorrect taxpayer identification number with respect to the money market account. Further, R determines from its business records that two notifications of an incorrect taxpayer identification number have been received with respect to the money market account within 3 calendar years. R must send F the notice required under paragraph (f)(2) of this section and must commence backup withholding on reportable interest paid on the money market account pursuant to paragraph (f)(3) of this section after November 14, 1991, which is 30 business days after R received the second notice. R must continue to backup withhold on the money market account until R receives from the payee a copy of the notice that was provided to the payee by the Internal Revenue Service as described in paragraph (h) of this section. R is not required to backup withhold on the savings account until it receives notice under paragraph (b) (1) or (2) of this section with respect to the savings account.

Appendix to § 31.3406 (d)–5

A notice required by paragraph (c)(3) of this section shall be substantially similar in content to the following.

Date_____

Important Tax Information—Please Read Carefully

You Must Provide Us With a Form W–9 (Even if we Already Have One on File For You)

Notice of Backup Withholding

We received a notice from the Internal Revenue Service (IRS) stating that the taxpayer identification number (TIN) on your account with us is incorrect. A TIN is incorrect if either the name or number shown on an account does not match a name and number combination shown on the records of the Social Security Administration (SSA) or IRS. You must act to correct this problem within 30 calendar days from the date shown above. Otherwise, we may be required to withhold 20% of the interest, dividends, and certain other payments that we make to your account.

Section 3406 of the Internal Revenue Code requires that we withhold 20% in tax, called backup withholding, when you do not give us your correct TIN. Further, you may be subject to a $50 penalty by the IRS under section 6723 of the Internal Revenue Code for failing to provide us with your correct TIN. This notice provides you with instructions to correct your account record in order to avoid backup withholding and the possible imposition of the penalty.

Instructions For Individuals

For individuals, the TIN is the social security number (SSN). Very often a TIN is incorrect because of a name change due to marriage, divorce, adoption or some other reason that has not been communicated to the Social Security Administration (SSA) and recorded on its records. Alternatively, the account may not contain the correct SSN of the actual owner. For example, an account in a child's name may contain a parent's SSN. An account should be titled in the name of the actual owner of the account with that person's SSN.

What to Do

To determine what actions you should take to correct your TIN, compare the name and SSN on your account with us (listed on page (insert the correct page number)) with the name and SSN shown on your social security card and then follow the chart below to determine what action you should take. (If you have never been assigned an SSN by SSA or if you lost your card and do not know your SSN, contact your local SSA office to apply for an original or a rep1acement SSN card, whichever is required. Also, if you have never been assigned an SSN, *read* the enclosed Form W–9, write the words "applied for" on the form according to its instructions, and return the form to us. You do not need to follow the chart below. You must send us your name and SSN, as shown on the SSN card that you get from SSA, on a Form W–9 within 60 days.)

IF—	*THEN—*
1. The last name and SSN on your account agree with the last name and SSN on your social security card.	1. Contact your local SSA office to ascertain why the information on SSA's records is different from that on your social security card and to resolve that problem. Also, put your name and SSN on the enclosed Form W–9 according to its instructions. Sign the Form W–9 and the statement below that you contacted SSA. Send both forms to us.
2. The SSN on your account is different from the SSN on your social security card, but the last name is the same on both.	2. Put your name and SSN, as shown on your social security card, on the enclosed Form W–9 according to its instructions, sign it and send it to us. No contact with SSA is necessary.
3. The last name on your account is different from the last name on your social security card, but the SSN is the same on both.	3. Take one of the following steps (but not all): If the last name on your account is correct, (a) Contact SSA to correct the name on your social security card. Put your SSN and name shown on your account on the enclosed Form W–9 according to its instructions, sign it and the statement that you contacted SSA. Send both forms to us. (b) If you are not able to contact SSA at this time, you can provide us with both last names. Put your SSN and the name shown on your social security card plus the last name shown on your account (in that order) on the enclosed Form W–9 according to its instructions, sign it, and return it to us. For example, if your social security card lists your maiden name, you can provide us with your SSN and your name in the following order: First/maiden/married name. Please note, however, that you should contact SSA as soon as possible. If the last name on your social security card is correct, (c) Put that name and your SSN on the enclosed Form W–9 according to its instructions, sign it, and return it to us. No contact with SSA is necessary.
4. Both the last name and SSN on your account are different from the last and SSN on your social security card.	4. If the last name and SSN on your social security card name are correct, (a) put that name and SSN on the enclosed Form W–9 according to its instructions, sign it, and send it to us. No contact with SSA is necessary. If the last name on your account and the SSN on your social security card are correct, (b) Follow procedures in section 3 (a) or (b) above. Be sure to put the name shown on your social security card on the Form W–9.

You must be consistent with the name and number (SSN) that you furnish (1) to us for all of your accounts and (2) to your other payors

in order to avoid a problem in the future. If you must visit SSA, take this notice, your social security card, and other relevant documents with you. You should call SSA first so they can explain to you what other documents you need to bring to the SSA office.

Instructions for Nonindividuals

For most nonindividuals (such as trusts, estates, partnerships, and similar entities), the taxpayer identification is the employer identification number (EIN). The EIN on your account may be incorrect because it does not contain the number of the actual owner of the account. For example, an account of an investment club or bowling league should reflect the organization's own EIN and name, rather than the SSN of a member. (The account of a sole proprietor who may have both an EIN and an SSN should reflect the individual name of the sole proprietor and his or her SSN.) Please put the name and EIN on the enclosed Form W–9, sign it, and send it to us.

Remember

YOU MUST SEND US A SIGNED FORM W–9 WITHIN 30 CALENDAR DAYS FROM THE DATE SHOWN AT THE TOP OF PAGE 1 even if the name and number (SSN or EIN) on your account with us match the name and number (SSN or EIN) on your social security card or the document issuing you an EIN. If we do not receive your Form W–9, any other documents that are necessary for us to change the name or TIN (or both) on your account to reflect the name and number on the newly provided Form W–9, and, if necessary, the statement that you contacted SSA or IRS within the 30-day period, we may be required to withhold 20% from any reportable payment that we pay to your account until we receive the necessary documents.

Please complete the form below if you are required to contact SSA or the IRS.

Detach and Return to Us

Statement of SSA or IRS Contact

I hereby state that I have contacted the Social Security Administration concerning my social security number (SSN) or the Internal Revenue Service concerning my employer identification number (EIN) to resolve the problem with my name or number which resulted in my being notified of an incorrect taxpayer identification number.

_____

(Print Name)

_____

(Signature)

By _____

(For Nonindividuals and Agents Only)

Date _____

(The portion below must be completed by the payor.)

Account Number _____

Current TIN on Account _____

Current Name on Account _____

§ 31.3406 (e)–1 Period during which withholding is required.

(a) *In general.* A payor shall withhold 20 percent of any reportable payment (as defined in § 31.3406 (b) (1)–1 (a)) made to a payee during the period described in this section. A payor shall continue to withhold until no condition for imposing backup withholding exists with respect to the payee. A payor shall not withhold more than 20 percent of any reportable payment irrespective of the number of conditions for imposing backup withholding that exist with respect to the payee.

(b) *Special rule for determining when the payor receives a taxpayer identification number or certificate from a payee.* In determining whether a payee has failed to provide a taxpayer identification number or any certification to a payor (including a Form W–8 or substitute form), a payor is required to process the taxpayer identification number or certification within 30 days after the payee or broker furnishes the taxpayer identification number or certification to the payor. Thus, the payor may take up to 30 days to treat the number or certificate as having been received. The payor, at its option, may treat the taxpayer identification number or certificate as having been received at any time within 30 days after the payee or broker furnishes the number or certification to the payor.

(c) *Failure to furnish taxpayer identification number in the manner required.* A payor is required to withhold 20 percent of any reportable payment (as defined in § 31.3406 (b) (1)–1 (a)) made to a payee if—

(1) The payor has not received the payee's taxpayer identification number in the manner required in § 31.3406 (d)–1, or

(2) The payor has received notice from a broker (as required by § 31.3406 (d)–4 (a) (1) (iii)) with respect to a readily tradable instrument that the payee did not furnish a taxpayer identification number to the broker in the manner required in § 31.3406 (d)–1 and the payor has not received the taxpayer identification number from the payee in such manner.

The payor shall continue to withhold 20 percent of any reportable payments made to the payee until the payor receives the taxpayer identification number from the payee in the manner required in § 31.3406 (d)–1. Once the payor receives the taxpayer identification number in the manner required, the payor must stop withholding under section 3406 (a) (1) (A) within 30 days after receiving the taxpayer identification number.

(d) *Payee certification failure.* A payor is required to withhold 20 percent of any reportable interest or dividend payment (as defined in § 31.3406 (b) (1)–1 (b)) made to a payee if—

(1) The payor has not received the certification required in § 31.3406 (d)–2, or

(2) The payor has received notice from a broker (as required in § 31.3406 (d)–4 (a) (1) (iii)) that the payee did not make the required certification and the payor has not received the required certification from the payee.

The payor shall continue to withhold 20 percent of any reportable payments made to the payee until the payor receives the required certification from the payee. Once the payor receives the required certification from the payee, the payor must stop withholding under section 3406(a)(1)(D) within 30 days after the certification is received.

(e) *Notification of an incorrect taxpayer identification number.* See §§ 31.3406(d)–5 (d) and (f)(3) for the period for which backup withholding is required in the case of notification of an incorrect taxpayer identification number.

(f) *Notified payee underreporting.* See § 31.3406(c)–1(e) for the period for which backup withholding is required in the case of Internal Revenue Service notification of payee underreporting.

(g) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). Individual A has maintained an interest bearing account with Bank M since 1981. M credits interest on the account on the first day of each month. A furnished a taxpayer identification number to M at the time that A opened the account, but A has not certified under penalties of perjury that the number is correct. Because the account is a pre-1984 account (as defined in § 31.3406(d)–1(b)(2)(i)), A has provided his taxpayer identification number in the manner required by § 31.3406 (d)–1. Moreover, no other condition for imposing backup withholding exists. Consequently, M is not required to withhold under section 3406 on payments made to A with respect to this account.

Example (2). Assume the same facts as in *Example (1)* except that A did not furnish a taxpayer identification number to M when A opened the account. A does not furnish his social security number to M until February 24, 1984. Under paragraph (b) of this section, M has up to 30 days in which to treat the number as having been received. M is required to withhold 20 percent of the reportable payment made on February 1. If M does not treat the number as having been received by March 1, M may withhold 20 percent of the reportable payment made on March 1. M may not, however, withhold 20 percent of the payment made on April 1.

Example (3). Individual B opens an interest bearing checking account with Bank N on January 9, 1984. N will pay interest on the account quarterly. B does not furnish his

taxpayer identification number to N and also does not certify that he is awaiting receipt of a taxpayer identification number (as described in § 31.3406(g)–3). N is required to withhold under section 3406 on payments made to B until N receives B's taxpayer identification number and certification under penalties of perjury that B's taxpayer identification number is correct and that B is not subject to backup withholding due to notified payee underreporting. N is required to withhold only 20 percent under section 3406 on any reportable payments made to B even though two conditions for imposing backup withholding exist.

Example (4). Assume the same facts as in Example (3) except that B furnishes his taxpayer identification number and the required certifications to M on March 15, 1984. Under paragraph (b) of this section, M has up to 30 days to treat the certifications as having been received. If N treats the number and certifications as received before March 31, N is not required to withhold under section 3406 on the March 31 quarterly interest payment. If N does not treat the certifications as received before March 31, however, N is required to withhold on the March 31 interest payment. See § 31.6413(a)–3 (a) which provides that N may treat the amount withheld on March 31 as erroneously withheld and may refund the withheld amount to B. N is required to withhold only 20 percent of any reportable payments made to B even though two conditions for imposing backup withholding exist.

Example (5). Assume the same facts as in *Example (4)* except that B furnishes his taxpayer identification number and certifies, under penalties of perjury, that it is his correct number, but B does not certify that he is not subject to backup withholding due to notified payee underreporting as required under § 31.3406(d)–2. N treats the number as having been received on March 15, 1984. Even though B furnished his taxpayer identification number in the manner required in § 31.3406(d)–1 and N has received the number, N is required to withhold 20 percent of the March 31 interest payment because M has not received certification from B that B is not subject to backup withholding due to notified payee underreporting. N is required to continue to withhold until N receives such a certification from B.

Example (6). C opens a new account with Broker P on March 19, 1984, to purchase a readily tradable instrument of Corporation Z. P holds the instrument in street name for C. Payments of $1000 of stated interest on the instrument will be made on June 30 and December 31. C does not certify his taxpayer identification number or that C is not subject to backup withholding due to notified payee underreporting until July 1, 1984. Because the instrument is held in street name, P is the payor of the interest to C (as defined in § 31.3406(a)–2). Under paragraph (b) of this section, P treats the certifications as having been received on July 31, 1984. P is required to withhold $200 (20 percent of $1000 paid on June 30) under section 3406 even though two conditions for imposing backup withholding under section 3406 exist with respect to C. P is not required to withhold under section 3406 on the December 31 interest payment because P has received C's certifications and no other condition for imposing backup withholding exists.

Example (7). Assume the same facts as in *Example (6)* except that P does not hold the instrument in street name for C. Thus, P is not the payor of the reportable interest payment (as defined in § 31.3406(a)–2). P is required under § 31.3406(d)–4(a)(1)(iii) to notify Z in connection with the transfer instructions that C failed to make the required certifications. Z is required to notify C as described in § 31.3406(d)–4(a)(3), is required to seek the missing certifications, and is required to withhold 20 percent of any reportable payments made to C until Z receives C's certifications.

Example (8). Assume the same facts as in Example (7) except that C furnishes the required certifications to Z on June 1, 1984. Under paragraph (b) of this section, Z has up to 30 days to treat the certifications as having been received. If Z treats the certifications as having been received before June 30, 1984, Z is not required to withhold on the June $0 interest payment. If Z does not treat the certifications as having been received before June 30, Z is required to withhold 20 percent of the June 30 interest payment.

Example (9). Assume the same facts as in *Example (7)* except that before P's notification Z had already received the required certifications from C because C had acquired other instruments directly from Z. Z is not required to withhold due to P's notification since Z has received the required certifications from C.

Example (10). Assume the same facts as in *Example (7)* except that in addition to acquiring the Z instrument through P, C subsequently acquired additional Z instruments through Broker Q. Q does not hold the instruments in street name for C so Q is not the payor as defined in § 31.3406(a)–2. Q is required under § 31.3406(d)–4 to notify Z in connection with the transfer instructions if C fails to make any required certifications. Q's transfer instructions to Z include C's taxpayer identification number and do not inform Z of any payee certification failure. Unless Z has received the certifications from C, Z may not assume that there is no reason to solicit the certifications required by P's notification even though Q's transfer instructions did not inform Z of any certification failure. Z is required to seek the missing certifications (based on P's transfer instructions to Z), and Z is required to withhold 20 percent of any reportable payments made to C until Z receives C's certifications. Another broker's transfer instructions to a payor do not relieve the payor's responsibility with respect to an earlier broker's transfer instructions. Once one broker notifies the payor that there is a payee certification failure, the payor must withhold until the payor receives the certification from the payee. See § 31.3406(d)–4(c)(2) which provides that if Z makes an aggregate payment with respect to all Z Corporation instruments owned by C, Z is required to withhold 20 percent of the aggregate reportable payment.

§ 31.3406(f)–1 Confidentiality of information.

(a) *Confidentiality and liability for violation—In general.* No person may use any information obtained under section 3406 for any purpose except for the purpose of complying with the requirements of section 3406 or for purposes permitted under section 6103 (subject to the safeguards of section 6103). See section 7431 for civil damages for violating the confidential use of such information.

(b) *Permissible use of information—*(1) *In general.* A payor or broker may transmit information on a Form W–9 or other acceptable form relating to backup withholding to the department, institution, or firm (or to any employee therein) that is responsible for withholding or processing of taxpayer identification numbers, certifications described in § 31.3406(h)–3, or other substitute forms. In addition, a broker may notify the payor with respect to a readily tradable instrument of the requirement to withhold and the condition or conditions for imposing backup withholding (as described in § 31.3406(d)–4) that exist with respect to the payee. A payor or broker may, without violating the Internal Revenue Code, close an account of, refuse to open an account for, or issue an instrument to, or redeem an instrument for, a person who fails to furnish his taxpayer identification number in the manner required in § 31.3406(d)–1.

(2) *Window transactions.* In the case of a window transaction (as defined in § 31.3406(b)(2)–3(b)), a payor may, without violating the Internal Revenue Code, refuse to redeem or may refuse to make payment if the payee fails to provide a taxpayer identification number regardless of when the obligation was issued or acquired.

(c) *Specific restrictions on the use of information.* A payor or broker is not permitted to refuse to open an account or to issue an instrument if the person fails to certify, under penalties of perjury, that the person is not subject to withholding under section 3406(a)(1)(C) (relating to notified payee underreporting). A payor or broker is not permitted to use information obtained under section 3406, including a payee's failure or inability to certify that he is not subject to backup withholding due to notified payee underreporting or the fact that the account is subject to backup withholding, to surcharge an account, to open or close an account, to issue or redeem an instrument, or in deciding whether to extend credit to the payee. A payor or broker has surcharged an account if the payor or

broker charged an account more than the fee charged a similar account that was not subject to backup withholding. If a payor or broker in good faith reasonably believes use of the information is permissible under this section, the payor or broker will not be liable under section 7431.

(d) *Examples.* The applioation of the provisions of this section may be illustrated by the following examples:

Example (1). A, an individual, attempts to open a savings account at Bank M on January 1, 1988. A fails to certify that he is not subject to backup withholding due to notified payee underreportinq under section 3406(a)(1)(D) and § 31.3406(d)–2. M refuses to open an account for A. A has a cause of action against M under section 7431 for an unauthorized use of information obtained under section 3406.

Example (2). Corporation N receives a notice from the Internal Revenue Service, pursuant to section 3406(a)(1)(B) and § 31.3406(d)–5, concerning an incorrect taxpayer identification number provided by B, a shareholder of N. N imposes backup withholding on reportable dividends paid to B and imposes a surcharge of $10 to cover the cost of backup withholding on B's account. B has a cause of action against N under section 7431 for an unauthorized use of information obtained by N under section 3406.

Example (3). Credit Union O receives a notice from the Internal Revenue Service, pursuant to section 3406(a)(1)(C), that C, a depositor of O, is subject to backup withholding due to notified payee underreporting. Based on this information, O refuses to approve C's credit application. C has a cause of action against O under section 7431 for an unauthorized use of information obtained pursuant to section 3406.

Example (4). Cooperative P receives a notice from the Internal Revenue Service, pursuant to section 3406(a)(1)(C), notifying P to withhold on payments made to E due to notified payee underreporting. P, pursuant to section 3406(c)(4), then provides notice to E of withholding at the time P begins withholding. E does not have a cause of action against P under section 7431, because this notice to E is an authorized use of information obtained pursuant to section 3406.

Example (5). Corporation Q receives notice from Broker R of the requirement to withhold with respect to F, a shareholder, who failed to certify that his taxpayer identification number was correct. Q provides notice to F of such withholding (as required in § 31.3406(d)–4(a)(3)). F does not have a cause of action against either Q or R for an unauthorized use of information obtained pursuant to section 3406.

§ 31.3406(g)–1 Exception for payments to certain payees and certain other payments.

(a) *Exempt recipients*—(1) *In general.* A payor of any reportable payment (as defined in § 31.3406(b)(1)–1(a)) shall not withhold under section 3406 if the payee is—

(i) A tax exempt organization as described in § 1.6049–4(c)(1)(ii)(B),

(ii) An individual retirement plan as described in § 1.6049–4(c)(1)(ii)(C),

(iii) The United States as described in § 1.6049–4(c)(1)(ii)(D),

(iv) A State as described in § 1.6049–4(c)(1)(ii)(E),

(v) A foreign government as described in § 1.6049–4(c)(1)(ii)(F), or

(vi) An international organization as described in § 1.6049–4(c)(1)(ii)(G).

(2) *Payments subject to reporting under section 6041 or 6041A(a).* In determining whether a payment is not reportable under section 6041 and 6041A(a) because it is made to a payee that is not subject to reporting under section 6041 or 6041A(a), the payor shall use the procedures provided in § 1.6049–4(c)(1)(ii) to determine whether an information return is required.

(3) *Determination of whether person is described in paragraph (a)(1) of this section.* The determination of whether a person is described in paragraph (a) of this section shall be made as provided in the applicable provision of § 1.6049–4(c)(1)(ii). A payor, even if permitted to treat a person as an exempt recipient without requiring a certificate under the provisions of § 1.6049–4(c)(1)(ii), may require a payee not required to file a certificate as to its exempt status to file a certificate and may treat a payee who fails to file such a certificate as a person who is not an exempt recipient. See § 31.3406(h)–3 for a description of the form or a substitute form prescribed under section 3406 for a person to claim exempt status.

(4) *Prepaid or advance premium life-insurance contracts.* A payor of a reportable payment (as defined in § 31.3406(b)(1)–1(a)) may, but is not required to withhold under section 3406 on reportable payments made from January 1, 1984, to December 31, 1991, on prepaid or advance premium life-insurance contracts to a payee who is the owner for tax purposes of the prepaid or advance premium life-insurance contract. However, a payor, at its discretion, may withhold on such payments. For purposes of this exception from backup withholding, a prepaid or advance premium life-insurance contract is one entered into on or before June 30, 1984, by the payee and under which the increment in value of the prepaid or advance premium is used for the payment of premiums during the period in which the exception from backup withholding applies.

(5) *Examples.* The application of the provisions of this paragraph (a) may be illustrated by the following examples:

Example (1). Corporation M pays $1000 to Broker N for services N performs for M. M's payment to N is in the course of M's trade or business. M is required to make an information return under section 6041 or 6041A(a) because the payment is of a kind (*i.e.*, nonemployee compensation paid in the course of a payor's trade or business) and to a payee subject to reporting (*i.e.*, payments to registered securities dealers are not excepted under § 1.6041–3 from information reporting under section 6041 or 6041A(a)). Thus, M is required to withhold under section 3406 if any of the two conditions for imposing backup withholding exists with respect to N as described in § 31.3406(b)(3)–1. N is also not an exempt recipient from backup withholding because N is not described in paragraph (a)(1) of this section.

Example (2). Assume the same facts as in *Example (1)* except that M pays the nonemployee compensation to P Co. While a payment to a corporation is excepted from information reporting under section 6041 or 6041A(a) and § 1.6041–3(c), M may not treat P Co. as exempt from information reporting without receiving a Form W–9 or substitute form from P Co. certifying that it is an exempt recipient. Because a payor may not treat a payee with "Co." in its name as an exempt recipient under § 1.6049–4(c)(1)(ii) without receiving a Form W–9 or substitute form from the payee, M, as payor of payments subject to reporting under section 6041 or 6041A(a), may not treat a payee with "Co." in its name as exempt from backup withholding without receiving a Form W–9 certifying as to its exempt status (as provided in paragraph (a)(2) of this section). If M does not receive a Form W–9 or acceptable substitute from P Co., M is required to make an information return under section 6041 or 6041A(a) and would be required to withhold under section 3406 if any condition for imposing backup withholding exists with respect to P (as described in § 31.3406(b)(3)–1) because P is not an exempt recipient described in paragraph (a)(1) of this section.

Example (3). Assume the facts as in *Example (2)* except that P's name is P Corp. M may treat P as an exempt recipient under section 6041 or 6041A(a) and § 1.6041–3(c) because P can be treated as a person described in § 1.6049–4(c)(1)(ii) without filing a certificate as to its exempt status. Since the payment to P Corp. is not subject to information reporting under section 6041 or 6041A(a), M is not required to withhold under section 3406 even though P is not described in paragraph (a)(1) of this section.

Example (4). Assume the same facts as in *Example (3)* except that P Corp. is a corporation engaged in providing medical and health care services or engaged in the billing and collection of payments in respect of medical and health care services (other than certain tax-exempt or governmental facilities described in § 1.6041–3(c) (1) and (2)). Notwithstanding paragraph (a)(2) of this section, M is required to make an information return under section 6041 because payments to such corporations are not excepted from information reporting under section 6041 or 6041A(a). Moreover, M would be required to backup withhold on the payments to P if P failed to provide its taxpayer identification number because P is not described in paragraph (a)(1) of this section.

Example (5). Corporation Q becomes a member of Barter Exchange R in 1984. Q provides goods for another member of R and receives a credit on the books of R for such goods. During 1984 members of R engage in more than 100 similar barter transactions. Consequently, R is required to make an information return with respect to the transaction engaged in by Q. Q fails to furnish its taxpayer identification number to R, under penalties of perjury, as required in § 31.3406(d)–1. Q is not exempt from information reporting under section 6045 as provided in § 1.6045–1(e). Q is also not exempt from backup withholding under section 3406 because Q is not described in paragraph (a)(1) of this section.

(b) *Middleman.* The transfer by a middleman (as defined by § 1.6049–4(f)(4)(i)) from within the United States of an interest coupon or discount obligation on behalf of a payee for presentation, payment, or collection outside the United States, although subject to information reporting under § 1.6049–4(b)(3)(ii), shall not be subject to backup withholding under section 3406. Thus, the middleman is not required to withhold under section 3406 with respect to the transfer.

(c) *International organizations.* An international organization as described in § 1.6049–4(c)(1)(ii)(G) (or a paying, transfer or other agent that is not also a payee's agent) is not required to withold under section 3406 on interest or principal paid with respect to an obligation issued by the international organization, provided the international organization is an organization of which the United States is a member and which enjoys immunity or exemption from any liability or obligation to pay, withhold, or collect tax pursuant to an international agreement having full force and effect in the United States.

(d) *United States deposits and accounts of foreign payees.* A payor of a reportable payment (as defined in § 31.3406(b)(1)–1(a)) is not required to withhold under section 3406 on amounts described in § 1.6049–5(e)(2).

(e) *Certain reportable payments made outside the United States by foreign persons, foreign offices of United States banks and brokers, and others.* A payor of a reportable payment (as defined in § 31.3406(b)(1)–1(a)) is not required to withhold under section 3406 if the reportable payment is made outside of the United States, the payor does not have actual knowledge that the payee is a United States person, and the payment is of—

(1) Interest described in § 1.6049–5(e)(1) (regarding interest payments made or collected by a person in the commercial banking business with respect to an account or deposit maintained at an office of such person outside the United States);

(2) Dividends that would be described in § 1.6042–3(b)(2) (regarding dividends from sources outside the United States that are distributed or paid outside the United States) but for the fact that they are actually owned by a United States person;

(3) Amounts that would be described in § 1.6045–1(g)(1)(i)(B) (regarding sales effected by a broker at an office of the broker outside the United States) but for the fact that the customer is a United States person; or

(4) Interest described in § 1.6049–5(f)(1) (regarding payments outside the United States by a middleman that, as an agent of the payee, collects the amount for or on behalf of the payee).

§ 31.3406(g)–2 Exception for reportable payments for which withholding is otherwise required.

(a) *In general.* A payor of a reportable payment (as defined in § 31.3406(b)(1)–1(a)) shall not withhold under section 3406 if tax is actually withheld from the payment under any other provision of the Code.

(b) *Payment of wages.* A payor who is required to make an information return under section 6041 with respect to a payment of wages (as defined in section 3401) because the employee makes a certification under section 3402(n) (relating to employees incurring no income tax liability) shall not withhold 20 percent of the wages under section 3406.

(c) *Distribution from a pension, annuity, or other plan of deferred compensation*—(1) *In general.* For payments prior to December 31, 1984, a payor who is required to make an information return under section 6041 with respect to a distribution from or under a pension, annuity, or other deferred compensation arrangement shall not withhold 20 percent of the distribution under section 3406 if tax is actually withheld from the distribution under section 3405 because the payee did not make an election under section 3405(a)(2) (relating to an election with respect to periodic distributions) or under section 3405(b)(3) (relating to an election with respect to nonperiodic distributions). Additionally, if tax is not actually withheld from the distribution under section 3405 because the payee made an applicable election or because the amount of the distribution is less than the minimum amount subject to withholding under section 3405 and if the payee does not provide a taxpayer identification number to the payor, then, except as provided in paragraph (c)(2) of this section, backup withholding shall apply to the distribution if any of the two conditions for imposing backup withholding exist (as described in § 31.3406(b)(3)–1).

(2) *Special rule.* If the annual distributions subject to reporting under section 6041 to a payee total $5,400 or less (in which case withholding on periodic payments under section 3405 generally is not required), and if the payor has no taxpayer identification number for the payee, the payor shall not impose backup withholding until the first payment made after June 30, 1984. If the payee does not provide a taxpayer identification number by that date backup withholding applies as described in § 31.3406(b)(3)–1 to distributions made after June 30, 1984.

(3) *Distributions not subject to backup withholding.* Backup withholding applies only to distributions from a pension, annuity, or other plans of deferred compensation that are subject to reporting under section 6041 and does not apply to distributions that are not reportable under section 6041. Thus, backup withholding does not apply to—

(i) Distributions from an individual retirement account (subject to reporting under sections 408(i) and 6047(d)),

(ii) Distributions from an owner-employee plan (subject to reporting under section 6047(b)),

(iii) Certain surrenders of life insurance contracts (subject to reporting under section 6047(e)), and

(iv) Distributions from a qualified bond purchase plan (subject to reporting under section 6047(c)).

(4) *Examples.* The application of the provisions of this paragraph (c) may be illustrated by the following examples:

Example (1). Corporation X maintains a qualified retirement plan for its employees and their beneficiaries. Distributions to retirees and beneficiaries are made by an employees' trust described in section 401(a) that is exempt under section 501(a). Individual A is an employee of Corporation X who has accrued substantial pension benefits. In June 1983, A dies and her beneficiary, Individual B, elects to receive the pension benefits from the retirement plan accrued on behalf of A in the form of an annuity, beginning January 1, 1984. The payments to B that are includible in B's gross income will aggregate approximately $10,000 per calendar year. In accordance with the requirements of section 3405 (relating to withholding from pensions, annuities, and other deferred income), X provided a notice to B of the right to elect out of withholding under section 3405. B returned the election form indicating that he did not want income tax withheld from his distributions, but B did not furnish his taxpayer identification number to X. Consequently, X is required to withhold 20 percent from all reportable payments made to B after December 31, 1983,

under section 3406 until B furnishes a taxpayer identification number to X.

Example (2). Assume the same facts as in *Example (1)* except that the payments to B from the retirement plan that are includible in B's gross income will aggregate only $5000 per calendar year. In addition, assume that B did not return the form to elect out of withholding under section 3405. Under section 3405(a)(4), if no exemption certificate electing out of withholding is filed, the amount withheld is determined by treating the payee as a married individual claiming three withholding exemptions. Therefore, for 1984, the payments to B are not subject to withholding under section 3405 since the payments aggregate less than $5400 per year. Because B has not furnished X a taxpayer identification number, however, X must withhold 20 percent of the payments made after June 30, 1984, under section 3406 until B furnishes a taxpayer identification number to X. If B provides his taxpayer identification number to X before July 1, 1984, however, no withholding under section 3406 is required (as described in paragraph (c)(2) of this section).

Example (3). Bank Y sponsors an individual retirement account (as defined under section 408(a)) on behalf of Individual C. C has attained the age of 59½ and requests scheduled payments from his IRA of $500 per month (or $6000 per year) beginning on January 1, 1984. Y reports such distributions under section 408(i) and section 6047(d). Because these distributions are not reportable under section 6041, Y is not required to withhold 20 percent of each payment under section 3406, even if C elects out of withholding under section 3405 and does not furnish a taxpayer identification number to Y.

(d) *Payment with respect to an oil or gas interest.* A payor who is required to make an information return under section 6041 with respect to a calendar year ending before January 1, 1987, or under section 6050N with respect to a calendar year ending after December 31, 1986, with respect to an oil or gas payment (including payments for working interests, delayed rental, or lease bonuses) shall not withhold 20 percent of such payment under section 3406 if the payor actually withholds windfall profit tax under section 4986. If windfall profit tax is not actually withheld from the payment (because, for example, payment is made with respect to "exempt royalty oil" (as defined in section 4994(f)), the payment is subject to backup withholding if any of the two conditions for imposing backup withholding exists (as described in § 31.3406(b)(3)–1). The amount subject to backup withholding under section 3406 is the net amount the payee receives (*i.e.*, the gross proceeds less production related taxes such as State severance tax). If the payor customarily makes an aggregate payment with respect to both an oil and gas payment to a payee, and windfall profit tax is actually withheld only upon the portion representing the oil interest, the aggregate payment is *not* subject to backup withholding. The payor shall not be liable to any person other than the United States for the amount of tax withheld as described in § 31.3406(h)–2(h).

(e) Gambling winnings—(1) *In general.* A payor of a reportable gambling winning shall not withhold 20 percent of the gambling winning under section 3406 if tax is actually withheld from the gambling winning under section 3402(q) (relating to the extension of withholding to certain gambling winnings). See paragraph (e)(2) of this section for the determination of a reportable gambling winning. If the reportable gambling winning is not withheld upon under section 3402(q), backup withholding shall apply to the gambling winning if, and only if, the payee does not furnish a taxpayer identification number to the payor. Section 31.3406 (b)(3)–1, (b)(2) does not apply to a reportable gambling winning. Thus, the payor of a reportable gambling winning is not required to aggregate all such winnings made to a payee during a calendar year, nor is the payor required to determine whether an information return was required to be made with respect to such payee for the preceding calendar year.

(2) *Definition of a reportable gambling winning and determination of amount subject to backup withholding.* For purposes of backup withholding, a reportable gambling winning is any gambling winning subject to information reporting under section 6041. The amount of a reportable gambling winning is—

(i) The amount paid with respect to the amount of the wager reduced, at the option of the payor, by

(ii) The amount of the wager.

Amounts paid with respect to identical wagers are treated as paid with respect to a single wager for purposes of calculating the amount paid with respect to the wager. The determination of whether wagers are identical shall be made under § 31.3402(q)–1(c)(1)(ii). In addition, until further regulations are issued under section 6041 or section 3406, a gambling winning (other than a winning from bingo, keno, or slot machines) is a reportable gambling winning only if the amount paid with respect to the wager is in excess of $600 and is based on betting odds of 300 to 1, or higher. See § 7.6041–1 to determine whether a winning from bingo, keno, or slot machines is a reportable gambling winning and thus subject to backup withholding.

(f) *Certain real estate transactions.* A real estate reporting person (the so-called "broker") as defined in section 6045(e)(2) shall not withhold under section 3406 on a payment made with respect to a real estate transaction that is subject to reporting under section 6045 (a) and (e) and § 1.6045.

(g) *Limited exception for certain payments after a merger or an acquisition of accounts.* A payor who acquires accounts or instruments of another payor by acquisition or merger and who is unable to determine from the business records of the merged payor or of the payor whose accounts or instruments were acquired whether any or all of such accounts or instruments are pre-1984 or post-1983 accounts or instruments may treat such accounts as pre-1984 accounts or instruments and may commence backup withholding under section 3406(a)(1)(A) and § 31.3406(d)–1 on any such accounts or instruments for which the payor does not have a taxpayer identification number from the payee or has an obviously incorrect taxpayer identification number as defined in § 31.3406(h)–1(a)(2) no later than sixty days following the date of the merger or acquisition of such accounts or instruments.

(h) *Certain gross proceeds.* No backup withholding is required with respect to any portion of the original issue discount on an instrument or security that is subject to backup withholding as reportable gross proceeds of such instrument or security under section 6045.

§ 31.3406(g)–3 Exemption while payee is waiting for a taxpayer identification number.

(a) *In general*—(1) *Withholding not required for 60 days.* Except as provided in paragraphs (b) and (c) of this section, a payor shall not withhold for 60 days if the payee is awaiting receipt of a taxpayer identification number unless the payee (or a joint payee in the case of a joint account) makes a withdrawal from an account described in paragraph (a)(2) of this section during the 60-day period. In order to qualify for the exemption, the payee must comply with paragraph (d) of this section which requires the payee to provide the payor a certification signed under penalties of perjury (an "awaiting-TIN certificate"). The payor must withhold under section 3406 from 60 days after the date that the payor receives an "awaiting-TIN certificate" described in paragraph (d) of this section if the payor has not received a taxpayer identification number from the payee in the manner required in § 31.3406(d)–1 by that date. Regardless of whether the payee provides an

awaiting-TIN certificate to a payor, the payor is required to withhold on reportable interest or dividend payments as described in § 31.3406(d)–2 if the payee fails to certify, under penalties of perjury, that the payee is not subject to backup withholding due to notified payee underreporting as required in § 31.3406(d)–2.

(2) *Withholding during 60-day period on accounts paying reportable interest or dividends*—(i) *Effective for awaiting-TIN certificates received after December 31, 1987, and before July 1, 1988.* A payor is required to withhold on reportable interest and dividend payments made during the 60-day period after the receipt of an awaiting-TIN certificate (which receipt occurs after December 31, 1987, and before July 1, 1988) if the payee made a withdrawal from the account after the close of 7 business days after the date the awaiting-TIN certificate is received and before the earlier of—

(A) The date that the payor receives a certified Form W–9 from the payee or an acceptable substitute form,

(B) The date the account is closed, or

(C) After the expiration of the 60-day exemption period when backup withholding applies.

For purposes of this paragraph (a)(2), a payor is also required to backup withholdings on any reportable interest or dividend payment made at the time the account or relationship is closed or at a time of the sale or redemption of an instrument. For purposes of this paragraph (a)(2), all cash withdrawals, in an amount up to the reportable payments, made from the day after the date of receipt of an awaiting-TIN certificate to the date of withdrawal are treated as reportable payments.

(ii) *Effective for awaiting-TIN certificates received on or after July 1, 1988.* On a payee-by-payee basis or in general, a payor may withhold on reportable interest or dividends—

(A) As described in paragraph (a)(2)(i) of this section, or

(B) As described in such paragraph but limiting the definition of cash to currency or a check issued to close out the account of a payee (For purposes of this paragraph (a)(2)(ii)(B) the term does not include a cash disbursement from an automatic teller machine or an electronic transfer.), or

(C) On the account no later than 7 business days after the date that the payor receives the awaiting-TIN-certification on reportable interest and dividend payments thereafter made to the account whether or not the payee makes a cash withdrawal and before the earliest of—

(*1*) The date that the payor receives a certified Form W–9 from the payee or an acceptable substitute form,

(*2*) The date the account is closed, or

(*3*) After the expiration of the 60-day exemption period when backup withholding applies.

Effective August 16, 1988, a payor who has elected to withhold under paragraph (a)(2)(ii)(C) of this section must refund the amounts withheld during the 60-day period in accordance with and to the extent permitted by the procedures described in § 31.6413(a)–3 if the payor receives the certified taxpayer identification number from the payee on or after August 16, 1988, and within the 60-day period provided that the payee is not subject to backup withholding under section 3406(a)(1) (C) or (D) during any part of such period. For purposes of the preceding sentence, amounts withheld are deemed to be withheld erroneously as described in § 31.6413(a)–3. If a certified taxpayer identification number is not received by the payor within the 60-day period, the amounts withheld shall not be refunded unless the amounts are erroneously withheld without regard to paragraph (a)(2)(ii)(C) of this section. The payor is also required to backup withhold after the 60-day period until a certified taxpayer identification number is received from the payee or the account is closed.

(b) *Special rule for readily tradable instruments.* The 60-day awaiting-TIN exemption described in paragraph (a)(1) of this section applies to payments made with respect to readily tradable instruments only if the payee provides an awaiting-TIN certificate directly to the payor. Thus, the payee does not qualify for the exemption by providing an awaiting-TIN certificate to a broker who effects a purchase of a readily tradable instrument for a payee (unless the instrument is held in street name). If a broker acquires a readily tradable instrument through a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(2)) for a payee who has no taxpayer identification number, the broker must advise the payor as required in § 31.3406(d)–4(a)(1) that the payee failed to provide a taxpayer identification number under penalties of perjury, regardless of whether the payee provides an awaiting-TIN certificate to the broker. Once a payor is notified by a broker that a payee failed to provide a taxpayer identification number in the required manner, or that the payee is subject to backup withholding under section 3406(a)(1) (B) or (C), the payor must impose backup withholding for the appropriate period described in § 31.3406(e)–1.

(c) *Exceptions*—(1) *In general.* The 60-day awaiting-TIN exemption described in paragraph (a) of this section does not apply to—

(i) Window transactions (as defined in § 31.3406(b)(2)–3(b)),

(ii) Redemptions of bearer obligations that are subject to reporting under section 6045 after September 27, 1990, or

(iii) Other amounts that are subject to reporting under section 6045 (except as described in paragraph (c)(2) of this section).

(2) *Special rule for amounts subject to reporting under section 6045 other than proceeds of redemptions of bearer obligations.* In any case in which a broker's customer does not provide a taxpayer identification number to the broker and the broker effects a sale that is subject to reporting under section 6045 (other than a redemption of a bearer obligation), § 31.3406(d)–3(b)(1) shall apply, whether or not the sale is pursuant to a telephone or wire instruction, if the customer provides an awaiting-TIN certificate to the broker before the sale, except that the 30-day period provided in § 31.3406(d)–3(b)(2) shall be a 60-day period.

(d) *Awaiting-TIN certificate.* A payee qualifies for the 60-day awaiting-TIN exemption provided in paragraph (a) of this section if the payee furnishes a written statement to the payor, signed under penalties of perjury, that the payee has not been issued a taxpayer identification number, that the payee has applied for a taxpayer identification number or intends to apply for a number in the near future, and that the payee understands that if the payee does not provide a number to the payor within 60 days, the payor is required to withhold 20 percent of any reportable payment thereafter made to the payee until the payor receives a number, or 20 percent of any withdrawal to the extent of reportable payments made to the payee during the 60-day period, as described in paragraph (a)(2) of this section. Language that is substantially similar to the following will satisfy the requirements of this paragraph:

"I certify, under penalties of perjury, that a taxpayer identification number has not been issued to me, and that I mailed or delivered an application to receive a taxpayer identification number to the appropriate Internal Revenue Service Center or Social Security Administration Office (or I intend to mail or deliver an application in the near future). I understand that if I do not provide a taxpayer identification number to the payor within 60 days, the payor is required to withhold 20 percent of all reportable payments thereafter made to me or 20 percent of any withdrawal to the extent of reportable

payments made to me during the 60 day period, until I provide a number."

(e) *Form for awaiting-TIN certificate.* A payor may use Form W–9 for the awaiting-TIN certificate, or a payor may include the language described in paragraph (d) of this section on any other document for the awaiting-TIN certification. See § 31.3406(h)–3 which provides that Form W–9 is the prescribed form but permits use of substitute forms, and specifies how long the payor is required to retain the form. If Form W–9 is used, the payee should write "Applied For" in the space reserved for the taxpayer identification number.

(f) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). Individual A opens a new account at Bank M on January 7, 1984, that pays reportable interest. A furnishes an awaiting-TIN certificate to M on January 7 (the date that he opened the account) and A also certifies, under penalties of perjury, that he is not subject to backup withholding due to notified payee underreporting as required in § 31.3406(d)–2(a). M treats the awaiting-TIN certificate as though received on such date as permitted in § 31.3406(e)–1(b). If M does not receive a taxpayer identification number from A within 60 days (March 7), M is required to withhold on payments made to A on or after such date until M receives a taxpayer identification number from A in the manner required in § 31.3406(d)–1.

Example (2). Assume the same facts as in *Example (1)* except that A does not certify, under penalties of perjury, that he is not subject to backup withholding due to notified payee underreporting as required in § 31.3406(d)–2(a). Notwithstanding that A provided an awaiting-TIN certificate to M, M is required to withhold because A failed to make the payee certification required in § 31.3406(d)–2(a).

Example (3). Individual B establishes a brokerage relationship with Broker O that is not a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(1)). B has never furnished his social security number to O. No reportable payments have been made with respect to any instruments in B's brokerage account until August 13, 1984, when B instructs O to sell stock of Z Corporation for $30,000. On that date B states that he is awaiting receipt of a social security number. Under paragraph (c)(2) of this section, B will be exempt from backup withholding for a 60-day period provided O receives an awaiting-TIN certificate from B (as described in paragraph (d) of this section). O receives B's awaiting-TIN certificate on August 13, 1984, as permitted in § 31.3406(e)–1(b). If B desires to withdraw or reinvest more than 60 percent of the proceeds of the sale (*i.e.*, $24,000) during the 60 days after the sale and before B certifies under penalties of perjury that his social security number furnished to O is correct, O is required to withhold 20 percent of the reportable gross proceeds on the date of withdrawal. (See § 31.3406(d)–3(b) for whether reinvestment will be considered a withdrawal.)

Example (4). Assume the same facts as in *Example (3)* except that, on October 12, 1984, B instructs O to send him a check for $10,000. Under paragraph (c)(2) of this section, B is exempt from withholding from August 13 to October 13 (60 days) provided B does not withdraw or reinvest more than 80 percent of the gross sale proceeds. Because B has not withdrawn more than 80 percent of the gross proceeds, O may not withhold on October 12 when B withdraws $10,000 (as provided in paragraph (a) of this section).

Example (5). Assume the same facts as in *Example (4)* except that, on September 12, 1984, B instructs O to reinvest all the gross proceeds of the sale in stock of R Corporation. Under § 31.3406(d)–3(b) the reinvestment is considered a withdrawal. Because B has not furnished his social security number certified under penalties of perjury before withdrawing more than 80 percent of the gross proceeds, O is required to withhold $6,000 (*i.e.*, 20 percent of $30,000) on October 12 (the date of withdrawal) even though within the 60-day exemption period described in paragraph (a) of this section.

Example (6). Individual C presents a taxable interest coupon on a corporate bond to Bank P after December 31, 1983. The payment is defined as a window transaction in § 31.3406(b)(2)–3(b). C furnishes an awaiting-TIN certificate to P at the time of the transaction. Under paragraph (c) of this section, the 60-day awaiting-TIN exemption does not apply with respect to the window transaction. Thus, P is required to withhold 20 percent of the payment made to C.

Example (7). Partnership D instructs Broker N to purchase Corporation Y's debentures on April 15 and instructs N to have them registered in D's name. Stated interest on the debentures will be paid on June 30 and December 31. D provides N on April 15 an awaiting-TIN certificate and certification that it is not subject to backup withholding due to notified payee underreporting. Under § 31.3406(d)–4(a) and paragraph (b) of this section, N is required to notify Y that D failed to furnish a taxpayer identification number. If Y does not receive either a taxpayer identification number in the manner required by § 31.3406(d)–1 or an awaiting-TIN certificate directly from D by June 30, Y is required to withhold 20 percent of the payment made on June 30.

Example (8). Assume the same facts as in *Example (7)* except that Y receives an awaiting-TIN certificate directly from D on May 1. Y must not withhold on June 30 because reportable payments made to D with respect to the instrument are exempt from backup withholding during the period from May 1 to June 30 (60 days). If Y does not receive a taxpayer identification number in the manner required by § 31.3406(d)–1 from D after June 30 and before December 31, however, Y is required to withhold 20 percent of the payment made on December 31.

§ 31.3406(h)–1 Definitions.

(a) *Taxpayer identification number*—(1) *In general.* The term "taxpayer identification number" shall mean the identifying number assigned to a person under section 6109 (relating to identifying numbers). Thus, the number for an individual is generally his social security number and the number for a corporation, estate, trust, or partnership is generally an employer identification number. The proper number of digits is nine for both the social security number and the employer identification number. An obviously incorrect number shall not be considered to be a taxpayer identification number. Thus, a payor shall treat the payee as having failed to furnish a taxpayer identification number if the payee furnishes an obviously incorrect number. See §§ 31.6011(b)–2 and 301.6109–1 for provisions relating to obtaining a taxpayer identification number.

(2) *Obviously incorrect number.* The term "obviously incorrect number" means a number that does not contain nine digits or a number that includes an alpha character as one of the nine digits.

(b) *Examples.* The application of the provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). Individual A provides Bank O with a social security number as 605–62–599. The number provided by A, because it does not contain nine digits, is an obviously incorrect number. Consequently, A is treated as not furnishing a taxpayer identification number.

Example (2). Individual B provides Bank P with a social security number as 605–6W–6599. The number provided by B, because it contains an alpha character, is an obviously incorrect number. Consequently, B is treated as not furnishing a taxpayer identification number.

Example (3). Partnership X provides its employer identification number as 12–2764. The number provided by X, because it does not contain nine digits, is an obviously incorrect number. Consequently, X is treated as not furnishing its taxpayer identification number.

Example (4). Individual C provides Bank Q with a social security number as 111–11–1111. The number provided by C, because it contains nine digits, is not an obviously incorrect number. Consequently, C is treated as furnishing a taxpayer identification number.

Example (5). Company Y provides Bank P with a employer identification number as 12–3456789. The number provided by Y, because it contains nine digits, is not an obviously incorrect number. Consequently, Y is treated as furnishing its taxpayer identification number.

(c) *Broker.* The term "broker" shall have the meaning given to such term by section 6045(c)(1) and § 1.6045–1(a)(1). If there could be more than one broker with respect to any acquisition, only the broker having the closest contact with the payee shall be treated as a broker.

The rules of § 5f.6045–1(c)(3) (ii) and (iii) shall apply to determine the broker with the closest contact with the payee. In the case of any instrument, the term "broker" shall not include any person who is the payor with respect to such instrument as described in § 31.3406(a)–2.

(d) *Readily tradable instrument.* The term "readily tradable instrument" means—

(1) Any instrument which is part of an issue any portion of which is traded on an established securities market (within the meaning of section 453(f)(5)), or

(2) Any instrument which is regularly quoted by brokers or dealers making a market.

Thus, the term may include, but is not limited to, bonds, debentures, notes, certificates, and other evidences of indebtedness regardless of how denominated, repurchase agreements, stocks, shares in a mutual fund, United States government securities, State and local government obligations, and deposits with persons carrying on the banking business and persons that are mutual savings banks. cooperative banks, building and loan associations, homestead associations, credit unions, or similar organizations.

§ 31.3406(h)–2 Special rules.

(a) *Special rule for joint payees*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, for purposes of information reporting and backup withholding, any payment made to joint payees shall be treated as if the entire payment were made to the first person listed on the account or instrument giving rise to the payment. Therefore, except as provided in paragraph (a)(2) of this section, for purposes of information reporting and backup withholding, the taxpayer identification number that is required to be furnished is the number for the first person listed on the account or instrument. However, if the payor knows that the first person listed on the account is not the owner of the account for tax purposes and the payor does not treat such payee as the owner of the account, then the taxpayer identification number required to be provided is that of the owner (identified by the payor) listed on the account even though such owner is not listed first on that account. The requirement to provide the taxpayer identification number of the actual owner (as described in the immediately preceding sentence) is effective for accounts for which backup withholding under this seotion would begin [DATE THAT IS 60 DAYS AFTER THIS DOCUMENT IS PUBLISHED AS A TREASURY DECISION].

Payors are required to withhold on joint accounts if the payee subject to backup withholding is the first person listed on the account at the time the payor determines that the payee is required to provide a taxpayer identification number on the certificates described in § 31.3406(d)–2 to the payor and in the case where the payor is notified under section 3406(a)(1) (B) or (C), if the payee is the first person on the account at the time of such notification. Thus, for example, if the first person listed on the account or instrument does not provide a taxpayer identification number to the payor in the manner required in § 31.3406(d)–1, the payor shall withhold 20 percent of the payment under section 3406. A payor is required to withhold even if the order of the names on the account is subsequently changed, provided the name of the payee subject to backup withholding remains on the account.

(2) *Special rule with respect to joint foreign payees.* If the first payee listed on an account or instrument provides the penalties of perjury statement as to its foreign status (as described in § 1.6049–5(g) with respect to interest and original issue discount and § 1.6045–1(g)(3)(i) with respect to brokers), backup withholding shall apply unless—

(i) Every joint payee provides the statement as to foreign status, or

(ii) Any one of the joint payees who has not established foreign status provides a taxpayer identification number to the payor in the manner required in § 31.3406 (d)–1.

If any one of the joint payees who has not established foreign status provides a taxpayer identification number under paragraph (a)(2)(ii), such number is the taxpayer identification number that is required to be furnished for purposes of information reporting and backup withholding.

(3) *Examples.* The application of the provisions of paragraph (a) of this section may be illustrated by the following examples:

Example (1). C and H, United States citizens, jointly own an instrument of Corporation X. C is the first person listed on the account giving rise to the payment and does not provide a taxpayer identification number to X. X is required to withhold 20 percent of any reportable payment with respect to such instrument even if H provided a taxpayer identification number in the manner required in § 31.3406(d)–1 to X.

Example (2). Assume the same facts as in *Example (1)* except that C is a foreign person and provides a written certification to that effect on Form W–8. In order for backup withholding not to apply to the jointly held instrument, X must receive H's taxpayer identification number or awaiting-TIN certification.

(b) *Withholding from an alternative source*—(1) *In general.* Except with respect to a payment in property (as described in paragraph (b)(2) of this section) or a barter exchange (as described in paragraph (b)(3) of this section), a payor may not withhold from a source maintained by the payor other than the source with respect to which there exists a liability to withhold with respect to the payee. See section 3403 and § 31.3403–1 that provides that the payor is liable for the amount required to be withheld regardless of whether the payor withholds.

(2) *Payments made in property.* (i) In the case of a payment that is made in property (other than money), the payor is required under section 3406 to withhold 20 percent of the fair market value of the property determined immediately before or on the date of payment. The payor may withhold from the principal amount being deposited with the payor, or the payor may withhold from another source maintained by the payee with the payor. The source from which the tax is withheld must be payable to at least one of the persons listed on the account subject to backup withholding. If the account or source is not payable to, and only to, the same person or persons listed on the account subject to backup withholding, then the payor must obtain a written statement from all other persons to whom the account or source is payable authorizing the payor to withhold from the alternative account or source. A payor that elects to withhold from an alternative source may determine the account or source from which the tax is to be withheld, or, in its discretion, the payor may allow the payee to designate the alternative source. However, a payee may not require a payor to withhold from a specific alternative source.

(ii) If the payor cannot locate, using reasonable care, an alternative source of cash out of which the payor may satisfy its withholding obligation pursuant to paragraph (b)(2)(i) of this section, the payor may elect to defer its obligation to withhold until the payor makes a cash payment to the account subject to backup withholding or cash is otherwise deposited in the account. For purposes of this paragraph (b)(2)(ii), a payor is considered to exercise reasonable care in locating an alternative source of cash if the payor follows procedures substantially similar to those set forth in § 31.3406(d)–5(b)(5)(i) (A) and (B). This paragraph (b)(2)(ii) does not apply to reportable payments of property made in connection with prizes, awards, or gambling winnings.

(3) *Barter exchanges.* In the case of a barter exchange that issues scrip to, or credits the account of, a member or client of the exchange in payment for property or services, the barter exchange may withhold from the credit or scrip, or, alternatively, the barter exchange may withhold from any other source maintained by the exchange for the member or client. If the barter exchange elects to withhold from the credit or scrip, such credit or scrip must be converted to cash in order to satisfy the deposit requirements of section 6302 and § 31.6302(c)–1(a)(1). In the case of a barter exchange that does not provide for payment for property or services by means of a credit on the books of the barter exchange or scrip issued by the barter exchange, the barter exchange may withhold from an alternative source in the manner described in paragraph (b)(1) of this section.

(4) *Examples.* The application of the provisions of paragraph (b) of this section may be illustrated by the following examples:

Example (1). Individuals A and B maintain a joint checking account at Bank M. A also maintains a savings account at M. Payments to A are subject to backup withholding under section 3406. On December 31, 1984, M credits A's savings account with a $50 interest payment. Because the payment giving rise to the liability to withhold was not made in property, M may not withhold the tax imposed by section 3406 on the amount credited to A's savings account from A's and B's joint checking account. M is liable under section 3403 and § 31.3403–1 for the tax required to be withheld from the savings account under section 3406 regardless of whether M withholds from accounts maintained by A.

Example (2). Individual C opens an interest-bearing savings account in 1984 at Bank N with respect to which C will receive property in lieu of interest. C has a joint checking account at N with Individual D. C and D are not foreign persons. C is the first person listed on the checking account. When C opens the interest-bearing savings account and receives the property, C fails to certify that his taxpayer identification number is correct or that he is not subject to backup withholding due to notified payee underreporting. N is required to withhold under section 3406 at the time the reportable payment is made to C (*i.e.*, the time that N pays C the "interest" as described in § 31.3406(a)–2(a)). N may elect to withhold the tax from the principal C has deposited with N in the interest-bearing savings account, or N may elect to withhold the tax imposed by section 3406 from C's and D's joint checking account, provided that N obtains a written statement from D permitting N to withhold the tax from C's and D's joint checking account. N is liable under section 3403 and § 31.3403–1 for the tax required to be withheld under section 3406 regardless of whether N withholds.

Example (3). Broker O provides a payment of property as a dividend to Individual D whose stock has been borrowed in connection with a short sale. D does not provide O with a social security number. O may elect to withhold the tax imposed by section 3406 by creating a liability on the margin account that D maintains with O, or O may withhold from any alternative source D maintains with O. O is liable under section 3403 and § 31.3403–1 for the tax required to be withheld under section 3406 regardless of whether O withholds.

Example (4). Corporation E, a member of Barter Exchange P, provides goods for another member of P and receives a credit on the books of P for such goods. During the same calendar year, members of P engage in over 100 similar barter transactions. Consequently, P is required to make an information return (Form 1099–B) with respect to the transaction engaged in by E. Corporation E fails to provide its taxpayer identification number to P. See §§ 1.6045–1(e) and 31.3406(g)–1 (a) which provides that corporate members of barter exchanges are not exempt from backup withholding. Accordingly, P is required to withhold 20 percent of the fair market value of the credit received by E. P may elect to withhold from the credit or from any alternative source maintained by P for E. If P elects to withhold on the credit, the credit must be converted to cash. P is liable under section 3403 and § 31.3403–1 for the tax required to be withheld under section 3406 regardless of whether P withholds.

Example (5). Individual F, an independent travel agent, receives an airline ticket as an award for performing nonemployee services for Company X. F is not an employee of X as defined in section 3121(d). X is required to make an information return under section 6041 showing the fair market value of the airline ticket under § 1.6041–1 (d)(3) and (e). F does not furnish a social security number to X. Because the reportable payment is made in property, X may elect to withhold from an alternative source with F under paragraph (b)(1) of this section. X is liable under section 3403 and § 31.3403–1 for the tax required to be withheld under section 3406 regardless of whether X withholds. If F does not maintain another account with X, X may withhold by reducing the amount of the award by the 20 percent tax required to be withheld.

(c) *Special rules for trusts*—(1) *In general.* Backup withholding shall apply to a payment to a trust if any of the conditions for imposing backup withholding apply to the trust. Generally, a trust is not a payor. Therefore, except as provided in paragraph (3) of this section, a trust will not be required to withhold on reportable payments that the trust makes to a beneficiary who is subject to backup withholding. In addition, the trustee of a trust may certify that the trust's taxpayer identification number is correct and that the trust is not subject to backup withholding due to notified payee underreporting, without regard to the status of the individual beneficiaries of the trust.

(2) *Grantor trusts with ten or fewer grantors.* Backup withholding will apply to a reportable payment to a grantor trust with ten or fewer grantors that was established on or after January 1, 1984, if one of the conditions for imposing backup withholding exists with respect to the trust. The trustee of a grantor trust with ten or fewer grantors may not certify either that the trust is not subject to backup withholding due to notified payee underreporting or that the trust's taxpayer identification number provided by the trustee is correct unless each grantor has furnished the trustee with certifications, signed under penalties of perjury, that the grantor is not subject to backup withholding due to notified payee underreporting and that the grantor's taxpayer identification number provided to the trustee is correct, and the trustee uses such taxpayer identification numbers provided by the grantors on the Form 1041 that is filed by the trustee pursuant to section 671. A trustee of a grantor trust with ten or fewer grantors is not considered a payor as provided in § 31.3406(a)–2(a). Therefore, distributions by the trust of amounts to beneficiaries will not be considered payments of reportable amounts subject to backup withholding.

(3) *Grantor trust with more than ten grantors.* Trustees of a grantor trust with more than ten grantors are considered payors of reportable payments received by such trust for purposes of backup withholding. Payments of all reportable amounts (except gross proceeds reportable under section 6045) made to such trust are considered payments of the same kind made by the trust, as payor, to each grantor, as payee, in proportion to each grantor's ownership of the trust. Each grantor of such a trust is treated as having received his or her proportionate share of the reportable payment on the day the payment is received by the trust. Accordingly, any reportable payment made to the trust is treated as a reportable payment made by the trust to the grantor or grantors and is subject to backup withholding if one of the conditions specified in paragraph (d) of this section exists with respect to a grantor. If the reportable amount of the distribution is greater than the amount distributed, the trustee may, in its discretion, withhold on the entire reportable amount.

(d) *Conditions for a trustee of a grantor trust with ten or more grantors to impose backup withholding.* The trustee is required to withhold under section 3406 on the amount of any reportable payment (except gross

proceeds reportable under section 6045) received by a trust attributable to a grantor if—

(1) The grantor fails to provide a taxpayer identification number to the trustee in the manner required in § 31.3406(d)–1,

(2) The grantor fails to certify to the trustee with respect to reportable interest or dividend payments (as defined in § 31.3406(b)(1)–1(b)) that he is not subject to backup withholding due to notified payee underreporting when required under § 31.3406(d)–2,

(3) The trustee is required to impose backup withholding under the rules applicable to readily tradable instruments which were not purchased from the issuer and are not held in "street name" by a broker, or

(4) The Internal Revenue Service notifies the trustee that the grantor provided an incorrect taxpayer identification number or that the grantor is subject to backup withholding due to notified payee underreporting.

The trustee of a grantor trust having more than ten grantors may certify that the trust's taxpayer identification number is correct and that the trust is not subject to backup withholding due to notified payee underreporting without regard to the status of, or certifications provided by, the grantors of the trust.

(e) *Examples.* The application of the provisions of paragraph (d) of this section may be illustrated by the following examples:

Example (1). Grantor Trust R has 100 grantors. R holds debentures of Corporation X that will pay stated interest. M is the trustee. A, one grantor of the trust, fails to provide the required certification to M that A's taxpayer identification number is correct and that A is not subject to backup withholding due to notified payee underreporting. Even though an individual grantor of the trust has failed to make the required certification, M certifies to X as described in paragraph (d) of this section as to R's taxpayer identification number and that R is not subject to backup withholding due to notified payee underreporting. X pays $100,000 of interest to R on July 1, 1984, and does not withhold. On September 30, 1984, M distributes $900 to each grantor (after deducting certain expenses). On September 30, 1984, M is required to withhold 20 percent of the $900 payment to A and any other grantor who is subject to backup withholding. M may withhold 20 percent of the amount reportable ($1,000).

Example (2). Assume the same facts in *Example (1)* except that R is a trust with 10 or fewer grantors. Under paragraph (c)(2) of this section, M may not certify that R's taxpayer identification number is correct or that the trust is not subject to backup withholding due to notified payee underreporting because the trustee has not received such certification from each grantor. Thus, X is required to withhold 20 percent of $100,000 payment on July 1, 1984. Because R has 10 or fewer grantors, R is not a payor under § 31.3406(a)–2, and M is not required to impose backup withholding on payments to A or any other grantor.

Example (3). Grantor Trust S is an oil royalty trust with 100 grantors. N is the trustee of the trust and B, a grantor of the trust, fails to furnish B's taxpayer identification number to N. On August 1, 1987, S receives a $1,000,000 oil royalty payment from X, an oil producer, subject to reporting under section 6050N. X does not withhold on the payment because N provided a taxpayer identification number to X. N distributes $8,000 to each grantor on December 31, 1984 (after deducting certain production-related taxes and expenses). On December 31, 1987, N is required to withhold 20 percent of the $8,000 payment made to B and to any other grantor who does not provide a taxpayer identification number to N.

Example (4). Trust T has 50 beneficiaries none of whom are grantors. Trust T maintains a savings account with Bank O that pays reportable interest. T has provided its taxpayer identification number to O. On August 16, 1987, Bank O makes a reportable interest payment to T. T has no information reporting obligation with respect to the interest it distributes to its beneficiaries because T is not a payor as described in § 31.3406(a)–2.

(f) *Adjustment of prior withholding by middlemen*—(1) *In general.* A middleman payor (as defined in § 31.3406(a)–2(b)) who receives a payment from which tax has been erroneously withheld under section 3406 may seek a refund of the tax withheld by the payor from whom the middleman payor received the payment (referred to as the "upstream payor"). Alternatively, the middleman payor may obtain a refund of the tax by claiming a credit for the amount of tax withheld by the upstream payor against the deposit of any tax imposed by this chapter which the middleman payor is required to withhold and deposit (as described in section 6413 and § 31.6413(a)–2). In either case, the middleman payor shall pay or credit the gross amount of the payment (including the tax withheld) to its payee as though it had received the gross amount of the payment from the upstream payor and shall withhold the tax imposed by section 3406 only if one of the conditions for imposing backup withholding exists with respect to its payee. If its payee is not subject to backup withholding under section 3406, the middleman payor shall pay or credit the full amount of the payment to the payee. See § 31.6413(a)–3 regarding repayment by a payor of tax erroneously collected from a payee.

(2) *Example.* The application of the provisions of this paragraph (f) may be illustrated by the following example:

Example. Broker M holds stock in Corporation N in "street name" for Individual A, who is not subject to backup withholding. M does not certify to N that M is not subject to backup withholding under section 3406 as N requires in order to treat M as an exempt recipient. Accordingly, N withholds 20 percent of its dividend payment to M. Rather than seek a refund of the erroneously withheld tax from N, M elects to credit the amount of tax withheld by N against any tax that M is required to withhold and deposit under section 6413 and § 31.6413(a)–2. Because A is not subject to backup withholding under section 3406, M pays the gross amount of the dividend payment to A.

(g) *Conversion of amounts paid in foreign currency into United States dollars*—(1) *Convertible foreign currency.* In the event that an amount is paid in convertible foreign currency, the amount shall be converted into United States dollars and the amount subject to withholding under section 3406 shall be computed on *that* amount expressed in United States dollars as of the date of the payment or crediting. The amount withheld shall be deposited in United States dollars. For purposes of this paragraph (g)(1), the term "convertible foreign currency" means currency of a foreign country that either is readily convertible into United States dollars or, effective from the date specified in a rule-related notice published in the **Federal Register**, is of a type the Secretary determines is to be treated as convertible foreign currency.

(2) *Nonconvertible foreign currency.* [Reserved]

(h) *Coordination with other sections.* For purposes of section 31, chapter 24 (other than section 3402(n)) of subtitle C of the Code (relating to employment taxes and collection of income tax at source) and so much of subtitle F (other than section 7205) of the Code (relating to procedure and administration) as relates to this chapter, and the regulations thereunder—

(1) An amount required to be withheld under section 3406 shall be treated as a tax required to be withheld under section 3402;

(2) An amount withheld under section 3406 shall be treated as an amount withheld under section 3402. Thus, an amount withheld under section 3406 shall be allowed to the payee of a reportable payment as a credit under section 31 against the tax imposed by subtitle A of the Code;

(3) The term "wages" includes the gross amount of any reportable payment (as defined in § 31.3406(b)(1)–1)) except for purposes of section 6014 (relating to election by the taxpayer not to compute the tax on his annual return);

(4) The term "employer" includes a payor who is required to withhold the tax under section 3406 (as defined in § 31.3406 (a)–2 (a)) with respect to any reportable payment (as defined in § 31.3406(b)(1)–1);

(5) The term "employee" includes a payee of any reportable payment: and

(6) The term "payroll period" includes the period described in § 31.3406(e)–1 during which the payor is required to withhold the tax imposed by section 3406.

Thus, the general procedures for withholding, deposit, payment, and reporting of Federal tax withheld shall apply to reportable payments and amounts withheld under section 3406. For example, section 6205 provides that an employer (payor) who makes an undercollection of income tax required to be withheld shall correct such error for the return period in which the undercollection is discovered. Section 6205 thus requires a payor to withhold amounts from subsequent payments to a payee that should have been withheld from prior payments, whether or not the subsequent payments are subject to backup withholding under section 3406. Accordingly, a payor who does not impose backup withholding under section 3406 when required must withhold from a subsequent payment to the payee even though the conditions for imposing backup withholding may not exist at the time the subsequent payment is made to the payee. See § 31.6302 (c)–1 for the rules relating to the timing for depositing withheld amounts.

(i) *Penalties.* A payor is subject to the same penalties for failing to impose backup withholding under section 3406 as an employer making a payment of wages. Consequently, under section 3403 and § 31.3403–1, a payor is liable for the tax required to be withheld whether or not the payor withholds the tax from a payee who is subject to backup withholding. A payor may be relieved of liability for an amount that was required to be withheld if the payor proves that the tax has been paid by the payee, as provided in section 3402 (d) and § 31.3402 (d)–1. The fact that a payor may be relieved of the liability for an amount that was required to be withheld will not relieve the payor of liability for any civil or criminal penalty. Additionally, a payor may be subject to civil and criminal penalties, including penalties under section 6651 (addition to the tax for failure to file certain tax returns and to pay any tax), section 6721 (failure to file certain information returns), section 6656 (failure to make deposit of taxes), section 6672 (failure to collect and pay over tax), section 6676 (failure to supply identifying numbers), section 6722 (failure to furnish certain statements), 6682 (false information with respect to withholding), section 7201 (willfully attempting to evade or defeat any tax or the payment of any tax), section 7202 (willful failure to collect or pay over any tax), section 7203 (willful failure to pay tax), section 7206 (2) (aid or assistance of fraud or false statement), section 7207 (fraudulent returns, statements, or other documents), and section 7215 (offenses with respect to collected taxes). In addition, a broker is subject to the penalty under section 6705 (failure of a broker to provide notice to a payor).

(j) *To whom payor is liable for amount withheld.* The payor is not liable to any person for any withheld amount under section 3406. The payor shall be liable only to the United States for an amount that was required to be withheld as provided in § 31.3403–1.

§ 31.3406(h)–3 Certificates.

(a) *Prescribed form to furnish information under penalties of perjury.* Except as provided in paragraph (c) of this section, Form W–9 is the form prescribed under section 3406 on which the payee may certify, under penalties of perjury, that—

(1) The taxpayer identification number furnished to the payor is correct (as required in § 31.3406(d)–1 and § 31.3406(d)–5),

(2) The payee is not subject to backup withholding due to notified payee underreporting (as required in § 31.3406(d)–2),

(3) The payee is an exempt recipient (as described in § 31.3406(g)–1), or

(4) The payee is awaiting receipt of a taxpayer identification number (as described in § 31.3406 (g)–3).

The Form W–9 shall be prepared in accordance with the instructions applicable thereto and shall set forth fully and clearly the data called for therein. A valid Form W–9 shall include the name, address, and taxpayer identification number of the payee. An obviously incorrect number shall not be considered to be a taxpayer identification number (see § 31.3406(h)–1(a)). Except as provided in paragraph (b) of this section, the payee must sign under penalties of perjury and date Form W–9 in order to satisfy the requirements of this section. Blank copies of Form W–9 will be supplied to payors, payees, and brokers upon request to the district director. A payor or broker may require a payee to furnish a separate Form W–9 for each obligation, deposit, certificate, share, membership, contract, or other instrument. Alternatively, a payor or broker may require a payee to furnish one Form W–9 for all the payee's obligations or relationships with the payor or broker. For example, a bank may permit a payee to file one Form W–9 for all savings, interest-bearing checking, or other accounts the payee has with the bank. In addition, a payee of a mutual fund that has a common investment advisor or common principal underwriter with other mutual funds may be permitted, in the discretion of the mutual fund, to provide one Form W–9 with respect to shares acquired or owned in any of the funds.

(b) *Prescribed form to furnish a noncertified taxpayer identification number.* With respect to accounts or other relationships where the payee is not required to certify, under penalties of perjury, that the taxpayer identification number being furnished is correct, the payor or broker may use Form W–9 or a substitute form, but the payee is not required to sign the form. Alternatively, the payor or broker may use any other document or may obtain the taxpayer identification number orally.

(c) *Forms prepared by payors or brokers*—(1) *Substitute forms; in general.* A payor or broker may prepare and use a form that contains provisions which are substantially similar to those of the official Form W–9 as described in paragraph (c) (2) and (3) of this section. A payor or broker may use any document relating to the transaction, such as the signature card for an account, so long as the certifications are clearly set forth. A payor or broker who uses a substitute form may furnish orally or in writing the instructions for Form W–9 that relate to the account. A payor or broker may refuse to accept certifications (including the official Form W–9) that are not made on the form or forms provided by the payor or broker. A payor or broker may refuse to accept a certification provided by a payee only if the payor or broker furnishes the payee with an acceptable form immediately upon receipt of an unacceptable form or within 5 business days of receipt of an unacceptable form. An acceptable form for this purpose must contain a notice that the payor or broker has refused to accept the form submitted by the payee and that the payee must submit the acceptable form provided by the payor in order for the payee not to be subject to backup withholding. If the payor or broker requires the payee to furnish a form for each account of the payee, the payor or broker is not required to furnish an acceptable form until the payee furnishes the payor or broker with the payee's account numbers. A payor or

broker may use separate substitute forms to have a payee certify under penalties of perjury that—

(i) The payee's taxpayer identification number is correct, and

(ii) The payee is not subject to backup withholding due to notified payee underreporting,

provided the language is substantially similar to the language in paragraph (c)(2) and (3) of this section or paragraph (c)(4) of this section if the payor or broker uses a single substitute form for both certifications.

(2) *Taxpayer identification number.* A payor or broker may use a substitute form for the payee to certify, under penalties of perjury, that the taxpayer identification number being furnished is correct, provided the language of the certification is substantially similar to the following:

"Under penalties of perjury, I certify that the taxpayer identification number furnished on this form is my correct taxpayer identification number."

(3) *Notified payee underreporting.* A payor or broker may use a substitute form for the payee to certify, under penalties of perjury, that such payee is not subject to backup withholding due to notified payee underreporting under section 3406(a)(1)(C), provided the language of the certification is substantially similar to the following:

"Under penalties of perjury, I certify that I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or because the Internal Revenue Service has notified me that I am no longer subject to backup withholding."

(4) *Substitute form for both certifications.* A payor or broker may use a substitute form for both certifications described in paragraph (c)(2) and (3) of this section, provided the language of the certification is substantially similar to the following: "Under penalties of perjury, I certify that the taxpayer identification number shown on this form is my correct taxpayer identification number and that I am not subject to backup withholding either because I have not been notified that I am subject to backup withholding as a result of a failure to report all interest or dividends, or because the Internal Revenue Service has notified me that I am no longer subject to backup withholding." If a payor or broker uses a single substitute form for both certifications which does not follow the Form W–9 format, the substitute form must contain an instruction to the payee to strike out the language certifying that the payee is not subject to backup withholding due to notified payee underreporting if the payee has been notified that he or she is subject to backup withholding due to notified payee underreporting, and if the payee has not received a notice from the Internal Revenue Service advising the payee that backup withholding due to notified payee underreporting has terminated.

(5) *Form for exempt recipients.* A payor or broker may use a substitute form for the payee to certify, under penalties of perjury, that the payee is an exempt recipient (described in § 31.3406(g)–1 or described in the respective reporting section), provided the form contains provisions that are substantially similar to those of the official Form W–9 relating to exempt recipients. A certificate shall be prepared in accordance with the instructions applicable to exempt recipients on Form W–9, and shall set forth fully and clearly the data called for therein. If a payor will treat the payee as an exempt recipient only if the payee files a certificate as to its exempt status, the certificate is valid only if it contains the payee's taxpayer identification number. Thus, a payee must include his taxpayer identification number on a certificate that a payor requires to be made in order to treat the payee as an exempt recipient.

(d) *Special rule for brokers.* A broker may act as the payee's agent for purposes of furnishing a taxpayer identification number or certification to a payor with respect to any readily tradable instrument (as defined in § 31.3406(h)–1(d)) provided the payee provides a taxpayer identification number or Form W–9 or other acceptable substitute form to the broker. The payor may rely on a taxpayer identification number provided by the broker unless the broker notifies the payor that the number was not certified when certification is required (as described in § 31.3406(d)–4).

(e) *Reasonable reliance on certificate.* A payor shall not be liable for the tax imposed under section 3406 if the payer's failure to deduct and withhold the tax is due to reasonable reliance on the taxpayer identification number provided by the payee or a broker which is in effect with respect to the payee at the time such tax is required to be deducted and withheld under section 3406. A payor or broker may reasonably rely on a Form W–9 or other acceptable substitute form only if the form contains a name and taxpayer identification number (or contains a name and states that the payee is awaiting receipt of a taxpayer identification number (*i.e.*, "an awaiting-TIN certificate") and is signed and dated by a payee. A payor or broker is not required to determine whether the statements made on the form are true. Any deletion of the jurat or other similar provisions of the statement by which the payee certifies or affirms the correctness of the information contained on the form that relates to the payee means, however, that the form may not be reasonably relied upon by the payor or broker. If a payor or broker receives a form that cannot be reasonably relied upon, the payor or broker shall treat the payee as if no form were provided.

(f) *Who may sign the certificate*—(1) *In general.* A Form W–9 or other acceptable form may be signed by any person who is authorized to sign a declaration under penalties of perjury on behalf of the payee as provided in section 6061 and the regulations thereunder (relating to who may sign generally for an individual, which includes certain agents who may sign returns and other documents), section 6062 and the regulations thereunder (relating to who may sign corporate returns), and section 6063 and the regulations thereunder (relating to who may sign partnership returns).

(2) *Notified payee underreporting.* Any payee who has not been notified that he is subject to backup withholding as a result of notified payee underreporting can make the certification related to notified payee underreporting. In addition, a payee who was subject to backup withholding due to notified payee underreporting may certify that he is not subject to backup withholding due to notified payee underreporting if the Internal Revenue Service has provided the payee with written certification that backup withholding due to notified payee underreporting has terminated.

(g) *Retention of certificate*—(1) *Accounts or instruments that are not pre-1984 accounts and brokerage relationships that are post-1983 brokerage accounts.* With respect to an account or instrument that is not a pre-1984 account (as described in § 31.3406(d)–1 (b) (3)) or with respect to a brokerage relationship that is a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(2)), the payor or broker who receives a Form W–9 or other acceptable substitute form related to backup withholding shall retain the form in its records for the same period of time that the payor or broker retains other account-creation or instrument-purchase agreements. The form may be retained on microfilm or microfiche in accordance with any applicable revenue procedures.

(2) *Accounts or instruments that are pre-1984 accounts and brokerage relationships that are not post-1983 brokerage accounts.* With respect to a pre-1984 account (as described in § 31.3406(d)–1(b)(1)) or with respect to a brokerage relationship that is not a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(1)), the payor or broker is not required to retain any Form W–9 or other acceptable substitute form on which—

(i) The payee has certified the correctness of the payee's taxpayer identification number,

(ii) The payee has certified that he is awaiting receipt of a taxpayer identification number ("an awaiting-TIN certificate" as described in § 31.3406(g)–3), or

(iii) The payee has certified that the payee is an exempt recipient described in § 31.3406(g)–1, provided the payor or broker can establish the existence of procedures that are reasonably calculated to ensure that a payee who has so certified is accurately identified in the payor's or broker's records. If, however, the payor or broker requires the payee to file only one Form W–9 or substitute form for all accounts or instruments of the payee, the payor or broker must retain the single form in the manner and for the period of time described in paragraph (g)(1) of this section if that form relates to any account or instrument that is not a pre-1984 account or relates to a post-1983 brokerage account.

§ 31.3406(i)–1 Transitional rules.

In general, the following transitional rules apply for the 1984 calendar year. In this connection, Question and answer 1 concerns certain payees of pre-1984 accounts or relationships who did not furnish a taxpayer identification number before January 1, 1984. Question and answer 2 concerns payments of gross proceeds before April 1984 and other similar payments.

Q–1. Did a special rule exist with respect to a payee who had not furnished a taxpayer identification number to a payor before January 1, 1984, with respect to a pre-1984 account (as described in § 31.3406(d)–1(b)(1)), a brokerage account that is not a post-1983 brokerage account (as described in § 31.3406(d)–1(c)(1)), or other relationships established (as described in § 31.3406(d)–1(d)) before January 1, 1984?

A–1. Yes. All payees of such accounts, instruments or relationships were treated as if they were waiting for receipt of a taxpayer identification number, without any action on their part, until January 16, 1984. The payor was required to withhold 20 percent of any payment made after January 16, 1984, unless (1) the payee had certified that the payee was waiting for receipt of a taxpayer identification number (as provided in § 31.3406(g)–3) or (2) the payor received a taxpayer identification number from the payee. If, however, a payor had been provided with a Form W–9 (or substitute form) with an "Applied For" designation by a payee on an account, instrument, or relationship established before January 1, 1984, the form was valid for 60 days notwithstanding the fact that the supplemental instruction referred to in § 31.3406(h)–3 was not provided to the payee.

Assume, for example, that the payee of an account established before January 1, 1984, delivered an awaiting-TIN certification to the payor on December 30, 1983, and the payor processed the certification that day as permitted in § 31.3406(e)–1(b). The payor should not impose backup withholding on payments made to the payee prior to February 29, 1984, because the payee is treated under this paragraph as having provided a taxpayer identification number during that period. If the payor did not receive a number in the manner required in § 31.3406(d)–1 from the payee prior to February 29, 1984, the payor would be required to withhold 20 percent of any payment made to the payee on or after February 29, and before the payee provided a number. As another example, assume that a payee of an account established before January 1, 1984, delivered an awaiting-TIN certification to the payor on January 12, 1984, and processed it that day. The payor should not impose backup withholding on payments made between January 1 and 12 because the payee would be treated during that period as if he had provided a taxpayer identification number under the rule set forth above. Moreover, backup withholding would not apply to payments made during the 60 days following January 12, because the payee on that date delivered an awaiting-TIN certification. Backup withholding would begin only if the payor had not received a taxpayer identification number within that 60-day period. (See § 31.3406(e)–1(b), however, for the rules relating to the dates on which the payor may be treated as having received the certificate or the taxpayer identification number.)

Q–2. Did transition rules apply to backup withholding on gross proceeds reportable by brokers under section 6045 (as described in § 31.3406(b)(3)–2)?

A–2. Yes. The following transition rules applied until April 1, 1984. First, for purposes of backup withholding on gross proceeds reportable by brokers, the penalties of perjury certification required by § 31.3406(d)–1(c)(2) (for post-1983 accounts) may be waived at the broker's option until April 1, 1984. A customer who opens an account after December 31, 1983, and who consummates a sale prior to Apri1 1, 1984, will not be subject to backup withholding provided that the customer furnishes a taxpayer identification number to the broker prior to the sale. The gross proceeds from sales made through post-1983 accounts after March 31, 1984, however, will be subject to backup withholding if the customer does not provide a taxpayer identification number certified under penalties of perjury. See § 31.3406(d)–3(b) for special rules applicable when a sale is made pursuant to a telephone or wire instruction.

Second, until April 1, 1984, the gross proceeds from a sale made through a pre-1984 aooount (as described in § 31.3406(d)–1(c)(1)) by a customer who has not provided a taxpayer identification number will not be subject to backup withholding at the broker's option provided that (1) the customer furnishes his number to the broker within 30 days after the date of the sale and (2) the customer does not withdraw the proceeds of the sale prior to the time his taxpayer identification number is furnished to the broker (or backup withholding is applied). For purposes of the preceding sentence, an investment of the cash proceeds in other property shall not be considered a withdrawal by the customer if, at all times during the 30-day period, at least 20 percent of all gross proceeds reportable under section 6045 are held in cash within the customer's account by the broker. If the customer does not furnish his taxpayer identification number within 30 days after the date of sale' the broker must withhold 20 percent of all reportable gross proceeds on the 31st day after the date of the sale.

If, with respect to forward contracts, regulated futures contracts, security short sales, or issuer payment of debt securities, the broker applies backup withholding on a date other than the sale date (see § 31.3406(b)(3)–2(c)) the rules of this paragraph shall apply as if any date on which the broker determines whether backup withholding applies were the sale date.

§ 31.6011(a)–5 [Amended]

Par. 8. Section 31.6011(a)–5(a) is amended by adding the phrase "or § 31.6011(a)–11" immediately after the phrase "§ 31.6011(a)–1 or § 31.6011(a)–(4)" wherever the latter phrase appears,

and by adding the phrase "or payor" immediately after the term "employer" wherever it appears.

§ 31.6011(a)-6 [Amended]

Par. 9. Section 31.6011(a)-6 is amended by revising the heading and the first and third sentences of paragraph (a)(1) to read as follows:

§ 31.6011 (a)-6 Final returns.

(a) *In general*—(1) *Federal Insurance Contributions Act; income tax withheld from wages and certain reportable payments.* An employer or payor who is required to make a return on a particular form pursuant to § 31.6011(a)-1, § 31.6011(a)-4, § 31.6011(a)-5, or § 31.6011(a)-11, and who in any return period ceases to pay wages or other reportable payments in respect of which he is required to make a return on such form, shall make such return for such period as a final return. * * * Every such person filing a final return (other than a final return on Form 942 or Form 943) shall furnish information showing the date of the last payment of wages, as defined in section 3121(a) or section 3401(a), and, if appropriate. the date of the last payment of certain reportable payments as defined in section 3406. * * *

* * * * *

Par. 10. A new § 31.6011(a)-11 is added to read as follows:

§ 31.6011(a)-11 Returns of income tax withheld from any reportable payment.

(a) *Quarterly returns.* Except as otherwise provided in § 31.6011(a)-5, every payor or broker required to withhold taxes from any reportable payment pursuant to section 3406 shall make a return on Form 941 or Form 941E, whichever is the prescribed form regarding those taxes, for the first calendar quarter in which the payor or broker is required to deduct and withhold such tax and for each subsequent calendar quarter (whether or not the payor or broker is required to deduct and withhold the tax imposed by section 3406 during the quarter) until it has filed a final return in accordance with § 31.6011(a)-6.

(b) *Information returns on Form 1099.* See sections 6041, 6041A, 6042, 6044, 6045, 6049, and 6050A for requirements regarding information returns on Form 1099 with respect to any reportable payment.

(c) *Time and place for filing returns.* For provisions relating to the time and place for filing returns required under this section, see § 31.6071(a)-1 and § 31.6091-1, respectively.

(d) *Monthly returns.* The provisions of § 31.6011(a)-5 regarding monthly returns shall apply, as appropriate, to a payor or broker.

(e) *Final returns.* The provisions of § 31.6011(a)-6(a)(1) regarding final returns shall apply, as appropriate, to a payor or broker.

Par. 11. A new § 31.6051-4 is added to read as follows:

§ 31.6051-4 Statements required in case of backup withholding.

(a) *Statements required from payor.* Every payor of any reportable payment (as defined in section 3406(b) and §§ 31.3406(b)(1)-1) who is required to deduct and withhold tax under section 3406 shall furnish to the payee a written statement containing the information required by paragraph (c) of this section.

(b) *Prescribed form.* The prescribed form for the statement required by this section shall be Form 1099. In the case of any reportable interest or dividend payment as defined in § 31.3406(b)(1)-1(b), the prescribed form shall be the official Form 1099 required in § 1.6042-5 (relating to payments of dividends), § 1.6044-6 (relating to payments of patronage dividends), or § 1.6049-6(e) (relating to payments of interest or original issue discount). Statements required to be furnished by this section shall be treated as statements required by the respective sections with respect to any reportable payment, except that the statement required under this section shall include the amount of tax withheld under section 3406. In no event shall a statement be required under this section if a statement with the same information is required to be furnished to the recipient under another section. Thus, a payor is not required to furnish two statements of the same information to a recipient.

(c) *Information required.* Each statement on Form 1099 shall show the following:

(1) The name, address, and taxpayer identification number of the person receiving any reportable payment;

(2) The amount subject to reporting under section 6041, 6041A(a), 6042, 6044, 6045, 6049, 6050A, or 6050N whether or not the amount of the reportable payment is less than the amount for which an information return is required, if tax is withheld under section 3406 relating to backup withholding. If tax is withheld under section 3406, the statement shall show the amount of the payment withheld upon;

(3) The amount of tax deducted and withheld under section 3406;

(4) The name and address of the person filing the form;

(5) A legend stating that such amount is being reported to the Internal Revenue Service; and

(6) Such other information as is required by the form.

(d) *Time for furnishing statements.* The statement shall be furnished to the payee no later than January 31 of the year following the calendar year in which the payment was made.

(e) *Aggregation.* The payor or broker may combine the information required to be shown under this section with information required to be shown under another section even if they do not relate to the same type of reportable payment.

(f) *Cross references.* For provisions relating to the failure to file certain statements, see section 6722. For provisions relating to the penalties provided for the willful furnishing of a false or fraudulent statement, or for the willful failure to furnish a statement, see sections 6656, 6682 and 7215. For additional provisions relating to the inclusion of identification numbers and account numbers in statements on Form 1099, see §§ 31.6109-1 and 301.6109-1. For provisions relating to the penalty for failure to report an identification number or an account number, as required by § 31.6109-1 or § 301.6109-1, see section 6676 for statements required for 1988 or earlier calendar years and section 6721 for statements required for 1989 or later calendar years.

Par. 12. Section 31.6071(a)-1 is amended by revising the heading of paragraph (a) and the first sentence of paragraph (a)(1) to read as follows:

§ 31.6071(a)-1 Time for filing returns and other documents.

(a) *Federal Insurance Contributions Act and income tax withheld from wages and certain reportable payments*—(1) *Quarterly or annual returns.* Except as provided in paragraph (a)(4) of this section, each return required to be made under § 31.6011(a)-1 in respect of the taxes imposed by the Federal Insurance Contributions Act, or required to be made under § 31.6011(a)-4 in respect of income tax withheld from wages, or required to be made under § 31.6011(a)-11 in respect of income tax withheld from certain reportable payments, shall be filed on or before the last day of the first calendar month following the period for which it is made. * * *

* * * * *

Par 13. Section 31.6302(c)-1 is amended by adding a new paragraph (a)(1)(i)(*d*), removing the term "and" at the end of paragraph (a)(1)(iii)(*b*), by adding the term ", and" at the end of paragraph (a)(1)(iii)(*c*), and by adding new paragraph (a)(1)(iii)(*d*). The added provisions read as follows:

§ 31.6302(c)–1 Use of Government depositaries in connection with taxes under Federal Insurance Contributions Act and income tax withheld.

(a) *Requirement*—(1) *In general.*
(i) * * *
* * * * * *

(*d*) A payor who withholds income tax with respect to reportable payments under section 3406 may elect, in accordance with the instructions provided with Form 941, to deposit such taxes under the rules of paragraphs (a)(1)(i) (a) or (b) of this section without taking into account the undeposited taxes described in paragraphs (a)(1)(iii) (*a*), (*b*), or (*c*) of this section for purposes of determining when taxes withheld under section 3406 must be deposited. A payor who makes this election shall not take tax withheld under section 3406 into account for purposes of determining when taxes described in paragraphs (a)(1)(iii) (*a*), (*b*), or (*c*) of this section must be deposited under paragraphs (a)(1)(i) (*a*) or (*b*) of this section.
* * * * * *

(iii) * * *

(*d*) The income tax withheld under section 3406, relating to backup withholding with respect to reportable payments. (See paragraph (a)(1)(i)(*d*) of this section concerning the election payors may make regarding deposits of tax withheld under section 3406).

Par. 14. A new § 31.6413(a)–3 is added to read as follows:

§ 31.6413(a)–3 Repayment by payor of tax erroneously collected from payee.

(a) *In general.* If a payor or broker withholds from a payee in error or withholds more than the proper amount of the tax under section 3406, the payor or broker may refund the amount erroneously withheld as provided in section 6413 and this section. A payor or broker shall be considered to have withheld erroneously only if the amount is withheld because of an error by the payor or broker (*e.g.*, an error in "flagging" or identifying an account that is subject to backup withholding under section 3406) or the Internal Revenue Service directs the payor to refund an amount withheld pursuant to section 3406(a)(1)(C). If the payor or broker requires a payee described in § 31.3406(g)–1(a) or the respective reporting section (*e.g.*, a corporation) to certify that it is an exempt recipient, the payee fails to make the required certification, and the payor or broker subsequently withholds the tax imposed by section 3406 from a payment to such payee, the payor or broker may, in its discretion, treat the amount withheld as an amount erroneously withheld and refund it to the payee. The same rule applies if the payor or broker does not require such a payee to certify concerning its exempt status and the payor or broker withholds. If a payor or broker withholds from a payee after the payee provides a taxpayer identification number or required certification (including the certification relating to foreign status described in § 1.6049–5(g) or § 1.6045–1(g)(3)(i)) to the payor, but before the payor or broker treats the number or required certification as having been received under § 31.3406(e)–1(b), the payor or broker may, in its discretion, treat the amount withheld as an amount erroneously withheld and refund it to the payee. If a payor or broker withholds, however, because the payor or broker has not received a taxpayer identification number or required certification and the payee subsequently provides a taxpayer identification number or a required certification to the payor, the payor or broker may not refund the amount to the payee because the payor or broker has not erroneously withheld under section 3406.

(b) *Manner of refunding amounts erroneously withheld.* If a payor or broker withholds from a payee in error or withholds more than the correct amount under section 3406 as described in paragraph (a) of this section, the payor or broker may refund the amount erroneously withheld to the payee so long as the refund is made prior to the end of the calendar year and prior to the time the payor or broker furnishes a Form 1099 to the payee with respect to the payment for which the erroneous withholding occurred. If the amount of the erroneous withholding is refunded to the payee, the payor or broker shall keep as part of its records a receipt showing the date and amount of refund and the payor or broker must provide a copy or such receipt to the payee. For this purpose, a cancelled check or an entry in a statement is sufficient provided that the check or statement contains a specific notation that it is a refund of tax erroneously withheld. If the payor or broker has not deposited the amount of the tax prior to the time that the refund is made to the payee, the payor or broker shall not deposit the amount erroneously withheld. If the amount erroneously withheld has been deposited prior to the time that the refund is made to the payee, the payor or broker may adjust any subsequent deposit of the tax collected under chapter 24 of the Code which the payor or broker is required to make in the amount of the tax which has been refunded to the payee. A payor or broker shall not report on a Form 1099 as tax withheld any amount which the payor or broker has refunded to a payee.

(c) *Examples.* The application of the provisions of this section may be illustrated by the following examples:

Example (1). A, an individual, maintains an interest-bearing checking account with Bank M. A has not furnished a social security number to M. On March 31, 1984, M credits a payment of interest to A's account and withholds 20 percent of the payment pursuant to section 3406. On April 7, 1984, A receives a quarterly statement from M showing the tax withheld, provides M with a social security number, and requests that M refund the tax withheld. Since M did not have A's social security number on the date M made a payment to A, M has not erroneously withheld the tax imposed by section 3406 and may not refund the tax to A.

Example (2). B, an individual, has an interest bearing share account with Credit Union N. Although B has provided a social security number to N, N has failed to associate B's number with the account B maintains with N. N credits a payment of interest to B's account on February 1, 1984, and withholds 20 percent of the payment. When B receives a quarterly statement from N showing the tax withheld, B requests that N refund the amount of tax withheld. Upon examining its records, N determines that the tax was withheld because of its error in associating B's social security number with B's account. Accordingly, N may treat the amount as erroneously withheld under paragraph (a) of this section and refund the amount withheld to B as provided in section 6413 and paragraph (b) of this section.

Example (3). State C maintains an investment account with Bank O. C does not have a taxpayer identification number on file with O. Although O requires persons who are exempt from backup withholding under section 3406 to certify their exempt status to O, C fails to do so. O credits a payment of interest to C's account on January 31, 1984, and withholds 20 percent of the payment. On February 2, 1984, O realizes it has withheld the tax imposed by section 3406 from a payment to C. O may treat the amount withheld from C as an amount erroneously withheld under paragraph (a) of this section and refund the amount withheld to C as provided in section 6413 and paragraph (b) of this section.

Par. 15. Section 31.6682–1 is amended by revising the first sentence and by adding two new sentences after the second sentence of paragraph (a) to read as follows:

§ 31.6682–1 False information with respect to withholding.

(a) *Civil penalty.* If any individual makes a statement under section 3402 (relating to income tax collected at source) or section 3406 (relating to backup withholding) which results in a lesser amount of income tax actually deducted and withheld than is properly allowable under section 3402 or section 3406 and, at the time the statement was

made, there was no reasonable basis for the statement, the individual shall pay a penalty of $500 for the statement. * * * There was a reasonable basis for a statement on a Form W–9 if the person included his correct taxpayer identification number assigned under section 6109 and, with respect to a reportable interest or dividend payment (as defined in § 31.3406(b)(1)–(1)(b), that person had a reasonable basis to certify under penalties of perjury that he was not subject to backup withholding if, prior to the time that the person made the statement, he had not been notified that he was subject to backup withholding as a result of notified payee underreporting. Additionally, a person who was subject to backup withholding due to notified payee underreporting had a reasonable basis to certify that he was not subject to backup withholding due to notified payee underreporting if, prior to the time that the person made the statement, the Service provided him with written certification that backup withholding due to notified payee underreporting had terminated. * * *

* * * * *

PART 301—PROCEDURE AND ADMINISTRATION

Par. 16. The authority citation for part 301 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * § 301.6109–1 also issued under 26 U.S.C. 6109.

Par. 17. Section 301.6109–1 is amended by revising paragraphs (a)(1) and (g), by redesignating paragraph (h) as paragraph (i), and by adding a new paragraph (h) to read as follows:

§ 301.6109–1 Identifying numbers.

(a) *In general*—(1) *Social security numbers and employer identification numbers.* Generally, there are two types of taxpayer identifying numbers: Social security numbers and employer identification numbers. Social security numbers take the form 000–00–0000, while employer identification numbers take the form 00–0000000. Social security numbers identify individual persons while employer identification numbers identify corporations, partnerships, nonprofit associations, trusts, estates of decedents, and similar nonindividual persons. Both types of taxpayer identifying numbers are used by individuals who are employers or who are engaged in trade or business as sole proprietors, as required by returns, statements or other documents and their related instructions. Such documents often require an individual's own social security number in connection with his individual taxes, and his employer identification number in connection with his business taxes. See paragraph (g) of this section for the rules with respect to the use of a taxpayer identification number for nonresident aliens.

* * * * *

(g) *Nonresident aliens.* In general, nonresident aliens who are treated as residents under section 6013 (g) or (h) must obtain a taxpayer identification number in the same form and manner that is required of U.S. residents. However, nonresident aliens with income effectively connected with a U.S. trade or business, or nonresident aliens who do not have such income but who must file a Form 1040NR to obtain a refund of tax withheld, must obtain a taxpayer identification number that takes the form 9xx–xx–xxxx. This number may be obtained from the Internal Revenue Service Center located in Philadelphia, Pennsylvania. Other nonresident aliens are not required to obtain a taxpayer identification number.

(h) *Other foreign persons.* A foreign corporation, foreign partnership, or foreign private foundation is not required to obtain a taxpayer identification number if it does not have income effectively connected with the conduct of a trade or business within the United States and does not have an office or place of business or fiscal or paying agent in the United States.

* * * * *

Par. 18. A new § 301.6676–2 is added to read as follows:

§ 301.6676–2 Due diligence defense.

For purposes of section 6676, the following questions and answers (Q/A's) concerning the actions that payors must take to establish due diligence are hereby referenced in this § 301.6676–2:

(a) Q/A–1, through Q/A–29, Q/A–31, Q/A–34 through Q/A–36, Q/A–38 through Q/A–42 B, and Q/A–48 through Q/A–56 of § 35a.9999–1;

(b) Q/A–1 through Q/A–9, Q/A–17 through Q/A–18, and Q/A–20 through Q/A–23 of § 35a.9999–2;

(c) Q/A–1, Q/A–3 through Q/A–4, Q/A–20, Q/A–29, Q/A–33 through Q/A–37, Q/A–41, Q/A–46, Q/A–48, Q/A–51 through Q/A–97, and Q/A–99 through Q/A–104 of § 35a.9999–3; and

(d) Q/A–3 and Q/A–5 of § 35a.9999–4T.

Par. 18(a). Sections 35a.3406–1 and 35a.3406–2 are removed.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 19. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 20. Section 602.101(c) is amended by inserting the following in the appropriate place in the table "§ 31.3406 . . . 1545–0112 and 1545–0979".

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 90–22490 Filed 9–20–90; 10:53 am]

BILLING CODE 4830–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 59

[DoD Directive 7330.1]

Voluntary Military Pay Allotments

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: This document includes proposed changes to the existing rule on voluntary military pay allotments from the pay and allowances of active duty and retired service members. These changes were requested by the Military Departments. The intended purposes are to clarify, with examples, discretionary and nondiscretionary allotments; modify insurance allotments authorized to retirees; and delete allotments under 10 U.S.C. 1035.

DATES: Comments are requested by October 29, 1990.

ADDRESSES: Office of the Deputy Comptroller (Management Systems), room 3E825 the Pentagon, Washington, DC 20301–1100.

FOR FURTHER INFORMATION CONTACT: Mr. James T. Jasinski, telephone (202) 697–0536.

SUPPLEMENTARY INFORMATION: This reissuance includes several administrative changes and authorizes active duty service members to have six discretionary allotments for undefined purposes. Written comments may be submitted to the addressee above. All comments will be available for examination upon request.

The prior publication of this rule can be found on 52 FR 34215 of September 10, 1987. This action is not a major rule as defined by Executive Order 12291. The rule will not have an annual effect on the economy of $100 million or more; result is a major increase in the cost or prices for consumers, industries, State or local governments; or adversely effect competition, employment, investment, productivity or innovation. The rule is not subject to the provisions of the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, no Regulatory Flexibility Analysis was prepared.

Copies of other DoD publications referenced in this document may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

List of Subjects in 32 CFR Part 59

Military personnel, Wages.

Dated: September 7, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Accordingly, it is proposed that title 32 CFR, chapter I, be amended by revising part 59, to read as follows:

PART 59—VOLUNTARY MILITARY PAY ALLOTMENTS

Sec.
59.1 Purpose.
59.2 Applicability.
59.3 Policy.
59.4 Responsibilities.

Authority: 37 U.S.C. Ch. 13.

§ 59.1 Purpose.

This part updates the policies that implement title 37 of the United States Code, chapter 13, and govern voluntary allotments of pay and allowances for active duty (AD) and retired Service members.

§ 59.2 Applicability.

This part applies to the Office of the Secretary of Defense (OSD) and the Military Departments. The term "Military Services," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

§ 59.3 Policy.

(a) *General.* (1) The voluntary allotment system is provided primarily as a means to assist Service members in accommodating their personal and family financial responsibilities to the exigencies of military service. It is a convenience and privilege not to be exploited or abused. To avoid unjustifiable expense to the Government, that system's use shall be limited to the purposes in § 59.3 (a)(2) and (a)(3).

(2) All existing approved registered allotments of military pay and allowances for AD and retired Service members that were authorized previously by this part at the time registered may be continued as approved allotments. If any such allotments are discontinued, they may not be reestablished except as a new allotment in accordance with the requirements of this part. Any change in the allotment initiated by the Service member is considered a discontinuance, except those that are beyond the control of the Service member.

(3) Changes beyond the control of the Service member are administrative changes that are dictated by events incidental to the allotment. Examples of administrative changes that are beyond the control of the Service member are name and address changes by the payee or amount changes due to contractual obligation existing at the time the allotment was executed; i.e., a mortgage payment change because of a variable rate mortgage or changing escrow requirements. Although the changes in this paragraph (a)(3) do not constitute a discontinuance, such administrative changes that adjust the amount of the allotment shall be accepted only when communicated by the Service member on a new allotment request. Discontinuance occurs with any mortgage refinancing action.

(4) A change in allotment initiated by an organizational allottee may be accepted when the change is documented properly, is of an administrative nature, and does not increase the amount allotted.

(b) *Active military service.* Voluntary allotments of military pay and allowances of Service members in active Military Service shall be limited to the following:

(1) *Nondiscretionary allotments.* (i) The purchase of U.S. savings bonds.

(ii) The repayment of loans to the Navy Relief Society, Army Emergency Relief, Air Force Aid Society, and American Red Cross.

(iii) The voluntary liquidation of indebtedness to the United States, that includes the following:

(A) Indebtedness incurred by reason of defaulted notes insured by the Federal Housing Administration (FHA) or guaranteed by the Department of Veterans Affairs (VA).

(B) Payment of amounts due under the Retired Serviceman's Family Protection Plan, in the case of retired Service members serving on AD.

(C) Any other indebtedness to any Department or agency of the U.S. Government, except to the Department paying the Service member.

(D) Any repayment of debts owed to an organization for funds administered on behalf of the U.S. Government and any such debts assigned to a collection agency.

(iv) Charitable contributions to the following:

(A) A CFC, in accordance with DoD Directive 5035.1 [1] "Fund-Raising Within the Department of Defense," April 7, 1978, and DoD Instruction 5035.5 [2] "DoD Combined Federal Campaign-Overseas Areas (CFC–OA)," August 17, 1990.

(B) Army Emergency Relief, Navy Relief Society, or affiliates of the Air Force Assistance Fund.

(v) Allotments to the VA for deposit to the Post-Vietnam Era Veterans Education Account within the periodic and cumulative depository limitations specified in DoD Directive 1322.8,[3] "Voluntary Educational Programs for Military Personnel," July 23, 1987. Once authorized by the Service member, the allotments must run a minimum of 12 consecutive months, unless the Service member suspends participation or disenrolls from the program because of personal hardship.

(vi) Payment of delinquent State or local income or employment taxes.

(vii) Dental and health insurance allotments for the benefit of the families of Service members.

(2) *Discretionary allotments.* Service members are authorized no more than six purely discretionary allotments. The Service members shall certify that the allotment is within the limits of the law (i.e., allotments may not be used to repay gambling debts in a State where gambling is not permitted). Examples include, but are not restricted to, the following:

(i) Payment of commercial life insurance premiums.

(ii) Voluntary payment to a dependent.

(iii) Deposits to a financial institution, mutual fund company, or investment firm.

(iv) Payment of car insurance or loan.

(v) Payment of a personal loan.

(vi) Payment of mortgage or rent.

(c) *Retired military personnel.* (1) Voluntary allotments by Service members receiving retired or retainer pay shall be limited to the following:

(i) Purchases of U.S. savings bonds.

(ii) Payment of premiums to insurance companies for insurance on the life of the Service member.

(iii) Voluntary liquidation of indebtedness to the United States, subject to the limitations prescribed in § 59.3(b)(1)(iii).

(iv) Allotments to a spouse, former spouses, and/or children of the retired Service member having a permanent

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[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 59.3(b)(1)(iv)(A).

[3] See footnote 1 to § 59.3(b)(1)(iv)(A).

residence other than that of the retired Service member.

(v) Charitable contributions to the Army Emergency Relief, Navy Relief Society, or affiliates of the Air Force Assistance Fund.

(vi) The repayment of loans to the Army Emergency Relief, Navy Relief Society, Air Force Aid Society, or American Red Cross.

(2) To assist personnel in the transition from AD to retired status, all allotments authorized for AD Service members may be continued, except those allotments in § 59.3 (b)(1)(iv)(A), (b)(1)(v), and (b)(1)(vi). If an allotment continued from AD, but not authorized by § 59.3(c)(1), is discontinued by the retiree, such an allotment may not be reestablished.

(d) *Exclusions and restrictions.* (1) The amount of pay and allowances that may be allotted shall exclude amounts required to be withheld for taxes, liquidation of indebtedness determined under applicable provisions of law to be chargeable against the Service member's pay account, or required premiums on Servicemen's Group Life Insurance.

(2) The total amount that may be allotted shall comply with the restrictions in the DoD Military Pay and Allowances Entitlements Manual [4] and DoD 1340.12–M,[5] "DoD Military Retired Pay Manual," March 1987.

(e) *Control and use of forms.* (1) Allotment requests shall be accepted only on authorized allotment forms, unless otherwise provided for in this part. Supplies of allotment forms shall not be made available to non-Federal organizations, except that each Military Department may authorize issuance of forms to the Army Emergency Relief, Navy Relief Society, Air Force Aid Society, and American Red Cross.

(2) Retired military personnel need not submit allotment requests on the prescribed forms. For allotments authorized for retired military personnel in § 59.3(c)(1), a signed personal letter may be used to support an allotment request, change, or cancellation by retired Service members if all required information is provided. Additionally, initiation or changes to National Service Life Insurance premiums are accomplished in accordance with instructions issued by the VA. The VA provides the Military Department with written documentation to support the allotment.

[4] Contact Defense Logistics Agency, ATTN: DLA–X, Cameron Station, Alexandia, VA 22304 for copies.

[5] See footnote 4 to § 59.3(d)(2).

§ 59.4 Responsibilities.

(a) The Comptroller of the Department of Defense (C, DoD) shall exercise primary management responsibility for the voluntary military pay allotment program and provide assistance to the Military Departments in the form of instructions, requirements, reviews, and other guidance.

(b) The Secretaries of the Military Departments shall ensure that this part is implemented by the Military Services concerned and shall establish criteria limiting the allotments in § 59.3(b)(2) to those that are administratively cost-effective to establish and process.

[FR Doc. 90–22346 Filed 9–26–90; 8:45 am]
BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9E3789/P517; FRL–3797–3]

Pesticide Tolerance for 2-[1-(Ethoxyimino)Butyl]-5-[2-(Ethylthio)Propyl]-3-Hydroxy-2-Cyclohexene-1-One

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one (also called "sethoxydim") and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity sweet potato. The proposed regulation to establish a maximum permissible level for residues of the pesticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATES: Written comments, identified by the document control number [PP 9E3789/P517], must be received on or before October 29, 1990.

ADDRESSES: By mail, submit written comments to: Public Information Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document 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 not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (H-7505C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703-557-2310.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4, (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 9E3789 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Arkansas, Florida, Louisiana, North Carolina, Oklahoma, and South Carolina.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for residues of the herbicide 2-[1-(ethoxyimino)butyl]-5-[2-ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on the raw agricultural commodity sweet potato at 2.0 parts per million (ppm). The petition was later revised to propose a tolerance level of 4.0 ppm in or on sweet potato.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include:

1. A 1-year dog feeding study with a no-observed-effect level (NOEL) of 8.86/9.41 (male/female) milligrams (mg)/kilogram (kg)/day and a lowest-effect level (LEL) of 17.5 and 19.9 (male/female) mg/kg/day based on equivocal evidence of anemia.

2. A 2-year chronic feeding/oncogenicity study in rats with a NOEL for systemic effects at 18 mg/kg/day (highest dose tested). There were no carcinogenic effects observed under the conditions of the study at all dose levels tested (2, 6, and 18 mg/kg/day).

3. A mouse 2-year oncogenicity study with a systemic NOEL of 18 mg/kg/day and no carcinogenic potential observed under the conditions of the study at all dosage levels tested (0, 6, 18, 54, and 162 mg/kg/day).

4. A two-generation reproduction study in rats with a NOEL for reproductive effects at 54 mg/kg/day and a NOEL for systemic effects at 18 mg/kg/day.

5. A rabbit teratology study with a NOEL for developmental and maternal toxicity at 160 mg/kg/day and a lowest effect level for developmental effects of 480 mg/kg/day.

6. A teratology study in rats with a NOEL of 40 mg/kg/day for maternal toxicity and no observed developmental toxicity at 250 mg/kg/day (highest dose tested).

7. Mutagenicity studies including host-mediated assay (mouse with *S. typhimurium*, negative at 2.5 grams/kg/day) and recombinant assays and forward mutations in *B. subtilis*, *E. coli*, and *S. typhimurium* (all negative at concentrations of the chemical up to 100 percent).

The reference dose (Rfd), based on the 1-year dog feeding study (NOEL of 8.86 mg/kg/day) and using a hundredfold uncertainty factor, is calculated to be 0.09 mg/kg of body weight (bw)/day. The theoretical maximum residue contribution (TMRC) for existing uses, assuming residues at tolerance levels, is calculated to be 0.03155 mg/kg/day. The current action will increase the TMRC by 0.000156 mg/day. Published tolerances utilize 35 percent of the reference dose (RfD) for the overall U.S. population (71 percent of the RfD for the population subgroup for children 1 to 6 years of age); the current action will utilize less than 1 percent of the RfD.

The nature of the residue is adequately understood, and an adequate analytical method (gas chromatography using sulfur-specific flame photometric detection) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual (PAM), Vol. II. No secondary residues in meat, milk, or eggs are expected since sweet potatoes are not considered a livestock feed commodity. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered by the Agency, the tolerance established by amending 40 CFR 180.412 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 9E3789/P517]. All written comments filed in response to this petition will be available in the Public Information Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 27, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.412(a) is amended by adding and alphabetically inserting a tolerance for the raw agricultural commodity sweet potato, to read as follows:

§ 180.412 2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Sweet potato	4.0
* * * * *	

[FR Doc. 90-22908 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of Saltwater Crocodile Populations in Australia From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: In December, 1989, the U.S. Fish and Wildlife Service (Service) received information from the Australian National Parks and Wildlife Service in support of removing the captive populations of saltwater crocodile (*Crocodylus porosus*) in Australia from the U.S. Endangered Species list. The Service seeks additional comments on this proposal to reclassify all populations of saltwater crocodiles in Australia from endangered to threatened. In addition, a special rule is proposed to allow for the import of ranched specimens into the United States in the course of a commercial activity.

DATES: Comments from all interested parties must be received by December 26, 1990. Public hearing requests must be received by November 13, 1990.

ADDRESSES: Comments, information, and questions should be submitted to the Chief, Office of Scientific Authority; Mail Stop: Room 725, Arlington Square; U.S. Fish and Wildlife Service; Washington, DC 20240. Comments and other information received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. Monday through Friday, in Room 750,

4401 North Fairfax Drive, Arlington, Virginia, 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, at the above address (phone 703–358–1708 or FTS 921–1708).

SUPPLEMENTARY INFORMATION:

Background

The saltwater or estuarine crocodile (*Crocodylus porosus*) ranges from southwest India and along its eastern coast, throughout Southeast Asia and through the Pacific Islands as far west as Fiji and south to the northern coast of Australia. The majority of populations have been reported from the following countries: Australia, Papua New Guinea, Indonesia, the Philippines, Malaysia, Thailand, Burma, Bangladesh, India, Cambodia, Vietnam, and Sri Lanka. It is the largest crocodilian species reaching lengths well over 20 feet (7 meters). The species inhabits estuaries, mangrove swamps, and tidal reaches of rivers (IUCN 1975).

At the 1979 meeting of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the saltwater crocodile was transferred from Appendix II to Appendix I, except for populations in Papua New Guinea which were retained on Appendix II. On December 18, 1979 (44 FR 75074), the Service listed all saltwater crocodile populations outside of Papua New Guinea as endangered. Both these actions were taken because the species had suffered serious losses of habitat throughout most of its range and it had been subject to extensive poaching for its hide. At the 1985 meeting of the CITES Parties, the Australian population was transferred from Appendix I to Appendix II of CITES pursuant to resolution Conf. 3.15 (ranching), and the Indonesian population from Appendix I to Appendix II pursuant to Conf. 5.21 (subject to export quotas approved by the Parties).

This proposed rule, if made final, would reclassify saltwater crocodile populations in Australia from endangered to threatened and would revise 50 CFR 17.11(h) by recognizing both wild and ranched saltwater crocodiles in Australia as threatened. It would also amend 50 CFR 17.42 by adding a new paragraph (e) which would allow for the importation of specimens from ranching operations into the United States. Saltwater crocodiles in other countries, except the Papua New Guinea populations, would remain in the endangered status; data are insufficient to propose downlisting in the other range states.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth five criteria to be used in determining whether to add, reclassify, or remove a species from the list of endangered and threatened species. These factors and their applicability to populations of the saltwater crocodile in Australia are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The saltwater crocodile occupies a variety of tidal and non-tidal habitats across northern Australia from Maryborough on the Queensland east coast to Broome on the Western Australian west coast. The Northern Territory has more extensive areas of prime saltwater crocodile habitat than either Queensland or Western Australia (Bridgewater 1990). Exploitation of crocodiles in Australia began on a large scale in the late 1940's and extended into the early 1970's. During this time, populations in the rivers along the north coast were decimated with only small scattered populations remaining (King *et al.* 1979).

Export of saltwater crocodiles and their parts from Australia was prohibited in 1972. Today their habitats are largely intact across the whole of northern Australia and the species occupies the whole of their known historical range within the country. The species is protected in the three states where it occurs (the Northern Territory of Australia, Queensland and Western Australia), and management programs which allow limited utilization of wild stocks for ranching operations have been implemented by the states or territories in light of their increasing population size and threat to public safety.

According to Bridgewater (1990), the Northern Territory population of saltwater crocodiles has undergone a significant recovery since protection from hunting in 1972. Analysis of all available monitoring results from 1975 to 1987 show that the density of wild saltwater crocodiles in tidal rivers has tripled since surveying began. In 1984, Webb *et al.* (1989) estimated the total Northern Territory population of the saltwater crocodile to be at least 40,000 individuals and between 1984 and 1987, the monitoring results indicated that the tidal population increased by 16.5 percent. Assuming that the 16.5 percent increase can be applied to the population as a whole, the minimum estimate for 1989 would be 46,600 crocodiles in the Northern Territory.

Extensive helicopter surveys have been carried out in Cape York Peninsula, Queensland, across the entire range of habitat types present. Results of this large-scale helicopter survey of Cape York Peninsula, resulted in an actual sighting of some 2,400 animals. Actual population numbers are likely to be considerably higher. It is not possible to derive an estimate of absolute numbers for Queensland, but potential suitable habitats sampled yielded an average density index of 0.77 crocodile/km. Surveys in 1977–78 resulted in a population estimate of about 2,000 nonhatchlings for Western Australia. The population was resurveyed in 1986 and was estimated at 2,500 nonhatchlings. Although current population numbers are probably less than historic ones, and although crocodiles have not reoccupied all suitable habitat to carrying capacity, the Service believes that Australia's wild saltwater crocodile populations are no longer threatened with the possibility of extinction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Population estimates of the saltwater crocodile in Australia were not made prior to 1970. Overexploitation both for the skin trade and as vermin began in the late 1940's and did not subside until hunting was banned in 1972. The export of saltwater crocodiles and their parts from Australia was prohibited in 1972 by an amendment of the customs regulations. Many accessible populations had become seriously threatened with extinction. With the promulgation of state protection laws (Wildlife Conservation and Control Ordinance (1962)—Northern Territories; the Fauna Conservation Act (1974)—Queensland; and the Wildlife Conservation Act (1950)—Western Australia), the populations showed an immediate response to this protection and have tripled in numbers since surveying began in the late 1970's.

At the 1985 meeting of the Parties, the Australian population was transferred from Appendix I to Appendix II of CITES, pursuant to resolution Conf. 3.15 on ranching. The transfer was recommended by the Australian Council of Nature Conservation Ministers and the International Union for Conservation of Nature and Natural Resources' Crocodile Specialist Group. The Australian CITES proposal to transfer the Australian population of saltwater crocodile to Appendix II was

based on a series of experimental egg harvests and quantification of the impacts of those harvests. The strategy relies on maximized egg harvests in a given area and no discernible impact has been detected on the number of crocodiles in subsequent age classes due to this egg harvest. Approval to harvest eggs incorporates a commitment that if any decline in the wild population occurred, a large number of one-year old crocodiles would be returned to the wild than would have survived had no eggs or hatchlings been removed from the wild.

As of June 30, 1989, the population on ranches in the Northern Territory was 10,374 animals with an additional 9,000 animals on ranches in Queensland and Western Australia. However, because specimens raised under these ranching provisions are removed from the wild and self sustaining captive populations are not achieved, they cannot be considered to be separate populations. Some ranches also raise young produced from captive animals, but it is not practical to consider them differently from the wild populations. In addition, nuisance animals when captured under permit (by state or territory authorities) are placed on the ranches and, if not required for captive breeding, can be harvested after one year. This time period is specifically required by federal regulation so as to remove the incentive for purposefully capturing wild specimens for use in the trade.

C. *Disease or predation.* None known at this time.

D. *The inadequacy of existing regulatory mechanisms.* As previously noted, the saltwater crocodile is protected by a series of wildlife acts in the three states in Australia where it occurs and exports are controlled by Australia's Wildlife Protection Act of 1982. In Australia, responsibility for management of native wildlife is vested with the state and territorial governments. The saltwater crocodile was recognized as a valuable resource and laws and regulations were introduced to prevent overexploitation of these animals. Since the ban on hunting in 1972, saltwater crocodile populations have undergone substantial increases in number. State wildlife laws govern the take, possession, and trade in saltwater crocodiles. Also, the Commonwealth Wildlife Protection Act of 1982, administered by Australian National Parks and Wildlife Service, protects wildlife that would be threatened by continuation of unregulated export trade. The substantial increase in the maximum penalties for attempting to export saltwater crocodile skins (increased from $1,000 to up to $200,000) is an effective deterrent to illegal export from Australia. In addition to internal legislation and policies regulating take within Australia, export of saltwater crocodiles is regulated by CITES of which Australia is a Party member. Regulation of take has been a factor in the continuous improvement of Australia's wild saltwater crocodile populations since the early 1970's. This significant improvement has prompted the Service to propose this reclassification.

E. *Other natural or manmade factors affecting its continued existence.* In Australia, a comprehensive system of nature conservation reserves has been developed, so that approximately 40 million hectares of all habitats throughout Australia or 5.3 percent of the total land surface is reserved under different categories. Parks, reserves, and sanctuaries in Northern Australia provide a mosaic of secure areas in which crocodiles and their habitats are protected. In addition, nearly 37 million hectares are protected under various marine and estuarine protected area categories (both State and National).

The Service has carefully assessed the best biological and status information regarding the past, present, and future threats faced by the species in proposing this rule.

Based on this evaluation, the preferred action is to reclassify Australia's saltwater crocodile populations from endangered to threatened. Criteria for reclassification of a threatened or endangered species, found in 50 CFR 424.11(d); include extinction, recovery of the species, or error in the original data for reclassification. This proposed rule is based upon data that Australia's populations of saltwater crocodiles have made a remarkable recovery and are no longer in danger of possible extinction. However, other populations throughout the species range are still threatened, to varying degrees, by taking. Identification of skins and products from crocodile ranching operations in Australia will ensure that illegal skins or products do not enter into commercial trade.

In light of increasing populations, little poaching, strict regulation, and ranching provisions, previous threats to the existence of the saltwater crocodile in Australia have been removed. Therefore, the Service believes that reclassification to threatened reflects the current status of populations in Australia.

Effects of This Rule Including the Proposed Special Rule

If this proposed rule is made final, it would change the status of populations of the saltwater crocodile in Australia from endangered to threatened; therefore, all populations (including wild and ranched) of saltwater crocodiles in Australia would be treated as threatened. By allowing the export of ranched animals and their parts and products (including meat), an incentive is created for captive production that in turn provides a safeguard against future population declines, since ranched animals would be available for restocking programs. Restocking at rates greater than natural reproduction rates is required under ranching provisions if a population decline occurs among populations from which eggs and hatchlings are being collected. The conservation program for saltwater crocodiles in Australia seeks to encourage the maintenance and management of habitats based on the commercial value of high quality skins. Sustained regulated international trade in products derived from approved ranching programs and identified accordingly, is thus an essential feature of programs based on commercial ranching.

Skins derived from saltwater crocodiles ranched or bred in captivity in Australia are currently exported to Europe (France) and Asia (Japan). Access to markets in the United States would substantially assist in the viability of ranching in Australia, and extend its potential beneficial influence to wild populations available for, but not presently subject to this form of management (annual egg and/or hatchling harvests).

Export of ranched saltwater crocodile skins or products (including flesh) to the United States will increase the range of markets available for the Australian products. This will reduce the potential that a restricted market may have in manipulating and destabilizing the maximum value of skins. Achieving a diverse export market will maintain the economic basis of crocodile ranching and the incentive for investment by Government and the private sector in commercial ranching as a viable strategy for the long-term management and conservation of saltwater crocodiles in Australia.

Those regulations specifically pertaining to threatened species (50 CFR 17.21 and 17.31) apply. A special rule included with this proposed rule would amend 50 CFR 17.42 to allow for the importation of live specimens, whole or

partial skins and products (including meat) that originate from ranches in Australia without an endangered species permit for individual shipments otherwise required by 50 CFR part 17.

However, this rule would impose a marking scheme for all parts and products that would enable detection of any illegal products in trade. In addition, all requirements of CITES (50 CFR part 23), including proper export or re-export documents with respect to Appendix II species, as well as the laws of Australia, must be met prior to allowing the importation of ranched specimens (live, partial or whole skins, flesh, and finished products) into the United States. Moreover, the importation of skins or products would not be permitted from a country that has taken a reservation on the saltwater crocodile (presently only Singapore), even though the skins or products may have originated in Australia. Furthermore, this proposed rule will not change the status or protection given to other saltwater crocodile populations that occur outside of Australia.

Public Comments Solicited

The Service intends that any action resulting from this proposal is accurate and is as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, the trade industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments are particularly sought concerning biological or commercial trade impacts on any other crocodilian populations, or other relevant data concerning any threat (or lack thereof) to the wild populations of saltwater crocodiles in Australia.

Final promulgation of the regulation on Australian populations of saltwater crocodiles will take into consideration the comments and any additional information received by the Service. Such communications may lead to adoption of final regulations that differ from those in the proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. All requests must be filed within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the Office of Scientific Authority (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the Authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** (48 FR 49244) on October 29, 1983.

Literature Cited

International Union for Convervation of Nature and Natural Resources. 1975. *Red Data Book, Amphibia and Reptilia.* Morges, Switzerland.

King, F.W., H.W. Campbell, H. Messel, and R. Whitaker, 1979. Review of the status of the estuarine or saltwater crocodile, *Crocodylus porosus.* Unpub. Report. 33 pp.

Bridgewater, P. 1990. Evidence in support of a proposed petition by Australia to the U.S. Fish and Wildlife Service to remove captive populations of the saltwater crocodile *Crocodylus porosus* in Australia from the Endangered Species List under the U.S. Endangered Species Act of 1973. 39 pp. + references.

Webb, G.J.W., M.L. Dillon, G.E. McLean, S.C. Manolis, and B. Ottley, 1989. Monitoring the recovery of the saltwater crocodile (*Crocodylus porosus*) population in the Northern Territory of Australia. *In:* Proceedings of the 9th working meeting of the Crocodile Specialist Croup of the Species Survival Commission of the International Union for Conservation of Nature and Natural Resources. October, 1988. Lae, Papua New Guinea.

Author

The primary author of this proposed rule is Dr. Richard M. Mitchell, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708 or FTS 921–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C.1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the entry for "Crocodile, saltwater (=estuarine)" under "Reptiles" on the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Crocodile, saltwater (=estuarine).	*Crocodylus porosus*	Southeast Asia, Australia, Papua-New Guinea, Pacific Islands.	Entire, except Papua-New Guinea and Australia.	E	87,___	NA	NA
Do	...do	...do	Australia	T	87,___	NA	17.42(e)

3. Section 17.42 is amended by adding a new paragraph (e), as follows.

§ 17.42 Special rules—reptiles.

* * * * *

(e) Saltwater crocodile (*Crocodylus porosus*)—(1) Except as noted in paragraph (e)(2) of this Section, all prohibitions of § 17.31 shall apply to saltwater crocodiles (*Crocodylus porosus*).

(2) Ranched saltwater crocodiles in Australia, consisting of live animals, partial or whole skins, flesh, or finished products may be imported into the United States provided:

(i) Specimens are tagged or otherwise identified as removed from ranches in accordance with the laws of Australia and in compliance with requirements of CITES for Appendix II species (50 CFR part 23),

(ii) The first receiving country must be a CITES member who regularly files annual trade reports with the CITES Secretariat,

(iii) Export documentation from Australia is sufficiently detailed and

accurate so that export and import records can be used to detect illegal trade,

(iv) The specimens are imported into the United States directly, or, if reexported from a third party into the United States, that country is a member of CITES, has not taken a reservation on saltwater crocodiles, and the specimens were traded in accordance with the requirements of Australian laws and CITES requirements,

(v) The requirements of 50 CFR parts 14 and 23 are complied with.

(3) Unlawfully imported saltwater crocodiles. It shall be unlawful in the course of a commercial activity, to deliver, receive, carry, transport, or ship in interstate or foreign commerce any such wildlife imported unlawfully.

Dated: August 24, 1990.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 90-22884 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 644

[Docket No. 900823-0223]

RIN 0648-AC87

Atlantic Billfishes

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to amend the regulations implementing the Fishery Management Plan for Atlantic Billfishes (FMP). This rule would (1) Broaden the definition of "dealer" to include any person, other than the consumer, who receives a billfish by way of purchase, barter, or trade, (2) require documentation of origin for related species of billfish for the limited purpose of ascertaining the eligibility for sale of a billfish possessed by a dealer or processor, (3) clarify the scope of the regulations in the broadest terms consistent with the FMP, (4) prohibit the removal at sea of the head, fins, or bill from a billfish, and (5) prohibit offering for sale a billfish harvested from its management unit. The intended effects of this rule are to ensure that a billfish harvested from its management unit is not purchased, bartered, traded, or sold in any state, to express clearly the intent of the FMP, to enhance enforceability of the regulations, and to clarify the regulations.

DATES: Written comments must be received on or before October 26, 1990.

ADDRESSES: Comments on the proposed rule should be sent to Rodney Co. Dalton, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Comments on the information collection requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA.

FOR FURTHER INFORMATION CONTACT: Rodney C. Dalton, 813-893-3722.

SUPPLEMENTARY INFORMATION: The billfish fishery is managed under the FMP, prepared jointly by the South Atlantic, New England, Mid-Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils (Councils). Regulations implementing the FMP are promulgated at 50 CFR part 644, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Section 644.24 of the regulations prohibits the purchase, barter, trade, or sale in any state of a billfish (i.e., white and blue marlin, sailfish, and longbill spearfish) harvested from its management unit (specific areas of the Atlantic Ocean as defined at 50 CFR 644.2). In support of that prohibition, documentation that a billfish was harvested from outside its management unit is required for all billfish possessed by a seafood dealer or processor, except for a billfish landed in a Pacific state and remaining in the state of landing. This documentation of origin is intended to ensure that a billfish harvested from its management unit is not sold.

In their market form (i.e., headed, gutted, and fins removed), the four billfish species are indistinguishable from related species such as black marlin, striped marlin, and shortbill spearfish (exclusively or nearly exclusively Pacific Ocean species). The documentation of origin requirement does not apply presently to these related species. Accordingly, it is possible for a dealer to buy, illegally, a billfish harvested from its management unit and claim the fish is one of the related species not subject to the documentation of origin requirement. To resolve this regulatory deficiency, and to ensure enforceability of the prohibition on sale of a billfish harvested from its management unit, it is necessary and appropriate to require the documentation of origin for the related species (i.e., specifically for black marlin, striped marlin, and shortbill spearfish). To ensure the maximum enforceability of this added documentation of origin requirement, a black marlin, striped marlin, or shortbill spearfish possessed by a U.S. seafood dealer or processor (except those fish landed in a Pacific state and remaining in that state) will be presumed illegal unless accompanied by documentation showing that it is one of the three related species harvested from other than the Atlantic Ocean.

It is clear that the Councils intended that the FMP's original documentation of origin requirement apply to the related species. Billfish imports from Ecuador, significantly if not predominately black marlin and striped marlin, were known to account for 99.4 percent of the total billfish imports in 1987. The original estimate of the reporting burdens associated with the approved collection of information requirement for the documentation of origin included the imports from Ecuador. Accordingly, this proposed rule clearly carries out the intent of the FMP.

To ensure that a billfish harvested from its management unit is not sold in any state, it is essential that the documentation of origin required by 50 CFR 644.24(b) accompany both the regulated and related billfish species from the points of importation into the U.S. to their final destinations. The definition of "dealer" at 50 CFR 620.2 presently is not adequate to meet this requirement because "dealer" is confined to "the person who *first* receives fish by way of purchase, barter, or trade" (emphasis added). Accordingly, this rule would broaden the definition of "dealer" applicable to 50 CFR part 644 to include any person, other than the consumer, who receives billfish by way of purchase, barter, or trade.

This proposed rule would also modify the purpose and scope section (50 CFR 644.1) to express the scope of the regulations in the broadest possible terms consistent with the FMP. The public is better served by a general expression of scope in this section, with the specific scope of each major provision or management measure stated within that provision or measure. This approach minimizes the possibility of misleading fishermen, dealers, and processors as to the overall scope of part 644. Accordingly, a specification of regulatory scope for the measures concerning size limits and fish release procedures is added to 50 CFR 644.21 (a) and (b).

Some fishermen are removing a billfish's head, fins, and bill at sea in order to avoid the size limits and/or the

prohibition on sale. This proposed rule would prohibit such practice, thereby enhancing enforcement of both the size limits and the prohibition on sale.

To enhance enforcement, this proposed rule would prohibit offering for sale a billfish harvested from its management unit, in addition to the current prohibitions on purchase, barter, trade, or sale of such billfish. Enforcement of the no-sale provision for a billfish harvested from its management unit has been unnecessarily limited in some instances. Some billfish legally harvested from their management units and landed and held in an Atlantic, Gulf of Mexico, or Caribbean coastal state are being offered for sale. The current language of the prohibition regarding sale of such billfish (50 CFR 644.7(e)) requires consummation of sale before a violation of the regulations can be established.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that rule is necessary for the conservation and management of the Atlantic billfish fishery and that it is consistent with the Magnuson Act and other applicable law.

This rule would not result in a significant change in the original environmental impact statement for the FMP and, thus, is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographical regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small business entities. The broadened definition of "dealer" and the addition of related species to the list of species for which documentation of origin is required will increase both the number of dealers required to have the documentation of origin and the occasions for such documentation. Nevertheless, both the number of dealers affected and the occasions for documentation remain miniscule in comparison to the vast number of dealers and processors in the U.S. or to the number who import fish. In 1987, imported billfish and related species constituted less than 1/10 of one percent of all edible fishery products imported into the U.S. Further, the addition of dealers required to have documentation of origin will not have a significant economic impact because the documentation, once obtained by the first dealer, can be passed to subsequent dealers. The prohibition on removal at sea of the head, fins, or bill from a billfish affect only those few fishermen who have been attempting to avoid the size and/or no-sale provisions of the regulations. Such removals have not been a customary practice in the fishery. As significant impacts on a substantial number of small business entities are not expected, a regulatory flexibility analysis was not prepared.

In the final rule implementing the FMP, NOAA concluded that, to the maximum extent practicable, the FMP is consistent with the coastal zone management programs of the adjoining states that have coastal zone management programs. Because this rule does not directly affect the coastal zone in a manner not already fully evaluated in the FMP and by the earlier consistency determination, a new consistency determination is not required.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

This proposed rule would revise an existing collection of information requirement subject to the Paperwork Reduction Act which was previously approved by the Office or Management and Budget (OMB Control Number 0648–0216). A request to revise the requirement has been submitted to the Office of Management and Budget for approval. The revision would add species for which documentation of origin is required and increase the number of dealers required to maintain the documentation. The public reporting burden for the existing collection of information was estimated to average 20 minutes 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. The proposed revision would not change that estimate for the initial documentation of origin. The increased public reporting burden for additions to that documentation by dealers subsequently possessing the billfish is estimated to average 2 minutes 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 on the reporting burden estimate or any other aspect of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 644

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 21, 1990.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 644 is proposed to be amended as follows:

PART 644—ATLANTIC BILLFISHES

1. The authority citation for part 644 continues to read as follows:.

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 644.1, paragraph (b) is revised to read as follows:

§ 644.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of billfish off the Atlantic, Gulf of Mexico, and Caribbean coastal states, and regulates the possession or sale in any state of a billfish harvested from it management unit.

3. In § 644.2, new definitions for *Dealer, Related species,* and *EEZ* are added in alphabetical order to read as follows:

§ 644.2 Definitions.

* * * * *

Dealer, for the purposes of this part 644, means a person, other than the consumer, who receives fish by way of purchase, barter, or trade.

* * * * *

EEZ, for the purposes of this part 644, means the EEZ, as defined at 50 CFR 620.2, in the Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea.

* * * * *

Related species means black marlin, *Makaira indica;* striped marlin, *Tetrapturus audax;* or shortbill spearfish, *Tetrapturus angustirostris.*

* * * * *

4. In § 644.7, paragraphs (d) through (h) are redesignated as paragraphs (e)

through (i); a new paragraph (d) is added; and newly redesignated paragraphs (f) and (h) are revised to read as follows:

§ 644.7 Prohibitions.

* * * * *

(d) Possess a billfish with its head, fins, or bill removed within the EEZ or through landing as specified in § 644.21(c).

* * * * *

(f) Purchase, barter, trade, sell, or offer for sale a billfish harvested from its management unit, as specified in § 644.24(a).

* * * * *

(h) As a dealer or seafood processor, possess a billfish or related species without the documentation, or with incomplete or falsified documentation, specified in § 644.24(b).

* * * * *

5. In § 644.21, paragraph (c) is redesignated as paragraph (d); the introductory text of paragraph (a) is revised; paragraph (b) is revised; and new paragraph (c) is added to read as follows:

§ 644.21 Size limits.

(a) The following minimum size limits, expressed in terms of lower jaw-fork length (LJFL), apply for the possession of billfish shoreward of the outer boundary of the EEZ, regardless of where caught:

* * * * *

(b) A billfish under the minimum size limit caught shoreward of the outer boundary of the EEZ must be released by cutting the line near the hook without removing the fish from the water.

(c) A billfish possessed aboard a fishing vessel shoreward of the outer boundary of the EEZ must have its head, fins, and bill intact, and a billfish landed from a fishing vessel in an Atlantic, Gulf of Mexico, or Caribbean coastal state must have its head, fins, and bill intact through landing. Such billfish may be eviscerated but must otherwise be maintained in a whole condition.

* * * * *

6. In § 644.24, the introductory text of paragraph (b) is revised and paragraphs (b)(2) through (b)(4) are revised to read as follows:

§ 644.24 Restrictions on sale.

* * * * *

(b) Except for a billfish or related species landed in a Pacific state and remaining in the state of landing, a billfish or related species that is possessed by a seafood dealer or processor will be presumed to be a billfish harvested from its management unit unless it is accompanied by documentation that the billfish was harvested from outside its management unit or the related species was harvested from other than the Atlantic Ocean. Such documentation must contain:

(1) * * *

(2) The name and home port of the vessel harvesting the billfish or related species;

(3) The port and date of offloading from the vessel harvesting the billfish or related species; and

(4) A statement signed by the dealer attesting that each billfish was harvested from an area other than its management unit and each related species was harvested from other than the Atlantic Ocean.

[FR Doc. 90-22845 Filed 9-26-90; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 55, No. 188
Thursday, September 27, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

September 21, 1990.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Public Law 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Extension

- Agriculture Stabilization and Conservation Service.

7 CFR part 760, Indemnity Payment Programs; Dairy Indemnity Payment Program.
ASCS–373.
Monthly.
Farms; Business or other for-profit; 480 responses; 240 hours; not applicable under 3504(h).
Clarence Domire, (202) 447–7673.

New Collection

- Agriculture Stabilization and Conservation Service.

ASCS County Office Evaluation Questionnaire.
ASCS–95.
On occasion.
Farms; 10,000 responses; 830 hours; not applicable under 3504(h).
Jim Hallet, (202) 475–5715.

Reinstatement

- Forest Service.

Fee Calculation for Concession Permits, Reconciliation of Sales and Gross Fixed Assets.
FS–2700, FS2700–8, FS2700–19.
Annually.
State or local governments; business or other for-profit; small businesses or organizations; 300 responses; 750 hours; not applicable under 3504(h).
Linda F. Washington, (703) 235–8459.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 90–22883 Filed 9–26–90; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

National Arboretum Advisory Council Renewal of Advisory Council

The Department of Agriculture has renewed the National Arboretum Advisory Council for a 2-year period. The Council was last renewed March 8, 1988.

The purpose of the Council is to provide the Secretary of Agriculture with an independent overview of the work of the Arboretum by a body of qualified individuals who represent national organizations. The National Arboretum was created by Act of Congress (Pub. L. 799, 69th Congress, 20 U.S.C. 191–194) on March 4, 1927, for purposes of research and education concerning tree and plant life.

The Council meets annually at the National Arboretum in Washington, DC, to receive reports from the Arboretum staff on research progress with trees and environmental plants, educational activities, site development, and long-range goals. The Council's findings are reported in writing to the Secretary of Agriculture.

The Secretary has determined that the renewal of this Council would be in the public interest in connection with the work of the U.S. Department of Agriculture.

Done at Washington, DC, this 21st day of September 1990.

Adis M. Vila,

Assistant Secretary for Administration.

[FR Doc. 90–22900 Filed 9–26–90; 8:45 am]

BILLING CODE 3410–03–M

Soil Conservation Service

Little Red River Watershed, AR; Enviromental Impact Statement

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Guidelines (40 CFR part 1500), and the Soil Conservation Service Guidelines (7 CFR part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Little Red River Watershed, White County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Gene Sullivan, State Conservationist, Soil Conservation Service, 5404 Federal Office Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, Telephone: (501) 378–5445.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Gene Sullivan, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project concerns a plan for increased availability for both ground and surface water within the hydrologic boundary of the 80,681 acre watershed. The plan includes the installation of on-farm irrigation systems. Systems will include one or more land treatment best management practices (BMP's) which will improve irrigation efficiency from 40 percent to 75 percent based on normal year condition. The recommended plan provides an adequate supply of

irrigation water to 34,400 acres of cropland.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Gene Sullivan.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: September 19, 1990.

Ronnie D. Murphy,

Deputy State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

[FR Doc. 90-22862 Filed 9-26-90; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-437-601]

Preliminary Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In response to requests by both the petitioner, The Timken Company, and an importer, Marsuda-Rogers International, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (TRBs), from the Republic of Hungary (Hungary). This review covers one manufacturer/exporter of this merchandise to the United States, and the period June 1, 1988 through May 31, 1989. We preliminarily determine the dumping margin to be 0.91 percent. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Mary Jenkins, or Mary S. Clapp, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-8371, 377-1756, or 377-3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 22, 1990, the Department published in the Federal Register (55 FR 21066) the final results of its last administrative review of the antidumping duty order on TRBs from Hungary (52 FR 23319, June 19, 1987). The petitioner, The Timken Company, and an importer, Marsuda-Rogers International, requested that we conduct an administrative review in accordance with § 353.22(a) of the Department's regulations. We published a notice of initiation of this antidumping duty administrative review on July 25, 1989 (54 FR 30915). The Department is conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

On April 3, 1990, the Court of International Trade (CIT) affirmed a remanded determination by the ITC that the U.S. industry was neither materially injured nor threatened with such injury from import of TRBs from Hungary. *Marsuda-Rogers* v. *United States* , Court No. 87-07-00772, Slip Op. 90-35 (April 3, 1990). In accordance with the decision of the Court of Appeals for the Federal Circuit (CAFC) in *Timken Company* v. *United States*, Slip. Op. 89-1489 (January 4, 1990), the Department published a notice that the *Marsuda-Rogers* decision is not in harmony with the Department's determination, (55 FR 14990, April 20, 1990). The Department will not instruct the U.S. Customs Service to lift the suspension of liquidation of entries entered, or withdrawn from warehouse, for consumption on or after April 13, 1990, before there is a conclusive court decision in this lawsuit.

Scope of Review

Imports covered by this review are shipments of TRBs from Hungary. During the review period such merchandise was classifiable under items 680.30, 680.39, 681.10, and 692.32 of the Tariff Schedules of the United States. This merchandise is currently classifiable under HTS item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.80. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer/exporter of Hungarian TRBs and the period June 1, 1988 through May 31, 1989.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Act. Purchase price was based on either the FOB Hamburg port price to unrelated purchasers or the ex-factory price to unrelated purchasers. With respect to FOB Hamburg sales, we made deductions for foreign inland freight and brokerage and handling charges. We valued the inland freight deductions using surrogate data based on Portuguese freight costs. We selected Portugal as the surrogate country for the reasons explained in the Foreign Market Value section of this notice. Deductions for brokerage and handling were based on the charges paid by the Hungarian producer, Magyar Gordulocsapagy Muvek (MGM), in freely convertible currency to a West German freight forwarder. We have used market-economy data where provided.

Foreign Market Value

We have concluded that Hungary is a non-market-economy country for purposes of this administrative review. Given that this review was initiated subsequent to the effective date of section 1316 of the Omnibus Trade and Competitiveness Act of 1988 (1988 Act), section 773(c) of the Act requires us to use the constructed value based on the valuation of factors of production or prices of such or similar merchandise in a market economy country as the basis for determining foreign market value. The Act further provides that the Secretary will value the factors of production in a market economy country which is comparable in terms of economic development to the non-market country.

We used the factors of production valued in a comparable economy as the basis for determining foreign market value. We calculated constructed value based on the factors of production reported by MGM, except as described below. MGM accounts for all Hungarian exports to the United States of the subject merchandise.

Where possible, we valued the factors on the basis of prices paid by MGM to market-economy suppliers. Where market-economy prices were not provided, we obtained information for valuing the factors of production from publicly available sources in a market economy. We chose Portugal as the

surrogate for valuing the factors of production because we were able to obtain more complete publicly available data pertaining to Portugal than for other potential surrogate countries with comparable economies.

The material costs for each component were determined by multiplying the gross weight of steel by the steel unit price less the salable scrap value. The scrap factor was adjusted to reflect only that portion considered salable; thus, the portion considered as waste is included in the cost of materials. The respondent did not identify waste and miscalculated the cost of materials by adding the scrap value to the net value of steel.

We valued the factors of production as follows:

- Certain raw material costs were valued based on MGM's imports of steel products from market economies which were paid for in freely convertible currency. We used market-economy values where provided.
- In the absence of market-economy prices charged to MGM, we determined that it was reasonable to value other raw material inputs using EUROSTAT data in the surrogate country. Given that Portugal does not have the capacity to produce the bearing quality steel rods that are used to produce TRBs, we used EUROSTAT Portuguese import data to value these types of steel. However, given that Portugal does produce the quality of steel strips used in the production of Hungarian TRBs, we used EUROSTAT Portuguese export data to value this type of steel.
- We valued steel scrap, factory overhead, and inland freight using information supplied by the American Embassy in Lisbon. The information provided by the Embassy reflected the cost a producer of TRBs would incur in Portugal.
- We valued labor using Portuguese labor rate data obtained from the U.S. Bureau of Labor Statistics. We used the OECD Main Economic Indicators Labor Wage Index to adjust the labor rate to coincide with the period of review. This rate is representative of actual labor rates in Portugal for all categories of labor workers.
- We used the OECD Main Economic Indicators Consumer Price Index to adjust factor values drawn from periods outside the review period. In the absence of data coinciding precisely with the review period, we determined that such adjustments would provide data representative of the period of review.
- We used the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses.
- We used the statutory minimum of eight percent of material and fabrication costs plus general expenses for profit.
- Consistent with our valuation of packing in the *Final Determinations of Sales at Less than Fair Value: TRBs from the Hungarian People's Republic, 52 FR 17428 (May 8, 1989), TRBs from the Socialist Republic of Romania,* 52 FR 17433 (May 8, 1989), *TRBs from the People's Republic of China,* 52 FR 19748 (May 27, 1987), the value for packing was based on publicly available data contained in the public file at the fair value investigation of *TRBs from Italy,* 52 FR 24198 (June 29, 1987).

Preliminary Results of the Review

As a result of our review, we preliminarily determine the margin to be:

Manufacturer/ exporter	Time period	Margin (percent)
Magyar Gordulocsopagy Muvek	6/1/88–5/31/89	0.91

The Department will issue appraisement instructions concerning MGM directly to the Customs Service.

Furthermore, the cash deposit rate for MGM or any other producer or exporter of Hungarian TRBs will be that established in the final results of this administrative review. This deposit requirement will be effective upon publication of the final results of this administrative review for all shipments of Hungarian TRBs entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act. This deposit requirement, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

In accordance with § 353.38 of the Department's regulations, case briefs or any other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration on or before October 11, 1990, and rebuttal briefs not later than October 18, 1990. In accordance with § 353.38(b) of the Department's regulations, we will hold a public hearing, if requested, on October 22, in room 3708 in the main Commerce Building, at 10 a.m., to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, room B–099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address and telephone number, (2) the reasons for attending, (3) a list of the issues to be discussed, and (4) the number of participants.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 353.22(c)(5) of the Department's regulations (19 CFR 353.22(c)(5) (1989)).

Dated: September 20, 1990.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90–22873 Filed 9–26–90; 8:45 am]

BILLING CODE 3510–DS–M

[C–201–009]

Iron-Metal Construction Castings From Mexico; Final Results of Changed Circumstances Countervailing Duty Administrative Review and Revocation of Countervailing Duty Order

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

ACTION: Notice of final results of changed circumstances countervailing duty administrative review and revocation of countervailing duty order.

SUMMARY: On August 7, 1990, the Department of Commerce published the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on iron-metal construction castings from Mexico. We have now completed that review and determine to revoke the countervailing duty order effective August 24, 1986.

EFFECTIVE DATE: September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Paul McGarr, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 7, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 28797) the preliminary results of its changed circumstances administrative review and intent to revoke the countervailing duty order on iron-metal construction castings from Mexico (48 FR 8834; March 2, 1983). The Department has now completed that review in accordance

with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Mexican iron-metal construction castings (castings), including manhole covers, rings and frames, cleanout covers and grates, meter boxes and valve boxes. These castings are commonly called municipal or public works castings. During the review period, such merchandise was classifiable under items 657.0950, 657.0990, 657.2540 and 657.2550 of the *Tariff Schedules of the United States Annotated* (TSUSA). This merchandise is currently classifiable under item numbers 7325.10.0010 and 7325.10.0050 of the *Harmonized Tariff Schedule* (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and intent to revoke. We received no comments.

Final Results of Review and Revocation

As a result of our changed circumstances administrative review, we are revoking the countervailing duty order on iron-metal construction castings from Mexico. The effective date of revocation is August 24, 1986.

Therefore, the Department will instruct the Customs Service to terminate the suspension of liquidation requirement and refund any cash deposits of estimated countervailing duties made on any shipment of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 24, 1986.

Further, as a consequence of this revocation, the administrative review of calendar year 1987, initiated on April 27, 1988 (53 FR 15084) is terminated. Entries of this merchandise exported on or after January 1, 1986 and entered, or withdrawn from warehouse, for consumption on or before August 23, 1986 are still subject to countervailing duties, and the administrative review initiated on April 22, 1987 (52 FR 13268) (preliminary results of the review published July 13, 1990 (55 FR 28797)) will proceed.

This changed circumstances administrative review, revocation and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b) and (c)) and 19 CFR 355.22 and 355.25.

Dated: September 19, 1990.

Marjorie A. Cherlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 90-22874 Filed 9-26-90; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered Species: Application for Permit: Steve W. Ross and Dr. Mary L. Moser (PA23A)

Notice is hereby given that an Applicant has filed in due form for a Permit to take endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered firsh and wildlife permits (50 CFR parts 217–222).

APPLICANT: Steve W. Ross, Dr. Mary L. Moser, BSEP Biology Laboratory, Box 10429, Southport, NC 28461.

TYPE OF PERMIT: Scientific Research.

NAME: Shortnose sturgeon (*Acipenser brevirostrum*).

TYPE OF TAKE AND NUMBERS: Up to forty (40) shortnose sturgeon will be collected using bottom-set, large-meshed gill nets (10.2–20.3 cm stretch mesh). All fish will be weighed, measured and tagged in the dorsal caudal fin with a Petersen disc tag. Up to ten (10) of the forty will be tagged internally with ultrasonci transmitters for tracking.

LOCATION AND DURATION OF ACTIVITY: Cape Fear and Brunswick Rivers, North Carolina from October 1, 1990 to December 31, 1992.

Written data or views or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the apecific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources, National marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, Maryland 20910 (301/427–2289);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141); and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, massachusetts 01930 (508/281–9200).

Dated: September 20, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90-22812 filed 9-26-90; 8:45 am]

BILLING CODE 3510-22-M

Permits; Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, DOC.

ACTION: Modification No. 1 to Permit No. 685 (P450).

Notice is hereby given that pursuant to the provisions of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361–1407) and §§ 216.33(d) and (2) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Scientific Research Permit No. 685 issued to Paul K. Dayton and Timothy J. Ragen, Scripps Institution of Oceanography, University of California (San Diego), on October 5, 1989 (54 FR 42321) is modified as follows:

Section A.2. is revised to read

2. 140 pups and 10 adult females may be taken, restrained, attached with radio-transmitters and released. This second year of study will allow the Permit Holder to verify the first year's results. Additional monitoring will include monitoring from a vessel and from a fixed-wing aircraft. The study will be restricted to pups in the weight range of >15 kg. All transmitters will be attached to the animal's backs. Up to 2000 animals of both sexes and ages may be incidentally harassed during the course of activities on rookeries of St. Paul Island of the Pribilof Islands in the Bering Sea for a period of one year.

Add to Special Condition B.1:

B.1 . . . , and modification request dated April 27, 1990.

Add to Special Condition B.3:

B.3 . . . Padded noose poles shall be used in order to prevent the animals from sustaining broken teeth as a result of biting the noose poles during the capture process.

Change Special Condition B.5 to read:

B.5. This Permit is valid with respect to the taking authorized herein until December 31, 1991.

All conditions currently contained in the Permit remain in effect.

This modification is effective upon publication in the **Federal Register.**

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910;

Director, Alaska Region, National Marine Fisheries Service, NOAA, 709 West 9th Street, Federal Bldg., Juneau, Alaska 99802; and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: September 20, 1990.

Nancy Foster,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 90–22811 Filed 9–26–90; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Application for Permit; Dr. Deane Renouf (P458)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. *Applicant:* Dr. Deane Renouf, Associate Professor, Ocean Sciences Centre, Memorial University of Newfoundland, St. John's, Newfoundland, Canada A1C 5S7.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Marine Mammals:* One harp seal (*Phoca groenlandica*).

4. *Type of Take:* The harp seal is a blind beached/stranded animal held at Mystic Marinelife Aquarium and has been determined to be unsuitable for release or public display. The applicant proposes to conduct behavioral research in connection with sensory function and orientation. This blind seal would be recorded hydrophonically to catalogue its vocal repertoire to compare it to sighted conspecifics.

Duration of Activity: 5 years.

The arrangements and facilities for transporting and maintaining the marine mammal requested in this application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammal involved.

Concurrent with the publication of this notice in the **Federal Register,** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Adminiatrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Hwy., room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Hwy., suite 7324, Silver Spring, Maryland 20910; Director, Southwest Region, National Marine Fisheries Service, Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

Dated: September 20, 1990.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 90–22813 Filed 9–26–90; 8:45 am]

BILLING CODE 3510–22–M

COMMISSION OF FINE ARTS

Notice of Meeting

The Commission of Fine Arts' next meeting is scheduled for Thursday, 25 October, 1990 at 10 a.m. in the Commission's offices in the Pension building, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001 to discuss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the Commission offices (202–504–2200) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC, 20 September 1990.

Charles H. Atherton,

Secretary.

[FR Doc. 90–22867 Filed 9–26–90; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

September 19, 1990.

The USAF Scientific Advisory Board will hold its Fall General Board Meeting on 24–25 October 1990 from 8 a.m. to 5 p.m. at Fort Lesley J. McNair, Washington, DC.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

The purpose of this meeting is to provide attendees the opportunity to hear results of important SAB studies and to enable members and senior AF leaders to become better acquainted. Additionally, the attendees will begin planning for future studies.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–22868 Filed 9–26–90; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

DOE High Priority Defense Nuclear Facilities; Design, Construction, Operation and Decommissioning Standards; Supplemental Response to Recommendation 90–2 of the Defense Nuclear Facilities Safety Board

AGENCY: Department of Energy.

ACTION: Notice and request for public comment.

SUMMARY: Pursuant to section 315(d) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286(d), the Department of Energy (DOE) hereby publishes notice of a supplemental response of the Secretary of Energy (Secretary) to Recommendation 90–2 of the Defense Nuclear Facilities Safety Board, 55 FR 9487–9488 (March 14, 1990),

concerning high priority defense nuclear facilities; design, construction, operation, and decommissioning. DOE hereby requests public comments on the supplemental response of the Secretary to Recommendation 90–2.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before October 29, 1990.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 600 E Street NW., suite 675, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Steven Blush, Director, Office of Nuclear Safety, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: September 24, 1990.

Steven M. Blush,

Director, Office of Nuclear Safety.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 600 E Street NW., Suite 675, Washington, DC 20004

Dear Mr. Chairman, In accordance with section 315 of Public Law 100–456, enclosed is the Department of Energy's (DOE) supplemental response and implementation plan concerning standards for DOE defense nuclear facilities. This supplemental response and implementation plan is in accordance with Defense Nuclear Facilities Safety Board Recommendation 90–2, which I addressed in my letter to the Board dated June 8, 1990.

Our implementation plan is designed to provide the Board with the requisite information on a continuing basis. Initial reports for each major element of work will be followed by bi-monthly reports to indicate progress and to provide newly developed information as it becomes available.

Sincerely,

James D. Watkins,

Admiral, U.S. Navy (Retired).

[FR Doc. 90–22899 Filed 9–26–90; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 et seq.). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipated that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 586–2171.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration
2. EIA–867
3. 1905–0177
4. Annual Nonutility Power Producer Report
5. Revision
6. Annually
7. Mandatory
8. State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, and Small businesses or organizations
9. 2,079 respondents
10. 2,079 responses
11. 2.27 hours per response
12. 4,719 hours
13. EIA–867 is required annually from nonutility power producers who own or plan on installing electric generation equipment with a total capacity of 5 megawatts or more at an existing or proposed site. The data will be used to augment existing electric utility data, and our electric power forecasts and analyses.

Statutory Authority: Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, September 21, 1990.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 90–22896 Filed 9–26–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES90–49–000, et al.]

Interstate Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

September 20, 1990.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Co.

[Docket No. ES90–49–000]

Take notice that on September 13, 1990, Interstate Power Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authorization to issue $60 million of short-term promissory notes to lending banks and/or commercial paper on or before December 31, 1992.

Comment date: October 12, 1990, in accordance with Standard Paragraph E end of this notice.

2. MDU Resources Group, Inc.

[Docket No. ES90–50–000]

Take notice that on September 4, 1990, MDU Resources Group, Inc. ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authorization to issue $50 million of short-term Indebtedness on or

before December 31, 1992, with a final maturity date no later than December 31, 1993.

Comment date: October 12, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Indianapolis Power & Light Co.

[Docket No. ES90-51-000]

Take notice that on September 14, 1990, Indianapolis Power & Light Company ("Applicant") filed an application with the Federal Energy Regulatory Commission ("Commission") pursuant to section 204 of the Federal Power Act seeking authorization to issue $150 million of unsecured short-term promissory notes on or before December 31, 1992, with a final maturity date no later than December 31, 1993.

Comment date: October 12, 1990, 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 Commisison, 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 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. 90-22823 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP90-2239-000, et al.]

Great Lakes Gas Transmission Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Great Lakes Transmission Co.

[Docket No. CP90-2239-000]

September 19, 1990.

Take notice that on September 18, 1990, Great Lakes Gas Transmission Company (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP90-2239-000 an application pursuant to section 7(c) of the Natural Gas Act for amendment to certificates of public convenience and necessity authorizing Great Lakes to continue interruptible and firm transportation of natural gas for a short-term extension of 120 days for 12 shippers, all as more fully described in the application which is on file and open to public inspection.

Great Lakes states that it provides firm transportation service for Northridge Petroleum Marketing, Inc., ADA Cogeneration Partnership, Texas Eastern Gas Transmission Corporation (TETCO), Tennessee Gas Pipeline Company (Tennessee), Northern Minnesota Utilities, a division of Utilicorp United, Inc. (NMU), and TransCanada PipeLines Limited. Great Lakes also seeks authorization to continue transportation of natural gas on an interruptible basis for NMU, Southeastern Michigan Gas Company, Ford Motor Company, Peoples Natural Gas Company, a division of Utilicorp United, Inc., Northern States Power Company, and Unicorp Energy, Inc. See the attached appendix for a list of the 12 shippers, the associated certificate proposed to be extended for a 120-day term by this application, the expiration date of the certificate to be extended, and the aggregate volumes for the interruptible and firm transportation service.

It is stated that in each of the certificates to be extended in this proposal, the Commission limited the term of the authority to the earlier of one year from the date of its last order in those proceedings, or the date that Great Lakes accepts a blanket certificate issued to it pursuant to part 284 of the Commission's Regulations. Great Lakes seeks authority to continue to provide these services on an interim basis for a period of 120 days from the date the Commission issues an order in this application. Great Lakes also requests that the authorization be granted prior to October 5, 1990, to prevent interruption in the existing authorizations for its firm and interruptible shippers.

It is alleged that in the event that the Commission is not able to issue a permanent certificate in this application prior to October 5, 1990, Great Lakes requests that the Commission issue temporary authorization to allow the continuation of the firm and interruptible transportation services. Great Lakes indicates that due to the urgency of submitting this application, it was not able to submit the information in this filing on electronic media as required by § 157.6 of the Commission's Regulations. As a result, Great Lakes requests waiver of this section of the Commission's Regulations.

Comment date: October 1, 1990, in accordance with Standard Paragraph F at the end of this notice.

Appendix

Docket No. CP90-2239-000, Great Lakes Gas Transmission Corporation

LIMITED TERM SHIPPERS

Docket No.	Shipper	Expiration date
CP88-719-001	Northern Minnesota Utilities	9/18/90
CP87-164-007	Southeastern Michigan Gas Company	10/5/90
CP87-474-008	Ford Motor Company	10/5/90
CP88-310-005	Peoples Natural Gas Company	10/5/90
CP88-307-007	Northern States Power Company	10/5/90
CP88-599-004	Unicorp Energy, Inc	10/5/90
CP89-1251-002	Northridge Petroleum Marketing, Inc	10/11/90
CP88-145-001	ADA Cogeneration Partnership	10/13/90
CP87-467-007	TETCO/Tennessee	10/18/90
CP66-110-040	TETCO/Tennessee	10/18/90
CP81-225-009	Northern Minnesota Utilities	10/26/90
CP88-397-005	TransCanada PipeLines Limited	10/26/90

VOLUMES (MCF/D) FOR LIMITED TERM SHIPPERS

Interruptible Transportation Shippers.	285,000—Summer; 355,000—Winter.
Firm Transportation Shippers.	212,792—Summer; 214,500—Winter.

2. Southern Natural Gas Co., Columbia Gas Transmission Corp.

[Docket Nos. CP90–2215–000, CP90–2216–000; CP90–2217–000; CP90–2218–000]

September 19, 1990.

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563, and Columbia Gas Transmission Corporation, 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, (Applicants), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued in Docket No. CP88–316–000 and Docket No. CP86–240–000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

[1] These prior notice requests are not consolidated.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak Day average day annual MMBTu	receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP90–2215–000 (9–17–90)	Tenngasco Corporation (Marketer).	100,000 1,500 547,500	OTX, OLA, TX, LA, MS, AL.	MS	6–25–90, IT, Interruptible.	ST90–4252–000, 7–20–90.
CP90–2216–000 (9–17–90)	Virginia Electric & Power Company (End-user).	43,000 34,400 15,695,000	Leach, Kentucky	Richmond, Virginia	7–2–90, ITS, Interruptible.	ST90–4061–000, 7–14–90.
CP90–2217–000 (9–17–90)	Phoenix Diversified Ventures, Inc. (Marketer.	42,000 33,600 15,330,000	WV, KY [2]	Various	6–21–90, ITS, Interruptible.	ST90–4203–000, 7–4–90.
CP90–2218–000 (9–17–90)	Acces Energy Corporation (Marketer).	50,000 40,000 18,250,000	Various [3]	Various	11–21–89,[4] ITS Interruptible.	ST90–4062–000, 7–13–90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Also, gas would be received from Phoenix's Appalachian Pool from various receipt points on Columbia's pipeline system.
[3] Gas would be received from Access' Appalachian Pool from various Appalachian meters on Columbia's pipeline system.
[4] As amended.

3. Southern Natural Gas Co.

[Docket No. CP90–2197–000]

September 19, 1990.

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563, (Applicant), filed in the above-referenced docket a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of a shipper under its blanket certificate issued in Docket No. CP88–316–000, 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.

Information applicable to the transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points [1]	Delivery points	Contract date rate schedule service type	Related docket, start up date
CP90–2197–000 (9–14–90)	Tenngasco Corporation (Marketer).	100,000 2,000 730,000	AL, LA, OLA, MS, TX, OTX.	LA	Interruptible	ST90–4255, 8–18–90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

4. ANR Pipeline Co.

[Docket No. CP90-2196-000]

September 20, 1990.

Take notice that on September 13, 1990, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP90-2196-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate an additional sales delivery point for Wisconsin Public Service Corporation (WPSC) near Goodman, Wisconsin, under ANR's blanket certificate issued in Docket No. CP82-480-000 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.

ANT states that sales to WPSC are made pursuant to a service agreement between the parties dated March 10, 1989. ANR further states that WPSC has requested the additional meter station in order to provide operational flexibility and reliability on WPSC's distribution system.

It is said that the maximum daily deliveries through the new sales delivery point would be within WPSC's currently existing peak day and annual entitlements from ANR.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

5. ANR Pipeline Co.

[Docket No. CP89-637-004]

September 20, 1990.

Take notice that on September 12, 1990,[2] ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-637-004 an amendment to its pending application in said docket for a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act for authorization to construct and operate facilities necessary to perform new transportation services, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

ANR intended to receive gas at various points on its system from seven shippers (and a certain amount from unspecified shippers to be transported in ANR's name), transport such gas through existing and proposed facilities, and deliver 142,711 Dt per day to CNG transmission Corporation (CNG) at Lebanon, Ohio, for ultimate redelivery by CNG to those shippers. In the instant amendment, ANR has filed new and amended precedent agreements which change the composition of the shippers and the volumes shipped. ANR now proposes to receive gas at various points on its system from ten shippers and deliver 134,095 Dt per day to CNG at Lebanon, Ohio, for ultimate redelivery by CNG to those shippers. In particular, the shippers and the associated volumes are listed below, before the instant amendment and with the instant amendment.

Shipper	Volumes in Dt per day	
	Prior to CP89-637-004	Including CP89-637-004
Kamine/Besicorp South Glens Falls	14,000	14,100
Northeast Energy Corp	11,794	12,076
Champion International Corp	15,547	0
Long Lake Congeneration Company	31,932	7,932
P&N Partners, L.P.	12,822	12,822
Berkshire Energy Group, Ltd	12,822	0
Delta Management Group, Ltd	12,822	12,822
ANR Pipeline Company	30,972	0
Sterling Power Partners, L.P	0	12,822
Onondaga Congeneration, L.P	0	16,084
Brookhaven Congeneration, L.P	0	15,707
Mid-Country Cogeneration, L.P	0	9,424
PG&E-Bechtel Generating Company	0	20,306
Total	142,711	134,095

Comment date: October 11, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

6. Florida Gas Transmission Co.

[Docket Nos. CP90-2234-000; CP90-2235-000; CP90-2236-000]

September 20, 1990.

Take notice that Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under part 284 of it's blanket certificate issued in Order No. 509 corresponding to the rates and conditions set forth in Docket No. RP89-50, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by FGT and is summarized in the attached appendix.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

[2] The amendment to application was tendered for filing on August 31, 1990; however, the fee required by Section 381.207 of the Commission's Rules (18 CFR 381.207) was not paid until September 12, 1990. Section 381.103 of the Commission's Rules provides that the filing date is the date on which the fee is paid.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points	Delivery points	Contract date rate schedule service type	Related docket start up date
CP90-2234-000 (9-18-90)	Transworld Oil U.S.A. (Marketer).	100,000 75,000 365,000,000	Multiple	Various	2-23-90, ITS-1, Interruptible.	ST90-4437-000, 8-1-90.

Docket No. (date filed)	Shipper name (type)	Peak day average day annual MMBtu	Receipt points	Delivery points	Contract date rate schedule service type	Related docket start up date
CP90-2235-000 (9-18-90)	Transworld Oil U.S.A. (Marketer).	100,000 75,000 365,000,000	Multiple	Various	2-23-90, ITS-1, Interruptible.	ST90-4451-000, 8-1-90.
CP90-2236-000 (9-18-90)	Tejas Hydrocarbons Company (Marketer).	32,876 24,657 11,999,740	Multiple	Various	2-23-90, ITS-1, Interruptible.	ST90-4449-000, 8-1-90.

7. Transcontinental Gas Pipe Line Corp.

[Docket No. CP90-2230-000]

September 20, 1990.

Take notice that on September 17, 1990, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP90-2230-000 an application pursuant to section 7(c) of the Natural Gas Act requesting authorization to expand and operate its facilities at the currently existing Eminence Salt Dome Storage Field (Eminence Storage Field), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Transco states that it desires to expand its facilities at the Eminence Storage Field, located adjacent to Transco's mainline in Covington County, Mississippi, to increase the working gas capacity to as total of 15 Bcf and the deliverability capacity to a total of 1.5 Bcf per day. Transco alleges that such expansion would be utilized to provide a force majeure backup service to its FT customers, as well as to facilitate the swing service characteristics of Transco's proposed FS sevice.

Transco contends that in intends to expand the Eminence Storage Field in two phases. During Phase I of the proposed expansion, the first expansion caverns would be constructed and placed in service. During Phase II, the third expansion cavern would be construced.

It is alleged that the expansion facilitates for which authorization is sought consist of approximately 1.56 miles of 30-inch pipeline loop from the existing storage facility lateral line to Transco's mainline, dehydration facilities, three additional storage caverns, and other necessary appurtenances located at the field. The proposed expansion would increase the amount of top gas to a total of approximately 15.0 Bcf. Each of the three proposed bottle-shaped caverns would have an approximate volumetric capacity of 3,167,100 barrels, and each is designed to hold approximately 4.07 Bcf of gas, at a maximum storage cavern pressure at 3,600 psia, for a total of approximately 12,20 Bcf additional capacity. Of the 12.20 Bcf, a total of approximately 8.76 Bcf would be top gas. The design deliverability of each cavern is 300 Mmcf per day at the minimum pressure. The overall deliverability of the storage facility is alleged to be a total of 1.5 Bcf per day.

The total costs of expansion at the Eminence Storage Field is estimated to be $60,883,671. The estimated Phase I costs are $50,731,421 and the estimated Phase II costs are $10,152,250. Transco proposes to allocate Phase I capacity and facility cost between FT and FS customers agreed to in the FS Settlement, filed on June 22, 1990, in Docket No. PR87-7-000, *et al.* It is alleged that 50 percent of the Phase I capacity and facilities costs would be allocated to FT customers and 50 percent would be allocated to FS customers. In addition to the facility costs which are allocated in the above described manner, Transco would also include in rate base the estimated costs associated with Transco's investment in top gas supplies required to provided the requested service to FT and FS customers. Transco estimates that the cost of such investment for Phase I would be $4,380,000 and $8,760,000 for Rate Schedule FS and FT customers, respectively.

Comment date: October 11, 1990, in accordance with Standard Paragraph F at the end of this notice.

8. CNG Transmission Corp.

[Docket No. CP89-638-002]

September 20, 1990.

Take notice than on August 31, 1990, CNG Transmission Corporation (CNG) amended its application for a certificate of public convenience and necessity failed pursuant to Section 7(c) of the Natural Gas Act of January 17, 1990, in Docket No. CP89-638-000 and as previously amended on February 2, 1990, in Docket No. CP89-638-001. The purpose of this amendment is to adjust levels of service in the project due to unavailabiity of certain equipment necessary to provide the previously proposed level of service scheduled to begin November 1, 1991, and to match the changed needs of the customers. CNG states that there are no significant changes to the facilities proposed in Docket Nos. CP89-638-000 and 001, however, the new level of service proposed for 1991 herein does require certain "auxiliary installations" at an existing CNG compressor station, as discussed below. These services are a part of the *ANR Project*, pursuant to the Principles of Settlement which were approved by the Commission on January 12, 1989, in *Northeast U.S. Pipeline Projects*, Docket No. CP87-451-016, 46 FERC 61,012.

In this application, as amended, on February 2, 1990, CNG requested authorization to render, beginning November 1, 1991, long-term, firm transportation service totalling 389,762 Dt per day for Beta Development Company (Beta) and Long Lake Cogeneration (Long Lake) 38,000 Dt per day), Trancontinental Gas Pipe Line Corporation (Transco) (251,762 Dt per day), and various designated ANR Pipeline Company (ANR) Shippers (ANR Shippers) (100,000 Dt per day). (CNG also requested authorization to construct and opeate certain required facilities and to render a compression service at Lebanon, Ohio, for ANR).

The plan (as described in the February 2, 1990 filing by CNG) as agreed to by ANR, Transco, and CNG called for facility construction and commencement of transportation services by CNG over a two year period. The first level of service would commence November 1, 1991, and the second and final level of service would commence November 1, 1992. This amendment scales back the 1991 level of service and construction, increases the 1992 level of construction, and slightly reduces the total level of service to be rendered upon completion from 389,762 Dt per day to 380,558 Dt per day.

While the total Transco requirements of 251,762 remain unchanged, Beta and Long Lake, along with the certain ANR Shippers, have altered requirements, delayed the date for commencement of service, or terminated agreements for service.

The following table shows all the changes in customer requirements (delivered volumes, Dt/day):

	Prior filings CP89-638-000 & 001	Current filing [1] [2] CP89-638-002
1991 Service		
Transco	251,762	168,555 (Leidy).
ANR Shippers:		
Beta [3]	14,000	14,200 (Niagara Mohawk).
Sterling		12,245 (Niagara Mohawk).
Champion	14,847	0
Northeast Energy	11,264	0
Long Lake	24,000	0
Total 1991	315,873	195,000
1992 Service		
Transco	251,762	251,762 (Leidy).
ANR Shippers:		
Beta [4]	14,000	14,200 (Niagara Mohawk).
Sterling		12,245 (Niagara Mohawk).
Champion	14,847	0
Northeast Energy	11,264	11,533 (Niagara Mohawk).
Long Lake	31,575	0
Mid County Cogen		16,500 (Leidy).
Brookhaven Cogen		15,075 (Leidy).
Berkshire	12,245	0
Delta Management	12,245	12,245 (Niagara Mohawk).
P & N Partners	12,245	12,245 (Niagara Mohawk).
Onondaga Cogen		15,360 (Niagara Mohawk).
PG & E Bechtel		19,393 (Niagara Mohawk).
Unassigned volumes for ANR Shippers	29,579	0
Total 1992	389,762	380,558

[1] The downstream transporter for volumes delivered to Leidy will be Transco; the downstream transporter for volumes designated Niagara Mohawk will be Niagara Mohawk Power Corporation, a local distribution company in New York.

[2] Fuel retention of 4.5 percent must be added to calculate the volumes to be received at Lebanon, Ohio. The upstream transporter for Transco's volumes will be Texas Gas Transmission Corporation; the upstream transporter wil be ANR.

[3] Beta's volume 14,000 Dt/d was an error in the prior filings. Beta's contract has always called for 14,200 Dt/d.

[4] *Ibid.*

CNG states that the principle reasons for the amendment are the unavailability (due to the long lead time required in the manufacturing) of compression equipment, the substantial financial risks associated with CNG's commitments for materials and equipment prior to Commission certification, and changes in the timing and makeup of some of the markets. CNG will require a total of twenty two (22) compressor units for all of the proposed compression that is part of this project. In its February 2 filing, CNG proposed installing sixteen (16) units for 1991 service. The long lead time required in manufacturing installing and commissioning such equipment limits the number of compression units that can realistically be ready for service by November 1, 1991. In early June, 1990, CNG ordered from manufacturers, ten (10) compressor units at a cost of approximately $24,000,000. With Commission approval by early January, 1991, CNG believes that ten (10) compressor units and the associated pipeline can be ready for service by November 1, 1991.

CNG states that changes in the markets, as shown above in the table, also dictated a scaling back of the 1991 level of service and construction to a total of 195,000 Dt per day. CNG now proposes, and requests authorization reflecting: (1) A 1991 level of transport service from Lebanon, Ohio, to Leidy, Pennsylvania, or the Niagara Mohawk market area for certain ANR Shippers, of up to 195,000 Dt per day (168,555 Dt per day to Leidy for Transco, 26,445 Dt per day to Niagara Mohawk for Sterling and Beta), and (2) a 1992 level of transport service from Lebanon to Leidy or the Niagara Mohawk market area, of up to 380,558 Dt per day (251,762 Dt per day to Leidy for Transco, 31,575 Dt per day to Leidy and 97,221 Dt per day to Niagara Mohawk for designated ANR Shippers) and (3) to render a compression service at Lebanon for ANR as previously proposed in Docket No. CP89-638-001.

CNG states thta while it was necessary, due to long lead times for manufacturing compressors, for it to commit (in advance of FERC approval) to purchase $24,000,000 in compressor units required to provide this 1991 level service, it is also necessary due to long lead times to install and commission the units, for construction to begin in early April, 1991, in order to provide such service by November 1, 1991. Any condemnation proceedings required for this project must commence at least 90 days in advance of construction, and Commission authorization is required to start such condemnation proceedings. Therefore, in order to serve the 1991 markets, CNG states that Commission approval is required no later than early January, 1991.

CNG states that there is no significant change in the required facilities as described in pages 8 through 10 of CNG's February 2 filing. However, in order to provide the level of services required on November 1, 1991, CNG states that it will need to make changes to the station piping, gas cooling equipment, and compressor valves/unloaders at its South Bend Station, near South Bend, Armstrong County, Pennsylvania. CNG states that all of this equipment falls under the definition of "auxiliary installations" appearing at § 2.55(a) of the Commission's Regulations; thus, no certificate authorization is needed to install this equipment. However, the estmated cost of this equipment has been included in revised Exhibits K and N of this amendment.

In order to provide 1991 and 1992 levels of service, CNG requests authorization to construct and operate the following previously proposed facilities in 1991 and 1992:

1991 Facilities

8,400 HP compression addition at Lebanon Station
8,400 HP compression at Groveport Station
4,200 HP compression addition at Gilmore Station
6,400 HP compression Beaver Station
8,400 HP compression at Punxsutawney Station
4,200 HP compression addition at Finnefrock Station
Modification at Ardell Station (replacement of compressor impellers)
Modification at South Bend Station (auxiliary installations)
TL–479—26.2 miles of 30"—Rochester Mills to Home Camp
TL–479 Ext.1—31.4 miles of 24"—Ardell to Finnefrock
TL–479 Ext.2—0.5 miles of 24"—Finnefrock to Leidy
TL–400 Ext.1—only 2.5 miles of 24"—Beaver Jct. to Beaver Station

1992 Facilities

16,500 HP compression at Washington Station
3,200 HP compression addition at Groveport Station
16,500 HP compression at Newark Station *
3,200 HP compression addition at Gilmore Station
8,780 HP compression at Carroll Station
6,400 HP compression addition at Beaver Station
TL–400 Ext.1—52.1 miles of 24"—Beaver Station to Valley
TL–473 Ext.2—6.0 miles of 30"—Cayuta to Lesky Road
TL–485 Ext.1—13.0 miles of 24"—Utica to Deansboro

Since this amendment on levels of service and timing of construction affects the costs and rates of the project, CNG has provided revised cost estimates and rates in Exhibits K and N of the application. The estimated cost of all construction, inclusive of filing fees, is now $230,065,000 as compared to $219,057,250 in the prior filing. For comparison purposes CNG has provided the 100 percent load factor rates:

	Lebanon to leidy rate		Leidy to market rate	
	CP89–638–001	CP89–638–002	CP89–638–001	CP89–638–002
1991 Service:				
D–1=$2.2239		$2.44	$1.6568	$0.0000
D–2=0.0730		0.0804	0.0545	0
Comm.=0.1679		0.1807	0.1149	0
Unit Rate=0.3140		0.3413	0.2239	0.0000
1992 Service:				
D–1=2.1895		2.55	0.7479	0.95
D–2=0.0719		0.0839	0.0246	0.0312
Comm.=0.1572		0.1733	0.066	0.0771
Unit Rate=0.3011		0.3410	0.1152	0.1395

In Docket No. CP89–638–000, CNG originally proposed to charge Beta a one part, monthly demand rate. CNG now proposes to conform Beta's rate design to Modified Fixed Variable (MFV), so that Beta's rate is the same as all other shippers in this project.

Also, because CNG is not proposing any additional facilities here, it states that no additional environmental studies (Exhibits FI–FIV) are necessary. (The auxiliary installations under § 2.55(a), discussed on page 5, are all within an existing, fenced, station yard and do not require environmental studies. Additionally, the auxiliary equipment to be installed at CNG's South Bend Station does not affect air emissions or noise levels).

Comment date: October 11, 1990, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

9. Texas Gas Transmission Corp.

[Docket No CP90–2194–000]

September 20, 1990.

Take Notice that on September 13, 1990, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP90–2194–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a new delivery point to the Cincinnati Gas and Electric Company (CG&E) in Butler County, Ohio, under Texas Gas' blanket certificate issued in Docket No. CP82–407–000 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.

Texas Gas states that it currently makes natural gas sales to CG&E pursuant to a service agreement dated August 1, 1990. The proposed new delivery point, it is said, would be located on Texas Gas' mainline system in Butler County, Ohio.

The proposed annual maximum quantity of natural gas to be delivered to CG&E at the new delivery point is said to be approximately 1,570,000 MMBtu. It is said that the natural gas delivered at this point would be consumed by a planned new electric generation facility, the Woodsdale Electric Generation Station, to be built by CG&E in Butler County, Ohio.

Texas Gas states further that the addition of this new delivery point would not result in an increase in CG&E's current daily contract demand and the service could be accomplished without detriment to Texas Gas' other customers.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

10. Colorado Interstate Gas Co.; Algonquin Gas Transmission Co.

[Docket No. CP90–2223–000; CP90–2224–000; CP90–2225–000; CP90–2226–000; CP90–2227–000]

September 20, 1990.

Take notice that Applicants filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under their blanket certificates pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket

[4] These prior notice requests are not consolidated.

numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicants state that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 5, 1990, in accordance with Standard Paragraph G at the end of this notice.

Applicant: Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, CO 80944.
Blanket Certificate Issued in Docket No.: CP86–589–000.

Docket No. (date filed)	Shipper name	Peak day,[1] average annual	Points of		Start up date, rate schedule	Related dockets[2]
			Receipt	Delivery		
CP90–2223–000 (09–17–90)	San Diego Gas & Electric Company).	90,000 10,000 3,650,000	TX, OK, WY	TX	07–20–90, TI–1	ST90–4183–000

Applicant: Algonquin Gas Transmission Company, 1284 Soldiers Field Road, Boston, MA 02135.
Blanket Certificate Issued in Docket No.: CP89–948–000.

Docket No. (date filed)	Shipper name	Peak day,[3] average annual	Points of		Start up date, rate schedule	Related dockets[2]
			Receipt	Delivery		
CP90–2224–000 (09–17–90)	Everett Energy Corp	42,000 NJ, 42,000 15,330,000		MA	06–14–90, AIT–1	ST90–4571–000
CP90–2225–000 (09–17–90)	Citizens Gas Supply Corp.	300,000 MA, 300,000 NJ 109,500,000	NY, CT,	MA	06–15–90, AIT–1	ST90–4572–000
CP90–2226–000 (09–17–90)	Tejas Power Corp	500,000 500,000 182,500,000	NJ, MA	CT	06–22–90, AIT–1	ST90–4570–000
CP90–2227–000 (09–17–90)	Catamount Natural Gas, Inc.	70,721 70,721 25,813,165	NJ, MA	CT	07–11–90, AIT–1	ST90–4574–000

[1] Quantities are shown in Mcf unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.
[3] Quantities are shown in MMBtu unless otherwise indicated.

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 designeee 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 appear or be represented at the hearing.

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 therefore, 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. 90–22825 Filed 9–26–90; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. TM91-1-20-001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

September 20, 1990.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on September 17, 1990, tendered for filing to its FERC Gas Tariff, Second Revised Volume No. 1, a correction to a previously filed tariff sheet as set forth in the substitute sheet:

Proposed to be effective October 1, 1990

Sub 7 Rev Sheet No. 201A

Algonquin states that it is making the instant filing to eliminate the inadvertent inclusion of a Current Adjustment under Rate Schedule WS-1 Excess Commodity Rate in Sheet No. 201A as filed on August 31, 1990 in Docket No. TM90-14-20-000 and RP90-180-000. The instant tariff sheet eliminates the Current Adjustment and contains only the change of the ACA Unit Rate for Fiscal Year 1990 as intended. Sub 7 Rev Sheet No. 201A is proposed to become effective on October 1, 1990.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before September 28, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22814 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP90-13-000]

ANR Pipeline Co. v. Ballard Exploration Co. Inc.; Complaint

September 20, 1990.

Take notice that on August 31, 1990, ANR Pipeline Company (ANR) filed a complaint under Rule 206 the Commission's rules of practice and procedure against Ballard Exploration Company, Inc. (Ballard). According to ANR, Ballard sold natural gas to ANR from the Henry No. 1 well in Calcasieu Pass Field, Louisiana between June 1982 and January 1983, pursuant to a gas sales purchase agreement between Michigan Wisconsin Pipeline Company (predecessor to ANR), and Ballard, dated April 20, 1982. ANR alleges that Ballard sold regulated gas to ANR at prices in excess of the applicable maximum lawful prices (MLP) under the Natural Gas Policy Act of 1978 (NGPA) and the Commission's regulations. ANR alleges that Ballard is obligated to refund that portion of the price, plus interest, which is in excess of the MLP. ANR states that the amount of the overcharge, including principal and interest, as of September 30, 1990, will be $33,961.71.

Any person desiring to be heard or to intervene should file a motion to intervene or protest in accordance with rules 214 (18 CFR 385.214 (1990)) or 211 (18 CFR 385.211 (1990)) of the Commission's Rules of Practice and Procedure. All motions to intervene or protests should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before October 22, 1990. All protests will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with rule 214. Copies of the complaint are on file with the Commission and are available for public inspection. Answers to the complaint shall be filed on or before October 22, 1990.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22821 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-153-001]

El Paso Natural Gas Co.; Compliance Tariff Filing

September 20, 1990.

Take notice that on September 17, 1990, El Paso Natural Gas Company ("El Paso") filed pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations under the Natural Gas Act and in compliance with the "Order Accepting and Suspending Tariff Sheets, Subjectg to Refund and Conditions, and Establishing Technical Conference" issued August 31, 1990 at Docket No. RP90-153-000, Substitute First Revised Sheet No. 250 to El Paso's FERC Gas Tariff, Second Revised Volume No. 1 along with certain workpapers and explanations regarding the maximum rate under Rate Schedule IS-1.

El Paso states that on August 1, 1990 at Docket No. RP90-153-000, El Paso tendered for filing with the Commission certain tariff sheets which serve to (i) Provide that title transfer of interruptible sales gas shall occur at mainline receipt points and (ii) provide for the elimination of the minimum rate under Rate Schedule IS-1.

El Paso further states that the order issued August 31, 1990 accepted El Paso's tariff sheets for filing but suspended them for five (5) months to become effective February 1, 1991, subject to refund and conditions. Ordering paragraph (A)(3) of the August 31, 1990 order directed El Paso to file, within fifteen (15) days of the date of the order, tariff language stating that any discount from the overall maximum ISS rate shall be deemed to have come from the transportation component of the overall rate before coming from any other component of the overall rate. Accordingly, the tendered tariff sheet reflects changes to Section 3, Rate, of Rate Schedule IS-1 to provide that any discount to the maximum rate shall occur first in the transportation component of such rate.

El Paso also states that ordering paragraph (A)(2) of said order directed El Paso to file, within fifteen (15) days of the date of the order, workpapers with detailed calculations of the gas and non-gas components to support the calculation of the maximum rate under Rate Schedule IS-1 and address the questions set forth in Part E of the order. Such workpapers and explanations are included in El Paso's compliance filing.

El Paso requested waiver of the Commission's Regulations, as appropriate, in order that the tendered tariff sheet be accepted by the Commission and permitted to become effective on February 1, 1991, which is the end of the suspension period established by the Commission in the proceeding at Docket No. RP90-153-000.

El Paso states that copies of the filing were served upon all interstate pipeline system sales customers of El Paso, all parties of record at Docket No. RP90-153-000, and all interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211 (1990). All such protests should be filed

on or before September 27, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22818 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-86-002]

MIGC, Inc.; Adjustment

September 20, 1990.

Take notice that on April 30, 1990, MIGC, Inc. (MIGC) filed with the Federal Energy Regulatory Commission its proposal for disposition of the balance remaining in its Unrecovered Purchased Gas Cost Account (Account No. 191) upon elimination of the purchased gas cost adjustment (PGA) provisions of its FERC Gas Tariff.

MIGC stated that in its March 1, 1990 general rate filing initiating the proceeding in RP90-86-000, MIGC proposed, among other things, to eliminate the PGA provisions of its tariff due to the termination of all of its jurisdictional sales of natural gas.

MIGC also stated as of April 30, 1990, that its Account No. 191 reflects a purchased gas cost underrecovery of $27,843.000, and that because MIGC is no longer making any jurisdictional sales of natural gas, that balance should be unaffected during the suspension period in RP90-86-000 except for the accural of interest in accordance with the Commission's PGA Regulations and the related provisions of MIGC's tariff, MIGC stated as of April 30, 1990, that it projects (at current interest rates) having an Account No. 191 unrecovered balanced of $28,656.00 as of September 1, 1990 (the actual balance will very slightly due to expected fluctuations in quarterly interest rates) which will be billed entirely to MGTC, Inc., MIGC's only sales customer purchasing gas from MIGC during the prior year.

MIGC further stated that due to both the relatively small size of the balance, as well as the fact that the balance is attributable to PGA purchases relating solely to resale sales to one jurisdictional customer, MIGC proposes to bill this amount in a single, lump-sum billing to such customer upon the effective elimination of its PGA clause as of September 1, 1990.

MIGC noted that copies of this letter and related worksheet were being served upon all MIGC customers and State Commissions, as well as all parties on the Commission's official service list in the proceeding in RP90-86-000.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 adn 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211 (1990). All such protests should be filed on or before September 28, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22822 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-156-001]

Natural Gas Pipeline Co. of America; Changes in FERC Gas Tariff

September 20, 1990.

Take notice that on September 14, 1990, Natural Gas Pipeline Company of America (Natural) submitted for filing Substitute Original Sheet No. 191 and Original Sheet No. 191A to be a part of its FERC Gas Tariff, Third Revised Volume No. 1.

Natural states that the tariff sheets are submitted in compliance with Ordering Paragraph B of the Commission's Order issued August 30, 1990, at Docket No. RP90-156-000.

Natural requested waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets to become effective August 27, 1990.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before September 28, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-22819 Filed 9-26-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-94-022, CP90-494-002, CP90-197-001, CP90-198-001, CP90-199-001]

Sea Robin Pipeline Co.; Compliance Filing

September 20, 1990.

Take notice that on May 29, 1990, Sea Robin Pipeline Company (Sea Robin), Post Office Box 1478, Houston, Texas, 77251-1478, filed the sheets listed in the attached Appendix A in its FERC Gas Tariff, Original Volume Nos. 1 and 2.

Sea Robin states the filing is being made to comply with the Federal Energy Regulatory Commission's (Commission) April 18, 1990 Order Modifying and Approving Settlement, Permitting Abandonment, and Dismissing Request for Rehearing (April 18 Order) in the above-referenced dockets. Further, Sea Robin notes that according to Article VI of the January 5, 1990 Settlement, the Settlement will not become effective until a final, non-appealable Commission order is issued in the proceedings. Sea Robin states that an order will be considered a final Commission order as of the date that rehearing on all issues is denied, or if rehearing is not applied for, the date on which the right to file a petition for rehearing expires.

Sea Robin also states that the tariff sheets filed in Volume No. 1 serve to implement the two rate periods and their respective rates as set forth in the January 5, 1990 Settlement (Settlement) and approved in the April 18 Order. Also filed in Volume No. 1 are sheets cancelling Fifty-Ninth Revised Sheet No. 4 and Fourth Revised Sheet No. 4-C, which are no longer effective under the provisions of the Settlement.

Sea Robin continues, saying that the sheets filed in Volume No. 2 serve to cancel Rate Schedules X-1, X-7, and X-13 with Southern Natural Gas Company, X-2, X-8, and X-12 with United Gas Pipe Line Company, and Rate Schedule X-13 with Natural Gas Pipeline Company of America.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before September 27, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–22820 Filed 9–26–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM91–1–6–001]

Sea Robin Pipeline Co.; Filing of Revised Tariff Sheets

September 20, 1990.

Take notice that on September 18, 1990, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following tariff sheets to be effective October 1, 1990:

Original Volume No. 1

Substitute Thirty-Third Revised Sheet No. 4–A
Substitute Tenth Revised Sheet No. 4–A1
Substitute Ninth Revised Sheet No. 4–A2

These tariff sheets reflect an upward revision to the unit rate of the Annual Charge Adjustment (ACA) Clause to be generally applied to interstate natural gas pipeline rates for the recovery of the 1990 Annual Charges, pursuant to Order No. 472.

This revision authorizes Sea Robin to collect 0.22¢ per each jurisdictional Mcf for natural gas transported applicable to the 1990 Annual Charge assessed Sea Robin by the Commission under Part 382 of the Commission's Regulation.

Sea Robin also states that the tariff sheets are being mailed to its jurisdictional customers and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before September 28, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–22815 Filed 9–26–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–2187–000]

Southern Natural Gas Co.; Application

September 20, 1990.

Take notice that on September 11, 1990, Southern Natural Gas Company. (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP–90–2187–000 an application pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act for an order granting permission and approval for the abandonment of a transportation service for Phillips Petroleum Company (Phillips),[1] all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern states that under the transportation agreement Phillips could deliver up to 15,000 Mcf of natural gas per month produced from the North Lake Washington Field in Plaquemines Parish, Louisiana, through Tennessee Gas Pipeline Company's (Tennessee) [2] existing facilities to the Bay St. Elaine Field in Terrebonne Parish, Louisiana. It is further stated that Southern would then deliver equivalent volumes to Phillips at the interconnection of Southern's Phillips' line for use in Phillips' gas lift operations in St. Elaine Field, Terrebonne Parish, Louisiana.

It is stated that effective December 1, 1987, Phillips sold its interest in the Bay St. Elaine Field. It is averred that on February 12, 1990, Phillips requested termination of the transportation service, to be effective March 1, 1990, or effective as of the Commission order allowing abandonment. Southern has agreed to terminate the agreement as of the date it receives a Commission's order allowing abandonment. Southern's Rate Schedule X–57 would be cancelled, effective upon receipt of the abandonment authorization, it is stated. Southern further states that no facilities are proposed to be abandoned.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 11, 1990, file with the Federal Energy Regulatory Commission, 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 385.214 or 385.211) 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 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 authroity contained in and subject to the 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 application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 Southern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90–22824 Filed 9–26–90; 8:45 am]

BILLING CODE 6717–01–M

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[1] Transportation service is rendered under the terms of a September 10, 1980, agreement between Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (presently known as Tennessee Gas), Southern Natural Gas Company, and Aminoil of Louisiana, Inc (Aminoil). Phillips purchased Aminoil and has succeeded to the rights and obligations of Aminoil.

[2] Tennessee filed on February 23, 1990, in Docket No. CP90–833–000 to abandon its certificated portion of this service (55 FR 9,179, March 12, 1990).

[Docket No. TM91–1–11–001]

United Gas Pipeline Co.; Filing of Revised Tariff Sheets

September 20, 1990.

Take notice that on September 18, 1990, United Gas Pipe Line Company (United) tendered for filing the following

tariff sheets to be effective October 1, 1990:

Second Revised Volume No. 1

Substitute Seventh Revised Sheet No. 4
Substitute Seventh Revised Sheet No. 4–A
Substitute Seventh Revised Sheet No. 4–B
Substitute Second Revised Sheet No. 4–E
Substitute Second Revised Sheet No. 4–F
Substitute Third Revised Sheet No. 4–H
Substitute Seventh Revised Sheet No. 4–I

These tariff sheets reflect an upward revision to the unit rate of the Annual Charge Adjustment (ACA) Clause to be generally applied to interstate natural gas pipeline rates for the recovery of the 1990 Annual Charges, pursuant to Order No. 472.

This revision authorizes United to collect 0.22¢ per each jurisdictional Mcf of natural gas sold or transported applicable to the 1990 Annual Charge assesed United by the Commission under Part 382 of the Commission's Regulation.

United also states that the tariff sheets are being mailed to its jurisdictional customers and to interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 385.211 (1990). All such protests should be filed on or before September 28, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–22817 Filed 9–26–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA90–1–49–004]

Williston Basin Interstate Pipeline Co.; Compliance Filing

September 20, 1990.

Take notice that on September 14, 1990, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing Second Subtitute Twenty-fourth Revised Sheet No. 10 to First Revised Volume No. 1 of its FERC Gas Tariff and supporting schedules reflecting the correction of certain clerical errors and contained in the Company's August 30, 1990 Annual Purchased Gas Cost Adjustment Compliance Filing in Docket No. TA90–1–49–000.

The proposed effective date of the tariff sheet is August 1, 1990.

Williston Basin states that Second Substitute Twenty-fourth Revised Sheet No. 10 (First Revised Volume No. 1) reflects a revised Surcharge Adjustment of a negative .144 cents per dkt applicable to Rate Schedules G–1 and SGS–1 which results in an overall .026 cents per dkt decrease to Rate Schedules G–1 and SGS–1, as compared to the tariff sheet contained in the Company's August 30, 1990 PGA Compliance filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before September 27, 1990. 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. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–22816 Filed 9–26–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket Nos. 90–36–NG and 90–37–NG]

North Canadian Marketing Corp.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of an order Granting blanket authorization to import and export natural gas from and to Canada.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that it has issued an order granting North Canadian Marketing Corporation (NCM) blanket authorization to import up to an aggregate of 146 Bcf of natural gas from Canada and to export up to an aggregate of 40 Bcf of domestic natural gas to Canada over a two-year term beginning on the date of first delivery.

A copy of the order is available for inspection and copying at the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 21, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–22898 Filed 9–26–90; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 90–72–NG]

Santanna Natural Gas Corp.; Application for Blanket Authorization To Import and Export Natural Gas and Liquefied Natural Gas

AGENCY: Office Of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import and export natural gas and liquefied natural gas.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 21, 1990, of an application filed by Santanna Natural Gas Corporation (Santanna), for blanket authorization to import and export from and to Canada, Mexico, and other countries up to a combined total of 73 Bcf of natural gas, including liquefied natural gas (LNG), over a two-year term beginning with the date of first import or export. Santanna intends to use existing pipeline and LNG facilities for the processing and transportation of the volumes to be imported or exported and to submit quarterly reports detailing each transaction.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m. e.d.t., October 29, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:
Larine A. Moore, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–53, 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, GC–32, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION:
Santanna, a Texas corporation with its principal place of business in Austin, Texas, and a natural gas marketer, requests authority to import natural gas and LNG on a short-term or spot market basis for its own account or as agent on behalf of other suppliers and purchasers.

Santanna states that the imported gas, including LNG, would make alternative supplies of gas available to a wide range of markets in the United States, including pipelines, local distribution companies, and commercial and industrial end-users. In regard to its request for export authority, Santanna proposes to export natural gas obtained from fields in various domestic gas producing states, or, utilizing import/export transactions, from non-U.S. suppliers. The specific terms of each import and export arrangement would be negotiated on an individual basis, including price and volume. Santanna maintains that such arrangements will enhance competition in the North American gas market.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications, the domestic need for the gas to be exported is considered, and any other issues determined to be appropriate in a particular case, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the proposed imports will make competitively priced gas available to U.S. markets while the shot-term nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. Santanna also asserts that the proposed export volumes would result in a reduction of the current excess domestic natural gas supply, generate income and tax revenues, and reduce the U.S. trade deficit. Parties opposing the arrangement bear the burden of overcoming these assertions. Similar to other blanket authorizations, there would be no daily volume restrictions imposed by FE if Santanna is granted blanket import and export approval.

All parties should be aware that if this blanket import/export application is granted, the authorization may permit the import or export of natural gas (including LNG) at any international border point where existing transmission or processing facilities are located.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

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 Office of Fuels Programs at the above address.

It is intended that a decisional record will 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 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, notice will be provided 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 Santanna's application is available for inspection and copying in the Office of Fuels Programs, Docket Room, 3F–056 at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 20, 1990.

Clifford P. Tomaszewski,
Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy

[FR Doc. 90–22897 Filed 9–26–90; 8:45 am]
BILLING CODE 6450–01–M

[FE Docket No. 90–73–NG]

Tenngasco Corp.; Application for Blanket Authorization To Import Natural Gas From Canada and Mexico

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application for blanket authorization to import natural gas from Canada and Mexico.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt on August 22, 1990, of a request by Tenngasco Corporation (Tenngasco) for blanket authority to import up to an aggregate of 200 Bcf of natural gas from Canada and Mexico over a two-year term beginning on the date of first delivery. Tenngasco

contemplates using existing facilities and would comply with quarterly reporting requirements.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204–111 and 0204–127. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filled at the address listed below no later than 4:30 p.m., e.d.t., October 29, 1990.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F–056, FE–50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Thomas Dukes, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3H–087, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–1657

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:

Tenngasco, a Delaware corporation and wholly owned subsidiary of Tenneco Corporation, proposes to import gas on a short-term or spot basis for its own account or as an agent for Canadian and Mexican suppliers or U.S. purchasers. The specific terms of each import and export sale, including price and volumes, would be negotiated on an individual basis. Tenngasco contemplates the possibility of exercising the requested import authority in conjunction with its existing blanket export authority (DOE/ERA Opinion and Order No. 312, issued April 28, 1989) in order to utilize the most advantageous routes for transporting natural gas into and out of the United States.

The decision on the application for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on these regulatory and policy considerations. The applicant asserts that the proposed imports will make competitively priced gas available to U.S. markets while the short-term nature of the transactions will minimize the potential for undue long-term dependence on foreign sources of energy. Parties opposing the arrangement bear the burden of overcoming these assertions. Similar to other blanket authorizations, there would be no daily volume restrictions imposed by FE if Tenngasco is granted blanket import approval.

NEPA Compliance

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires the DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until the DOE has met its NEPA responsibilities.

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 Office of Fuels Programs at the above address.

It is intended that a decisional record will 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 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 trail-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, a notice will be provided 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 section 590.316.

A copy of Tenngasco's application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, at the above address, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 20, 1990.

Clifford P. Tomaszewski,

Acting Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 90–22895 Filed 9–26–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PP 6G3350/T599; FRL 3796–6]

Carbon Disulfide; Renewal of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has renewed temporary tolerances for residues of the nematicide carbon disulfide in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire November 15, 1990.

FOR FURTHER INFORMATION CONTACT:

By mail: Susan Lewis, Product Manager (PM) 21, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 229, CM# No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–1900.

SUPPLEMENTARY INFORMATON: EPA issued a notice, which was published in

the Federal Register of February 22, 1990 (55 FR 6310), stating that a temporary tolerance had been renewed for residues of the nematicide carbon disulfide in or on the raw agricultural commodities grapefruit, grapes, oranges and potatoes at 0.1 part per million (ppm) resulting from soil applications of the nematicide sodium tetrathiocarbonate. These tolerances were renewed in response to pesticide petition (PP) 6G3350, submitted by Union Chemicals Division, Unocal, c/o Delta Management Group, 1414 Fenwick Lane, Silver Spring, MD 20910.

The company has requested a 1-year renewal of the temporary tolerances to permit the continued marketing of the above raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 612– EUP–1, which is being renewed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that a renewal of the temporary tolerances will protect the public health, Therefore, the temporary tolerances have been renewed on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active nematicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Unocal Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire November 15, 1990. Residues not in excess of this amount remaining in or on the above raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the Federal Register of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: September 10, 1990

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90–22910, Filed 9–26–90; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30302A; FRL–3797–7]

E. I. Du Pont de Nemours and Co; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by E. I. Du Pont de Nemours and Co., to conditionally register the pesticide products Du Pont Accent Herbicide and Du Pont Accent Technical, containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 245, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–557–1800).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of November 22, 1989 (54 FR 48313), which announced that E. I. Du Pont de Nemours and Co., Inc., Agricultural Products Dept. Walker Mill Bldg., Barley Mill Plaza, Wilmington, DE 19880–0038, had submitted applications to register the pesticide products Du Pont Accent Herbicide and Du Pont Acccent Technical (EPA File Symbols 352–LGU and 352–LGL), containing the active ingredient 2-{{{{{4,6-dimethoxypyrimidin-2-yl)aminocarbonyl}}aminosulfonyl}}-*N,N*-dimethyl-3-pyridinecarboxamide, monohydrate at 75 and 88.5 percent respectively; an active ingredient not included in any previously registered products.

The applications were approved on June 29, 1990, as Du Pont Accent Herbicide (EPA Reg. No. 352–534) and Du Pont Accent Technical (EPA Reg. No. 352–535) for general use to control annual and perennial weeds in field corn.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of 2-{{{{{4,6-dimethoxypyrimidin-2-yl)aminocarbonyl}}aminosulfonyl}}-*N,N*-dimethyl-3-pyridinecarboxamide, monohydrate, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of 2-{{{{{4,6-dimethoxypyrimidin-2-yl)aminocarbonyl}}aminosulfonyl}}-*N,N*-dimethyl-3-pyridinecarboxamide, monohydrate, during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that the conditional registration is in the public interest. Use of the pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on 2-{{{{{4,6-dimethoxypyrimidin-2-yl)aminocarbonyl}}aminosulfonyl}}-*N,N*-dimethyl-3-pyridinecarboxamide, monohydrate.

A copy of the fact sheets, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's

regulatory position and rationale, may be obtained from the Natural Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Docket, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM #2, Arlington, VA 22202 (703–557–4456). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: September 10, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90–22914 Filed 9–26–90; 8:45 am]

BILLING CODE 6560-50-F

[OPP–180834; FRL 3800–6]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the eight States as listed below. Two crisis exemptions were initiated by the Michigan and Nebraska Departments of Agriculture. Two quarantine exemptions were also granted to the United States Department of Agriculture/APHIS. These exemptions were issued in June, except for one issued in May. They are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied specific exemptions requests from the Alabama Department of Agriculture and Industries, Florida Department of Agriculture and Consumer Services, and Georgia Department of Agriculture. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific, crisis, and quarantine exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. California Department of Food and Agriculture for the use of hexakis on watermelons to control mites; June 19, 1990, to October 15, 1990. (Robert Forrest)

2. California Department of Food and Agriculture for the use of hexakis on sweet corn to control spider mites; June 15, 1990, to February 28, 1991. California had initiated a crisis exemption for this use. (Robert Forrest)

3. Georgia Department of Agriculture for the use of permethrin on southern peas to control cowpeas curculio; June 26, 1990, to October 31, 1990. (Robert Forrest)

4. Idaho Department of Agriculture for the use of hexakis on hops to control two-spotted spider mites; June 8, 1990, to September 15, 1990. (Robert Forrest)

5. Iowa Department of Agriculture and Land Stewardship for the use of pendimethalin on dry bulb onions grown on organic soil to control broadleaf weeds; June 11, 1990, to June 30, 1990. (Jim Tompkins)

6. Michigan Department of Agriculture for the use of pendimethalin on dry bulb onions grown on organic soil to control broadleaf weeds; June 11, 1990, to June 30, 1990. Michigan had initiated a crisis exemption for this use. (Jim Tompkins)

7. Michigan Department of Agriculture for the use of cypermethrin on onions to control thrips; June 15, 1990, to September 1, 1990. (Robert Forrest)

8. North Dakota Department of Agriculture for the use of benomyl on canola to control sclerotinia stem rot; June 19, 1990, to July 31, 1990. (Susan Stanton)

9. South Dakota Department of Agriculture for the use of chlorpyrifos on wheat to control aphids; June 8, 1990, to December 30, 1990. (Robert Forrest)

10. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of clomazone on cabbage to control velvetbean caterpillar; June 15, 1990, December 31, 1990. (Libby Pemberton).

Crisis exemptions were initiated by the:

1. Michigan Department of Agriculture on May 13, 1990, for the use of pendimethalin on dry bulb onions grown on organic soil to control broadleaf weeds. This program has ended. (Jim Tompkins)

2. Nebraska Department of Agriculture on June 18, 1990, for the use of cyfluthrin on sorghum to control chinch bugs. This program has ended. (Libby Pemberton)

EPA has granted quarantine exemptions to:

1. United States Department of Agriculture/APHIS for the use of malathion in Florida to eradicate Mediterranean fruit flies; June 17, 1990, to July 17, 1990. (Susan Stanton)

2. United States Department of Agriculture/APHIS for the use of diazinon in Florida to eradicate Mediterranean fruit flies; June 17, 1990, to July 17, 1990. (Susan Stanton)

EPA has denied specific exemption requests from the:

1. Alabama Department of Agriculture and Industries for the use of pirimiphos-methyl on stored peanuts to control storage insects. (Susan Stanton)

2. Florida Department of Agriculture and Consumer Services for the use of pirimiphos-methyl on stored peanuts to control storage insects. (Susan Stanton)

3. Georgia Department of Agriculture for the use of pirimiphos-methyl on stored peanuts to control storage insects. (Susan Stanton)

Authority: 7 U.S.C. 136.

Dated: September 14, 1990.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90–22912 Filed 9–26–90; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50711; FRL 3800–5]

Receipt of Notification of Intent to Conduct Small-Scale Field Testing; Nonindigenous and Genetically Modified Nonindigenous Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Monsanto Agricultural Co. a notification of intent to conduct small-scale field testing in the States of Indiana, Montana, Washington, Alabama, Missouri, and Illinois of a nonindigenous strain (Ps 2140) of *Pseudomonas corrugata* and a genetically modified strain (Ps. 2140RL3) of the same

organism on wheat. The nonindigenous strain was isolated from soil in Australia. The genetically modified strain was derived by inserting genes isolated from *E. coli* bacteria into the nonindigenous strain for the purpose of providing a marker for detection of the modified organism at very low populations in the soil.

DATES: Comments must be received on or before October 11, 1990.

ADDRESSES: By mail, submit written comments to: Public Docket and Freedom of Information Section, Field Operations Division (H–7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) 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(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Susan T. Lewis, Product Manager (PM–21), Registration Division (H–7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703)–557–1900.

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's "Statement of Policy; Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act" of June 26, 1986 (51 FR 23313), has been received from the Monsanto Agricultural Co., St. Louis, MO. The purpose of the proposed testing is to evaluate the efficacy of the genetically modified and unmodified strains of *Pseudomonas corrugata* for the control of Take-All, a disease of wheat. The nonindigenous strain, which was isolated in Australia, has been modified by inserting genes isolated from *E. coli* bacteria which are designated as the *lac*ZY marker. The *lac*ZY marker is a tracking system which has been previously used as a means for monitoring the survival and location of similar organisms under field conditions. Proposals for small-scale field testing of organisms of the same species which contained these marker genes have been reviewed by scientists from both the Office of Pesticide Programs and the Office of Toxic Substances. The organisms were subsequently field tested with no observed adverse effects.

The main objective of the current tests is to confirm that the nonindigenous and *lac*ZY-marked organisms demonstrate potential as biological control agents under actual field conditions in differing geographical areas, soil types, and seasonal periods. In addition, Monsanto proposes to evaluate a new microencapsulation delivery system for some of the microorganisms used in this testing program. The proposed field tests would be carried out in collaboration with State universities in the States of Indiana, Montana, and Washington and at company research facilities in Alabama, Missouri, and Illinois. The tests would be conducted at seven sites with each site consisiting of 1.5 acres or less of wheat. The total acreage shall not exceed a total area of 10 acres.

Dated: September 6, 1990.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90–22913 Filed 9–26–90; 8:45 am]

BILLING CODE 6560–50–F

[PF–539; FRL 3795–9]

Pesticide Tolerance Petitions; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces amended filings for pesticide petitions (PP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

ADDRESSES: By mail, submit written comments to:

Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a 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 not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 246 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H–7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/ telephone number	Address
Dennis Edwards (PM 12).	Rm. 202, CM #2, 703–557–2386.	1921 Jefferson Davis Hwy., Arlington, VA.
Joanne Miller (PM 23).	Rm. 237, CM #2, 703–557–1830.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the amendment of regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Amended Pesticide Petitions

1. *PP 0F3825.* NOR-AM Chemical Co., 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803, has submitted a revised Section F proposing to amend 40 CFR 180.287 for the insecticide and miticide amitraz (*N*'-[2,4-dimethylphenyl]-*N*-[[(2,4-dimethylphenyl)imino]methyl]-*N*-methylmethanimidamide) and its metabolites containing the *N*-(2,4-dimethylaniline) moiety (calculated as parent compound) by lowering the tolerance for beeswax from 7.0 parts per million (ppm) to 6.0 ppm. (The proposed tolerance of 1.0 ppm on honey remains unchanged). The analytical method is gas chromatography using electron detection. The original notice appeared in the **Federal Register** of February 22, 1990 (55 FR 6311). (PM 12)

2. *PP 5F3158.* Chevron Chemical Co., P.O. Box 4010, Richmond, CA 94804–0010, has submitted an amended notice of filing proposing to amend 40 CFR

180.401 to establish tolerances for the combined residues of the herbicide thiobencarb (*S*-[(4-chlorophenyl)methyl]diethylcarbamothioate) and its chlorobenzyl and chlorophenyl moiety-containing metabolites in or on the following raw agricultural commodities: celery at 0.2 ppm, endive at 0.2 ppm, and lettuce at 0.2 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 23)

Authority: 7 U.S.C. 136a.

Dated: August 20, 1990.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 90-22911 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-F

[FRL-3835-8]

Proposed Settlement of Administrative Order by Consent

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Proposed *de minimis* Settlement.

SUMMARY: U.S. EPA is proposing to settle a claim under Section 122 of CERCLA with *de minimis* potentially responsible parties for costs that have been and will be incurred during remedial and removal activities at the Summit National Site in Deerfield, Ohio. Respondents have agreed to collectively pay $1,906,312 into a specially created escrow account that will be used by the *de maximus* settlors for remedial work at the Site, or, in the event a consent order is not entered into between U.S. EPA and the *de maximus* settlors, the money will be used to reimburse the U.S. EPA for costs incurred during U.S. EPA's removal and remedial actions at the Site. This action is being taken to settle all liability related to the Summit National site with the small quantity Respondents pursuant to the intent of section 122(g) of CERCLA, as amended.

DATES: Comments on this proposed settlement must be received on or before October 29, 1990.

ADDRESSES: Copies of the proposed settlement are available at the following address for review: (It is recommended that you telephone Cheryl Allen at (312) 353-6196, before visiting the Region V Office).

U.S. Environmental Protection Agency, Region V, Office of Superfund, Remedial and Enforcement Response Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Comments on this proposed settlement should be addressed to: (Please submit an original and three copies, if possible).

Cheryl Allen, Community Relations Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-6196.

FOR FURTHER INFORMATION CONTACT: Cheryl Allen, Office of Public Affairs, at (312) 353-6196.

SUPPLEMENTARY INFORMATION: The Summit National Site, which is listed on the National Priorities List, was operated as a waste disposal facility from 1974 until 1980, when it was closed by the State of Ohio. Due to the nature of the material received by the facility when it was in operation, the release or threatened release of hazardous substances into the environment has caused the U.S. EPA to take emergency removal actions at the Site and to conduct an investigation as to long term remedial measures necessary to rectify the environmental hazard at the Site.

The thirty-seven Respondents are small quantity generators and transporters of the hazardous substances sent to the Site. Each Respondent's share of the waste delivered to the Site does not exceed 0.2 percent of the total waste delivered to the Site, and as an aggregate all Respondents' shares do not exceed 2.0 percent of all waste delivered to the Site.

A 30-day period, beginning on the date of publication, is open pursuant to section 122(i) of CERCLA for comments on the proposed settlement. Comments should be sent to the Office of Public Affairs (5PA-14), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

Peter M. Felitti,

Assistant Regional Counsel, U.S. Environmental Protection Agency.

[FR Doc. 90-22891 Filed 9-26-90; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59287; FRL-3804-2]

Toxic and Hazardous Substances; Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38.

EPA has designated this application as TME-90-18. The test marketing conditions are described below.

DATES: This approval is effective September 20, 1990. Written comments will be received until October 12, 1990.

ADDRESSES: Written comments, identified by the document control number "OPTS-59287" and the specific TME number "TME-90-18" should be sent to: Document Control Officer (TS-790), Confidential Data Branch, Information Management Division, Office of Toxic Substances, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Suzanne M. Parent, New Chemical Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202) 245-4142.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

EPA hereby approves TME-90-18. EPA had determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. The test marketing period, production volume, use, and number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time.

The complete nonconfidential document is available in the TSCA Public Docket Office, NE G004 at the above address between 8 a.m. to noon, and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

The following additional restrictions apply to TME–90–18:

1. A bill of lading accompanying each shipment must state that the use of the substance is restricted to that approved in the TME.

2. During manufacturing, processing, and use of the substance at any site controlled by the Company, any person under the control of the Company, including employees and contractors, who is reasonably likely to be exposed by inhalation in the work area to the substance as a dust is provided with, and is required to wear in accordance with 29 CFR 1910.134 and 30 CFR part 11, at a minimum, a NIOSH-approved respirator from one of the following categories:

a. Category 21C air-purifying respirator equipped with a full facepiece and high efficiency particulate filters.

b. Category 21C powered air-purifying respirator equipped with a tight-fitting facepiece and high efficiency particulate filters.

c. Category 21C powered air-purifying respirator equipped with a loose-fitting hood or helmet and high efficiency particulate filters.

d. Category 21C air-purifying respirator equipped with a high efficiency particulate filter including disposable respirators.

3. The Company must affix a label to each container of the substance or formulations containing the substance. The label shall include, at a minimum, the following statement:

WARNING: Inhalation may be harmful. Chemicals similar in structure to this substance have been found to cause cancer and neurotoxicity. To protect yourself, you must wear a 21C respirator.

4. The Company must also obtain or develop a material safety data sheet (MSDS) for the substance. The MSDS must contain language requiring precautionary measures to control worker exposure that include the use of a NIOSH-approved 21C respirator.

5. The applicant shall maintain the following records until 5 years after the date they are created and shall make them available for inspection or copying in accordance with section 11 of TSCA:

a. Records of the quantity of the TME substance produced and the date of manufacture.

b. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

c. Copies of the labels affixed to containers of the substance or formulations containing the substance.

d. Copies of the MSDS.

e. Copies of the bill of lading that accompanies each shipment of the substance.

f. Copies of any determination under paragraph 2 above that the protective gloves used by the Company are impervious to the substance.

T–90–18

Date of Receipt: August 10, 1990.

Close of Review Period: September 23, 1990. The extended comment period will close October 12, 1990.

Applicant: American Cyanamid Company.

Chemical: (G) Substituted Heterocycle.

Use: Additive for dispersive use.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: Confidential.

Risk Assessment: EPA identified concerns for oncogenicity and neurotoxicity based on test data on analogous chemicals. However, exposure to workers will be mitigated by respirators. Therefore, the test market activities will not present an unreasonable risk of injury to health. EPA identified no significant environmental releases of the test market substance. Therefore, the test market activities will not present an unreasonable risk of injury to the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

Dated: September 20, 1990.

Lawrence E. Culleen,

Acting Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc 90–22902 Filed 9–26–90; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Office of Training

Board of Visitors for the Emergency Management Institute; Notice of Continuation

In accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), GSA Regulation 41 CFR 101.6, and FEMA Regulation 44 CFR part 12, and after consultation with the General Services Administration, the Director of the Federal Emergency Management Agency (FEMA) has determined that the continuation of the FEMA Board of Visitors for the Emergency Management Institute (EMI) is in the public interest in connection with the performance of duties imposed on the Agency by law.

The objectives and the duties of the Board are to review the programs of EMI and continue to make comments and recommendations to the Director of the Office of Training regarding the operation of the Institute and any improvements therein which the Board deems appropriate.

1. In carrying out its responsibilities, the Board may include in its review:

a. A discussion of the Institute's programs to determine whether these programs further the basic mission of the EMI; and

b. Other appropriate subject areas that are related to the effectiveness of the delivery of the Institute's programs.

2. The Board shall draw on the expertise of its members and with the concurrence of the Director, Office of Training, such other experts as may be considered appropriate in order to provide advice and make recommendations to the Director, Office of Training.

3. The Board shall submit annually a written report to the Director, Office of Training, no later than April each year. This report shall provide detailed comments and recommendations regarding the operation of the Institute.

4. The Board shall function solely as an advisory board and comply fully with the provisions of the Federal Advisory Committee Act.

The Board consists of 12 members, including a chairperson. The Director, Office of Training, shall appoint the individuals to the Board, including the member to be designated as chairperson. The members of the Board, including the chairperson, represent the fields of emergency management, education, public administration and industry, and such professional

organizations as will ensure a balance representation of interest. The members are appointed for a 2-year term.

Interested persons are invited to submit comments regarding the recommendation to continue the Board of Visitors. Such comments, as well as any inquiries, may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, Washington, DC 20472.

Dated: September 12, 1990.

Laura Buchbinder,

Acting Director, Office of Training.

[FR Doc. 90-22879 Filed 9-26-90; 8:45 am]

BILLING CODE 6718-01-M

[FEMA-879-DR]

IOWA; Amendment to Notice of A Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-879-Dr), dated September 6, 1990, and related determinations.

DATED: September 17, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Iowa, dated September 6, 1990, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1990:

The counties of Clinton and Pottawattamie for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 90-22881 Filed 9-26-90; 8:45 am]

BILLING CODE 6718-02-M

Adjustment of Disaster Grant Amounts

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, as amended, prescribes that grants made under Sec. 411, Individual and Family Grant Programs, and grants made under sec. 422, Simplified Procedure, relating to the Public Assistance program, shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

EFFECTIVE DATE: October 1, 1990.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the maximum amount of any grant made to an individual or family for disaster-related serious needs and necessary expenses under Sec. 411 of the Act, with respect to any single disaster, is increased to $11,000 for all disasters declared after October 1, 1990.

Notice is also hereby given that the amount of any grant made to the State, local government, or the owner or operator of an eligible private nonprofit facility, under Sec. 422 of the Act, is increased to $38,500 for all disasters declared after October 1, 1990.

The increase is based on a rise in the Consumer Price Index for All Urban Consumers of 5.6 percent for the prior 12-month period. The information was published by the Department of Labor on September 18, 1990.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director, Federal Emergency Management Agency.

[FR Doc. 90-22880 Filed 9-26-90; 8:45 am]

BILLING CODE 6718-02-M

Guidance on Offsite Emergency Radiation Measurement Systems, Phase 3—Water and Non-Dairy Food Pathway—Agency (FEMA)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Extension of due date for submittal of comments.

SUMMARY: The Federal Register Notice of May 7, 1990, Vol. 55, No. 88, pages 18948 and 18949, announced the availability of FEMA REP-13 and requested comments on the document by September 30, 1990. However, due to delays in the printing and distribution of the documents, it was not available at that time. FEMA REP-13, dated May 1990, is now available for distribution and the comment period is being extended.

Comments will be accepted through December 31, 1990, and should be addressed to: Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C Street Southwest, Washington, DC 20472. A single copy of this document may be obtained by writing FEMA, P.O. Box 70274, Washington, DC 20024.

If you have any questions, please contact Marlow J. Stangler at 202-646-2856 or FTS 876-2856 or by writing FEMA, Office of Natural and Technological Hazards, Room 633, 500 C Street Southwest, Washington, DC 20472.

Dated: September 17, 1990.

For the Federal Emergency Management Agency.

Richard W. Krimm,

Acting Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 90-22882 Filed 9-26-90; 8:45 am]

BILLING CODE 6718-20-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.: 207-007622-003.

Title: A.P. Moller-Maersk Line Joint Service Agreement.

Parties: Dampskibsselskabet AF 1912, Aktieselskabet, Aktieselskabet Dampskibsselskabet Svendborg.

Synopsis: The proposed amendment would restate the Agreement to conform with the Commission's format, organization and content requirements.

Agreement No.: 203-011271-002.

Title: United States/Peru Discussion Agreement.

Parties: Crowley Caribbean Transport, Inc., Empresa Naviera Santa, Lykes Line.

Synopsis: The proposed amendment

would expand the scope of the Agreement to include Chile.

Dated: September 21, 1990.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 90-22847 Filed 9-26-90; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 1168.

Name: Barry Transfer & Storage Company dba Citrans International.

Address: 1200 17th St., San Francisco, CA 94107.

Date Revoked: July 10, 1990.

Reason: Failed to maintain a valid surety bond.

License Number: 582.

Name: Ramsay, Scarlett & Company, Inc.

Address: 19 South Street, Baltimore, MD 21202.

Date Revoked: August 16, 1990.

Reason: Failed to maintain a valid surety bond.

License Number: 1827R.

Name: West Coast Moving & Storage, Inc. dba West Coast International.

Address: 39695 Oberenda Road, Temecula, CA 92390.

Date Revoked: August 17, 1990.

Reason: Surrendered license voluntarily.

License Number: 2463.

Name: Scan-Shipping, Inc.

Address: 116 John Street, suite 320, New York, NY 10038.

Date Revoked: August 20, 1990.

Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Acting Director, Bureau of Domestic Regulation.

[FR Doc. 90-22846 Filed 9-26-90; 8:45 am]

BILLING CODE 6730-01-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 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 090490 AND 091490

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
Acadia Partners, L.P., Prudential Corporation plc, BMK Inc	90-2058	09/04/90
Heerema Trust, The Ceco Corporation, The Ceco Corporation	90-1971	09/05/90
Vornado, Inc., Alexander's, Inc., Alexander's, Inc	90-2000	09/05/90
Wace Group PLC, Parkway Group PLC, Parkway Group PLC	90-1983	09/06/90
Reed International P.L.C., Robert C. Legler, First Marketing Corporation of Florida	90-1994	09/06/90
Media General, Inc., Garden State Newspapers, Inc., Garden State Newspapers, Inc	90-1995	09/06/90
Rubbermaid Incorporated, Eldon Industries, Inc., Eldon Industries, Inc	90-2011	09/06/90
Greyhound Dial Corporation, American Cyanamid Company, Shulton Group's Breck Business	90-2026	09/06/90
Wearne Brothers, Limited, Qume Corporation, Qume Corporation	90-2030	09/06/90
The Dun & Bradstreet Corporation, Commercial Credit Group, Inc., American Credit Indemnity Company	90-2301	09/06/99
Fiat, S.p.A., Baxter International Inc., Baxter Healthcare Corporation	90-1985	09/07/90
Florida Progress Corporation, The United Company, Belfry Coal Corporation	90-1993	09/07/90
The Peninsular and Oriental Steam Navigation Company, Estate of E. Robert Street, MS Construction, Inc	90-2016	09/07/90
Westinghouse Electric Corporation, The Goldman Sachs Group, L.P., Skybound, Inc	90-2042	09/07/90
Mr. Edward H. Arnold, Robert Bosch Industrietreuhand KG, Gilmour Manufacturing Co	90-2057	09/07/90
Mr. Edward H. Arnold, Emerson Electric Company, Gilmour Manufacturing Co	90-2061	09/07/90
Heerema Trust, Petitjean S.A., Petitjean S.A	90-2091	09/07/90
Nelson Peltz, Equitable Bag Holding Company, Equitable Bag Holding Company	90-2038	09/10/90
American Business Products, Inc., Edward C. Leavy, Jen-Coat, Inc. & Leavy Realty	90-2052	09/10/90
Renouf Corporation Limited, Renouf Corporation Limited, Renouf Associates USA	90-2062	09/10/90
University of Detroit, Mercy College of Detroit, Mercy College of Detroit	90-2066	09/10/90
Renouf Corporation Limited, Ariadne Australia Limited, Renouf Associates USA	90-2067	09/10/90
Richard R. Kelley, Manufacturers Hanover Corporation, CFH, Inc	90-2071	09/10/90
Kobayashi Pharmaceutical Co., Ltd., C.R. Bard, Inc., Shield-California Health Care Center, Inc	90-2075	09/10/90
NCNB Corporation, Southmark Corporation, Fundamental Mortgage Corporation	90-2083	09/10/90
Chester C. Davenport, United Technologies Corporation, Hamilton Test Systems, Inc	90-2090	09/10/90
Kokusai Kogyo Kabushiki Kaisha, Stichting Pensioenfonds voorde Gezondheid, Geesteiijke, Grand Cypress Resort	90-2094	09/10/90
Saratoga Partners II, L.P., Harry J. Pappas and Stella A. Pappas, Pappas Telecasting of the Carolinas, Inc	90-2096	09/10/90
Toyota Motor Corporation, Mr. Frederick R. Weisman, Mid-Atlantic Toyota Distributors, Inc	90-2099	09/10/90
Margaret Hunt Trust Estate, Caroline Hunt Trust Estate, Rosewood Resources, Inc	90-2101	09/10/90
Hillsdown Holdings, PLC, Thomas R. Shelton, Case Foods, Inc	90-2103	09/10/90
FS Equity Partners II, L.P., American Stores Company, Buttray Food and Drug Division	90-2111	09/10/90
Hillsdown Holdings plc, Hillsdown Holdings plc, Case Foods, Inc	90-2115	09/10/90
The Estate of James Campbell, CH Greenspoint Retail #1 Limited Partnership, The Commons at Greenspoint Joint Venture	90-2118	09/10/90
The Estate of James Campbell, Deceased, American National Insurance Company, The Commons at Greenspoint Joint Venture	90-2119	09/10/90
Westlake Health System, "Newco", "Newco"	90-2022	09/12/90
Wheaton Franciscan Services, Inc., "Newco", "Newco"	90-2023	09/12/90

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 090490 AND 091490—Continued

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
Pioneer International Limited, Beazer PLC, Beazer West, Inc	90-2050	09/12/90
Trefoil Capital Investors, L.P., CNC Holding Corporaton, Child World, Inc	90-2095	09/12/90
Modine Manufacturing Company, Sundstrand Corporation, Subsidiaries	90-2097	09/12/90
Norfolk Southern Corporation, Occidental Petroleum Corporation, Kentucky Ohio Transportation Co	90-2021	09/13/90
Jefferson Smurfit Group plc, PCL Industries Limited, PCL Industries Limited	90-2069	09/13/90
The Morgan Stanley Leveraged Equity Fund II, L.P., PCL Industries Limited, PCL Industries Limited	90-2070	09/13/90
Ashland Oil, Inc., Blue Diamond Coal Company, Blue Diamond Coal Company	90-2007	09/14/90
Tech-Sym Corporation, Varian Associates, Inc., Varian Continental Electronics Division	90-2020	09/14/90
Minorco, Danville Resources, Inc., Danville Resources, Inc	90-2073	09/14/90
Minorco, Adobe Resources Corporation, Adobe Resources Corporation	90-2074	09/14/90
President and Fellows of Harvard College, Berkshire Hathaway, Inc., NHP, Inc	90-2078	09/14/90
Thyssen Aktiengesellschaft, Harold A. O'Callaghan, Jr., Universal Builders Supply, Inc	90-2107	09/14/90
Thyssen Aktiengesellschaft, R. Anthony O'Callaghan, Universal Builders Supply, Inc	90-2108	09/14/90
Apache Corporation, Consolidated Natural Gas Co., Consolidated Natural Gas Co	90-2112	09/14/90
Intercontinental Affiliates, Lazard Freres & Co., Institutional Leasing, Inc	90-2116	09/14/90
Code, Hennessy & Simmons Limited Partnership, Pioneer-American, Inc., Pioneer-American, Inc	90-2126	09/14/90

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-22872 Filed 9-26-90; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3304]

Jeep Eagle Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Highland Park, MI. successor to American Motors Corp. to conduct a computer search of its warranty claims files to implement a redress program to benefit original owners of new 1983, 1984 and 1985 Renault Alliance and 1984 and 1985 Encore automobiles that experienced four or more documented repair visits to correct specific automatic transmission fluid or engine oil leaks or related problems.

DATES: Complaint and Order issued September 4, 1990.[1]

[1] Copies of the Complaint, the Decision and Order, and the statement by Commissioner Azcuenaga are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT:
Adrienne Williams, FTC/H-238, Washington, DC 20580. (202) 326-3121.

SUPPLEMENTARY INFORMATION: On Friday, November 24, 1989, there was published in the **Federal Register**, 54 FR 48681, a proposed consent agreement with analysis In the Matter of Jeep Eagle Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 90-22871 Filed 9-26-90; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Performance Review Board

September 21, 1990.

Effective immediately, the following officials are designated to serve on the GSA Performance Review Board in accordance with the HB, Senior Executive Service, Chapter 6 (ADM P 9920.1). Meetings are to be attended by those listed below; substitutes are not acceptable. Five members constitute a quorum.

James A. Lobmaster, Chairperson...Chief of Staff (AC) Tel. Ext. 501-1216
Carlene Bawden...Associate Administrator for Administration (C) Tel. Ext. 501-0945
John Meyer...Deputy Regional Administrator, National Capital Region (WAD) Tel. Ext. 708-6161
Roger D. Daneiro...Commissioner, Federal Supply Service (FD) Tel. Ext. 557-8667
Richard H. Hopf...Associate Administrator for Acquisition Policy (V) Tel. Ext. 501-1043
Don Zito...Regional Administrator, Region 5 (5A) Tel. Ext. 353-5395
June Huber...Controller, Public Building Service (PF) Tel. Ext. 501-0658
Judy Parks...Assistant Commissioner, Information Systems Tel. Ext. 501-1800
John F. Wynn...Director, Office of Small and Disadvantaged Business Utilization (AU) Tel. Ext. 501-1021

Richard G. Austin,

Administrator of General Services.

[FR Doc. 90-22858 Filed 9-26-90; 8:45 am]

BILLING CODE 6820-BR-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-050-09-4351-11]

Emergency Closure of Public Lands (Western Portion of the Shoshone BLM District)

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: Notice is hereby given that effective immediately all public lands located in the western portion of the Shoshone BLM District are closed to off road motorized travel. The closed area is bounded and generally described as follows:

That portion of Idaho Department of Fish and Game Unit 45, West of the Bliss-Hill City Road, and North of the Pioneer Road, to the Snake River, downstream to the confluence of King Hill Creek with the Snake River, up King Hill Creek to the Idaho Power two pole power line, east along the powerline to White

Arrow ponds on the Bliss-Hill City Road the point of beginning.

All public lands administered by the Bureau of Land Management within the above described area are closed to off-road motorized vehicle use, from the date of the notice until April 1, 1991.

Exemptions from this closure for federal, state, and local government personnel on official duty, emergency service personnel including medical, search and rescue, utility services, and all other licensed/permitted individuals may be approved by the authorized officer.

The described area is currently experiencing high concentrations of Mule Deer hunters during a late season muzzleloader hunt season. The hunting activity has encouraged off-road motorized use which is opening tracks for excessive soil erosion during snowmelt or seasonal rains. The purpose of the closure is to protect the natural resources from excessive soil erosion caused by disturbances from off-road vehicle use.

The authority for this closure is 43 CFR 8364.1. The closure will remain in effect until April 1, 1991.

DATES: September 20, 1991.

ADDRESSES: BLM District Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION AND APPLICATION FOR EXCLUSION PERMITS CONTACT: Robert D. Cordell, Bennett Hills Resource Area Manager, P.O. Box 2–B, Shoshone, Idaho 83352, Telephone (208) 886–2206.

K. Lynn Bennett,

District Manager.

[FR Doc. 90–22848 Filed 9–26–90; 8:45 am]

BILLING CODE 4310–GG–M

[OR–030–00–1540–11–N264; GPO–403]

Road Closure; Oregon

AGENCY: Vale District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following order, affecting approximately 4,000 feet of road along West Sutton Creek, on public land in T. 11 S., R. 40 E., WM, sections 12, 13 and 14, was issued on September 19, 1990.

This road suffered significant damage from recent storms in the area and is presently impassable. Any attempts to negotiate the road by vehicle or to reconstruct it would pose a significant threat to cultural, soil, vegetation and forest resources which have already suffered adverse impacts from storms and wildfire. Under the authority of 43 CFR 8364.1, the above road is closed to use by motorized vehicles. This closure shall remain in effect until further notice.

EFFECTIVE DATE: September 19, 1990.

FOR FURTHER INFORMATION CONTACT: Jack Albright, BLM Baker Resource Area, P.O. Box 987, Baker City, Oregon 97814, 503–523–6391.

Jack D. Albright,

Area Manager.

[FR Doc. 90–22855 Filed 9–26–90; 8:45 am]

BILLING CODE 4310–33–M

[MT–921–08–4121–14; NDM 78697]

Request for Public Comment on Environmental Analysis, Fair Market Value and Maximum Economic Recovery; Coal Lease Application NDM 78697—The Coteau Properties Co.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management requests public comment on the fair market value of certain coal resources it proposes to offer for competitive lease sale.

The land included in Coal Lease Application NDM 78697 is located in Mercer County, North Dakota, and is described as follows:

T. 145 N., R. 87 W., 5th P.M.

Sec. 6: SE¼
160.00 acres.

The Beulah bed, avaraging 15.4 feet in thickness, is the only economically minable coal seam within the tract. The tract contains an estimated 2,300,000 short tons of recoverable lignite. Coal quality, as received, averages 6,970 BTU/lb, 37.19 percent moisture, 5.80 percent ash, 0.53 percent sulfur, 31.96 percent fixed carbon, and 35.05 percent volatile matter. This coal bed is being mined in an adjoining tract on the south by the Coteau Properties Company.

The public is invited to submit written comments on the environmental analysis, fair market value, and the maximum economic recovery of the tract.

In addition, notice is also given that a public hearing will be held on Friday, October 26, 1990, on the environmental assessment, the proposed lease sale, the fair market value, and maximum economic recovery of the proposed lease tract.

DATES: Comments must be received on or before October 26, 1990. The public hearing will be held at 1 p.m. on the same date, at the BLM Dickinson District Office, 2933 Third Avenue West, Dickinson, North Dakota.

ADDRESSES: For more complete data on this tract, please contact Donald Gilchrist (telephone 406–255–2816), Bureau of Land Management, Montana State Office, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107 or William Krech (telephone 701–225–9148), Bureau of Land Management, Dickinson District Office, 2933 Third Avenue West, Dickinson, North Dakota 58601. Copies of the environmental assessment are available at both addresses.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Coal Management regulations 43 CFR parts 3422 and 3425, not less than 30 days prior to publication of a notice of sale, the Secretary shall solicit public comments on the environmental assessment, the proposed sale, fair market value, and maximum economic recovery on the proposed lease tract. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on fair market value and maximum economic recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, 222 North 32nd Street, Billings, Montana, during regular business hours 9 a.m. to 4 p.m.) Monday through Friday.

Comments should be sent to the Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107 and should include, but not necessarily be limited to the following:

1. The quality and quantity of the coal resources;

2. The mining method or methods which would achieve maximum economic recovery of the coal including specification of the seams to be mined, timing and rate of production, restriction to mining, and inclusion of the tract in an existing mining operation;

3. The fair market value appraisal including but not limited to the evaluation of the tract as an incremental unit of an existing mine, selling price of the coal, mining and reclamation costs, net present value discount factors, depreciation and other tax accounting factors, value of the surface estate, and any comparable sales data of similar coal lands.

The values given above may or may not change as a result of comments received from the public and changes in

market conditions between now and when final economic evaluations are completed.

Dated: September 18, 1990.

Robert W. Faithful,

Acting State Director.

[FR Doc. 90-22857 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-DN-M

[MT-070-00-4050-91-ADVB]

Postponement of District Advisory Council and Grazing Board Meetings

AGENCY: Bureau of Land Management, Butte District Office.

ACTION: Notice of postponement of meetings.

SUMMARY: The meetings scheduled on October 4 and 5 for the Butte District Advisory Council and the Butte District Grazing Board are hereby postponed. The meetings will be rescheduled and announced in a future **Federal Register** Notice.

The advisory council was scheduled to meet October 4 and 5, the grazing board on October 4. The meetings were to include a joint field tour.

The reason for the postponement is the unlikelihood of the availability of necessary travel funds in the district in early October.

The notices for both meetings appeared in the **Federal Register**, September 13, page 37773.

FOR FURTHER INFORMATION CONTACT: James R. Owings, District Manager, Butte District, Bureau of Land Management, Box 3388, Butte, Montana 59702.

James R. Owings,

District Manager.

[FR Doc. 90-22851 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-DN-M

[AZ-020-00-4320-12]

Kingman Resource Area Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting—Kingman Resource Area Grazing Advisory Board.

SUMMARY: Kingman Resource Area Grazing Advisory Board will hold a meeting on Thursday, November 15, 1990. The meeting will start at 9 a.m. in the Kingman Resource Area Conference Room, 2475 Beverly Avenue, Kingman, Arizona 86401.

The agenda for the meeting will include:

1. Election of Officers.
2. Update of the Bureau's Exchange Program.
3. Status of the Bureau's Planning and Environmental Impact Statements.
4. Report on Range Improvements for FY 90 and FY 91.
5. Range Policy Update.
6. Use of Helicopter and Motor Vehicles to Capture Wild Horses and Burros.
7. Request for Advisory Board Expenditures.
8. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven (7) days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 19, 1990.

Henri R. Bisson,

District Manager.

[FR Doc. 90-22853 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-32-M

[AZ-020-00-4320-12]

Phoenix/Lower Gila Resource Areas Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting—Phoenix/Lower Gila Resource Areas Grazing Advisory Board.

SUMMARY: The Phoenix/Lower Gila Resource Areas Grazing Advisory Board will hold a meeting on Tuesday, November 13, 1990. The meeting will start at 9 a.m. in the Phoenix District Office Conference Room, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

The agenda for the meeting will include:

1. Election of Officers.
2. Update of the Bureau's Exchange Program.
3. Status of the Bureau's Planning and Environmental Impact Statements.
4. Report on Range Improvements for FY 90 and FY 91.
5. Range Policy Update.
6. Request for Advisory Board Expenditures.
7. Arrangements for Future Meetings.

The meeting is open to the public. Anyone wishing to make oral or written statements to the Board is requested to do so through the office of the District Manager, 2015 West Deer Valley Road, Phoenix, Arizona 85027, at least seven (7) days prior to the meeting date.

Summary minutes of the Board meeting will be maintained in the District Office and be made available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: September 19, 1990.

Henri R. Bisson,

District Manager.

[FR Doc. 90-22854 Filed 9-26-90; 8:45 am]

BILLING CODE 4310-32-M

[ID-010-00-4212-14, IDI-26957, IDI-27777]

Realty Actions; Sales, Leases, Etc.: Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Amended Notice of Realty Action, Sale of Public Land in Owyhee County, Idaho.

SUMMARY: A Notice of Realty Action was published November 6, 1989, (54 FR 46656) offering for sale certain parcels of land in Silver City, Idaho to the owners of the habitable buildings thereon. This amendment corrects the previous Notice of Realty Action to correctly show the owners and acreages of two lots shown below, and to correctly show the corresponding change in sale offering dates for these two lots. All other terms of the previous Notice of Realty Action remain in effect.

Serial No.	Building owner's name	Lot No.	Acres
IDI-26957.	Kenneth M. and Linda R. Jantz.	111	0.37
IDI-27777.	Gayland T. and Barbara L. Carr.	112	0.02

DATES: The sale offering for these two parcels will begin Tuesday, October 2, 1990, at 10 a.m., and continue until Tuesday, October 9, 1990, at 4 p.m., at which time and date this sale offering will be suspended.

ADDRESSES: The sale offering will be held at the Bureau of Land Management, Boise District Office, 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning the conditions of the sale can be obtained by contacting Blackie Bruegman at (208) 334-1582.

SUPPLEMENTAL INFORMATION: All other terms and conditions of the original Notice of Realty Action dated October 20, 1989, and published November 6, 1989, (54 FR 46656) remain unchanged.

Dated: September 18, 1990.

J. David Brunner,

District Manager.

[FR Doc. 90–22849 Filed 9–26–90; 8:45 am]

BILLING CODE 4310–66–M

[OR 46068; OR–080–00–4212–14: GPO–407]

Realty Action; Proposed Direct Sale; Oregon

September 18, 1990.

This notice amends the notice of realty action published in the **Federal Register** on July 3, 1990 (FR Doc. 90–15390).

The appraised fair market value has been determined to be $500.00.

The date that sealed written bids must be received is changed to October 19, 1990.

All other provisions, of the notice remain unchanged.

Peter J. Schay,

Acting Clackamas Area Manager.

[FR Doc. 90–22850 Filed 9–26–90; 8:45 am]

BILLING CODE 4310–33–M

[MT–070–4050–91–355D]

Montana; Establishment of Supplementary Rule To Provide for the Protection of Public Lands and Resources

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Pursuant to 43 CFR 8365.1–6, a Supplementary Rule is established to prohibit the use of noncertified noxious weed seed free feeds and forage on certain public lands in the Dillon Resource Area in southwest Montana.

SUMMARY: Effective on the date of publication of this notice, all feeds and forage, to include hay, straw, whole or processed grains and pellets brought onto public lands within the following described areas shall be certified by an authorized federal, state, or county officer as being noxious weed seed free.

No person, department or agency is exempt from this rule.

The restricted area is described as Township 7S and Ranges 1E, 1W, 2W, 3W, 4W, PMM; Township 8S and Ranges 1E, 1W, 2W, 4W, PMM; Township 9S and Ranges 1E, 1W, 4W, 5W, PMM; Township 10S and Ranges 1E, 1W, 4W, 5W, 6W, PMM; Township 11S and Ranges 1E, 2E, 5W, 6W, PMM; Township 12S and Ranges 2E, 6W; PMM; Township 13S and Ranges 1E, 1W, 2W, 3W, 4W, 5W, PMM; Township 14S and Range 1E, PMM; and public lands within the Bear Trap unit of the Lee Metcalf Wilderness Area in Townships 3S, 4S, and Range 1E, PMM.

FOR FURTHER INFORMATION CONTACT: Jim Lewis, Area Manager, Dillon Resource Area, 1005 Selway Drive, Dillon, MT 59725.

SUPPLEMENTARY INFORMATION: This rule is issued to manage and prevent the spread of noxious weed seeds in the above-described area and to cooperate with the United States Forest Service and Madison and Beaverhead County Weed Districts to administer a weed seed free hay and feed zone.

Jim Lewis,

Area Manager, Dillon Resource Area.

[FR Doc. 90–22856 Filed 9–26–90; 8:45 am]

BILLING CODE 4310–DN–M

[OR–943–00–4214–10; GPO–409; OR–45928]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon; Correction

The land description in FR Doc. 90–6567, published on page 10701, in the issue of Thursday, March 22, 1990, is hereby corrected as follows:

On page 10701, under T. 37 S., R. 16 E., reads Sec. 28, "SE¼NE¼" and is corrected to read "SW¼NE¼".

Dated: September 19, 1990.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 90–22852 Filed 9–26–90; 8:45 am]

BILLING CODE 4310–33–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–318]

Certain Anti-Knock Ignition Systems and Automobiles or Automobile Component Parts Containing Same; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on August 20, 1990, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of John A. McDougal, P.E., 14388 Harbor Island, Detroit, MI 48215. The complaint was supplemented on September 5, 1990. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain anti-knock ignition systems and automobiles or component parts containing same by reason of alleged infringement of (1) claims 1, 7, and 21 of U.S. Letters Patent No. 3,903,856, (2) claims 1, 12, and 23 of U.S. Letters Patent No. 4,116,173, and (3) claims 10, 18, and 21 of U.S. Letters Patent No. 4,809,662, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complaint requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, the supplement to the complaint, and the accompanying exhibits, except for exhibits claimed to contain confidential business information, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–252–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–252–1572.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on September 18, 1990 *Ordered* That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain anti-knock ignition systems or automobiles or automobile component parts containing same by reason of alleged infringement of (1) claims 1, 7, or 21 of U.S. Letters Patent No. 3,903,856, (2) claims 1, 12, or 23 of U.S. Letters Patent No. 4,116,173, or (3) claims 10, 18, or 21 of U.S. Letters Patent No. 4,809,662, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this Notice of Investigation shall be served:

(a) *The complainant is:* John A. McDougal, P.E., 14383 Harbor Island, Detroit, MI 48215.

(b) The respondents are the following entities alleged to be in violation of section 337, and the parties upon which the complaint is to be served:

AB Volvo, Volvo Car Corp. S–40508 Gothenburg, Sweden.

Volvo North America Corp., One Volvo Drive, Rockleigh, NJ 07647.

(c) Juan Cockburn, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401Q, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the Notice of Investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint and this Notice of Investigation. Extensions of time for submitting responses to the complaint and Notice of Investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this Notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this Notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this Notice, and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order, or a cease and desist order, or both, directed against such respondent.

Issued: September 18, 1990.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–22833 Filed 9–26–90; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–455 (Final)]

Certain Laser-Light Scattering Instruments and Parts Thereof From Japan; Commission Determination to Deny Request for in Camera Hearing

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission has denied a request by Otsuka Electronics Co., Ltd. ("Otsuka"), respondent in the above-captioned final investigation, to conduct a portion of its hearing scheduled for September 25, 1990, in camera.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, telephone 202–252–1087. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that wherever possible its business should be conducted in public. It has determined that the extraordinary measure of an in camera hearing is unnecessary and inappropriate in this investigation. With respect to that portion of Otsuka's request seeking an in camera proceeding concerning information submitted by petitioner Wyatt Technology Corp. ("Wyatt"), the Commission has concluded that discussion of proprietary company-specific data, although relevant to its investigation, is unnecessary at the hearing. With respect to that portion of the request seeking an in camera hearing devoted to presenting information proprietary to Otsuka, the Commission has concluded that any benefit it might receive in receiving additional information concerning Otsuka's operations at an in camera hearing is outweighed by the unfairness of such a procedure to Wyatt, which is proceeding *pro se* and would be excluded from participating in such an in camera session. Thus the Commission has determined that the public interest would be best served by a hearing that is entirely open to the public. *See* 19 CFR 201.36(c)(1).

By order of the Commission.

Issued: September 17, 1990.

Kenneth R. Mason,

Secretary.

[FR Doc. 90–22832 Filed 9–26–90; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–52 (Sub-No. 71X)]

The Atchison, Topeka and Santa Fe Railway Co.; Abandonment Exemption in Lyon County, KS

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 6,686-foot line of railroad between mileposts 111 + 1597.8 feet and 1 + 1406 feet, at or near Emporia, Lyon County, KS.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on October 27, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

banking statements under 49 CFR 1152.29 must be filed by October 9, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by October 17, 1990, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Dennis W. Wilson, The Atchison, Topeka and Santa Fe Railway Company, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 2, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 17, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–22696 Filed 9–26–90; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 31728]

W. Robert Bentley, George M. Kloster, Daniel P. Moscato, and James T. Moore—Continuance in Control, Exemption—Massachusetts Central Railroad Corp. and Maine Coast Railroad Corp.

W. Robert Bentley, George M. Kloster, Daniel P. Moscato, and James T. Moore II filed a notice of exemption [1] to continue to control Massachusetts Central Railroad Corporation (MACE) and Maine Coast Railroad Corporation (MECO).

MACE is a class III rail carrier operating approximately 25 miles of line between Palmer and South Barre, MA. MECO is a newly organized corporation that has filed a notice for a modified rail certificate in Finance Docket No. 31727, *Maine Coast Railroad Corporation, Modified Rail Certificate*, to operate a line of railroad owned by the State of Maine. The line runs between Brunswick (milepost 33.79) and Rockland, ME (milepost 85.55), a distance of 51.76 miles. MECO will be a class III rail carrier.

Together, Messrs. Bentley, Kloster, Moscato, and Moore own, directly or beneficially, approximately 30 percent of MACE's outstanding stock.[2] Bentley is MACE's president; Kloster acts as MACE's sales representative; Moscato is in charge of MACE's rail operations; and Moore is MACE's chief mechanical officer. Furthermore, Bentley, Kloster, and Moscato are directors of MACE.

Bentley, Kloster, Moscato, and Moore each own 25 percent of MECO's stock. The four are MECO's only directors and perform for MECO the same duties that they perform for MACE.

This transaction involves the acquisition or continuance in control of nonconnecting carriers where: (1) The railroads would not connect with each other or any railroads in their corporate family; (2) the acquisition or continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on James E. Howard, Kirkpatrick & Lockhart, 84 State Street, Boston, MA 02109.

Decided: September 21, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–22890 Filed 9–26–90; 8:45 am]

BILLING CODE 7035–01–M

Release of Waybill Data for Use By Freight Equipment Management Research-Demonstration Program Association of American Railroads

The Commission has received a request from the Freight Equipment Management, Research-Demonstration Program of the Association of American Railroads (AAR) for permission to use certain data from the Commission's 1989 ICC Waybill Sample.

A copy of the request may be obtained from the ICC Office of Economics.

The Waybill Sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data [Ex Parte 385 (Sub–No. 2)] are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 275–6864.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–22887 Filed 9–26–90; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 12, 1990, a proposed Consent Decree in *United States* v. *C. Robert Ivey, et al.*, Civil Action No. *89–CV–71179–DT* was lodged with the United States District Court for the Eastern District of Michigan. The proposed Consent Decree concerns the hazardous waste site known as the Liquid Disposal, Incorporated ("LDI") Site, located at 3901 Hamlin Road in Shelby Township, Macomb County, Michigan. The Consent Decree sets forth a settlement with three *de minimis* Defendants. Under the terms of the Consent Decree, the United States will recover approximately $605,000.

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[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

[1] Applicants have also filed a motion to dismiss the notice of exemption, alleging that the Commission lacks jurisdiction over the matter. That motion will be handled in a subsequent decision, and, if jurisdiction is not found and the motion is granted, this notice will be revoked.

[2] In addition, Kloster is a party to a voting trust agreement that affects 50 percent of MACE's outstanding stock.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *C. Robert Ivey, et al.*, D.J. Ref. 90-11-2-220A.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Michigan, Office of the United States Attorney, 231 West Lafayette, Detroit, Michigan 48226 and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. The proposed Consent Decree may be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202/347-7829. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page for reproduction costs) payable to Aspen Systems Corporation. Supporting documentation for the settlement is available at Region V of EPA and the Department of Justice.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-22864 Filed 9-26-90; 8:45 am]

BILLING CODE 4410-01-M

Lodging Final Judgment by Consent Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 7, 1990 a proposed consent decree in *United States and Commonwealth of Pennsylvania* v. *Borough of Punxsutawney and the Municipal Authority of Punxsutawney*, Civil Action No. 89-2060, was lodged with the United States District Court for the Western District of Pennsylvania.

The complaint was filed by the United States in October 1989 to address alleged violations of the National Pollution Discharge Elimination System ("NPDES") permit for Punxsutawney's municipal sewage treatment plant, and applicable regulations under sections 301 and 307 of the Clean Water Act, 33 U.S.C. 1311 and 1317, relating to implementation of Punxsutawney's pretreatment program. In March 1990, the Commonwealth of Pennsylvania intervened as a co-plaintiff.

The proposed consent decree between the United States, the Commonwealth of Pennsylvania and the defendants resolves the subject violations by providing a detailed schedule to bring Punxsutawney's pretreatment program into compliance with the NPDES permit requirements and applicable regulations. The proposed decree contains stipulated penalties for non-compliance and provides for a $70,000 civil penalty to be paid by the defendants for past violations. Under the decree the Commonwealth receives $10,000 of the civil penalty; the remainder goes to the United States Treasury.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and Commonwealth of Pennsylvania* v. *Borough of Punxsutawney and the Municipal Authority of Punxsutawney*, DOJ Ref. No. 90-5-1-1-3399. The proposed consent decree may be examined at the office of the United States Attorney, Western District of Pennsylvania, 633 USPO & Courthouse, 7th and Grant Street, Pittsburgh, Pennsylvania. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy please enclose a check in the amount of $11.00 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90-22863 Filed 9-26-90; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Massachusetts Institute of Technology and TV of Tomorrow Consortium

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 Massachusetts Institute of Technology ("MIT") and TV of Tomorrow Consortium ("the venture") on June 25, 1990 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture and its general areas of planned activities, are given below.

The members of the ventures are:

BNR Inc., 5555 Spalding Drive, Norcross, GA 30092.

Eastman-Kodak Company, Kodak Park, Rochester, NY 14650-2010.

Hughes Aircraft Company, P.O. Box 92424, Los Angeles, CA 90009.

Massachusetts Institute of Technology, c/o The Media Laboratory, 20 Ames St., Cambridge, Massachusetts 02139.

Sharp Corporation, 273-1 Kashiwa, Kashiwa-shi, Chiba 277, Japan.

Sony Corporation, 6-7-35, Kitashinagawa, Shinagawa-ku, Tokyo 141, Japan.

Toppan Printing Co., Ltd., 1, Kanda Izumi-cho, Chiyoda-ku, Tokyo, Japan.

The nature of the venture is to conduct basic research into new digital systems, applications and techniques in an effort to develop and combine advanced computer and television technologies. This research will include, but will not be limited to, development of advanced methods of low-level and mid-level vision for use in motion analysis and image coding; development of scalable formats for video signals; studies of very high definition formats, brightness and contrast ratios, and advanced video display; development of advanced interface computation; and development of methods to produce three-dimensional images, data compression and interactive systems.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-22865 Filed 9-26-90; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Open Software Foundation, Inc.

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"), Open Software Foundation, Inc. ("OSF") on July 24, 1990, has filed an additional written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The additional notification was filed for the purpose of

extending the protections of section 4 of the Act limiting recovery of antitrust plaintiffs to actual damages under specific circumstances.

On August 8, 1988, OSF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the Federal Register pursuant to section 6(b) of the Act on September 7, 1988 (FR 34594). On November 4, 1988, February 2, 1989, May 3, 1989, July 28, 1989, October 26, 1989, January 22, 1990, and April 19, 1990, OSF filed additional written notifications. The Department published notices in the Federal Register in response to these additional notifications on November 25, 1988 (53 FR 47773), February 23, 1989 (54 FR 7893), August 25, 1989 (54 FR 35407), August 25, 1989 (54 FR 35408), November 29, 1989 (54 FR 49123), April 18, 1990 (55 FR 14493), and May 21, 1990 (55 FR 20861), respectively.

The identities of the new, non-voting members of OSF are as follows:

Member	Date
Malaysian Institute of Microelectronics	4/17/90
Chips & Technologies	4/18/90
Boston University	4/30/90
Cray Research, Inc.	5/02/90
Software Research Associates, Inc.	5/21/90
Naval Weapons Center	6/11/90
BP Exploration	6/13/90
Royal Signals and Radar Establishment	6/19/90
Institute Blaise Pascal	6/25/90
City Polytechnic of Hong Kong	6/29/90
Princeton University	6/29/90
U.R.A.C.O.M./University Paul Sabatier	6/29/90
Universitat Kaiserslautern	6/29/90
California Polytechnic State University	7/02/90
National Institutes of Health	7/11/90

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 90-22866 Filed 9-26-90; 8:45 am]

BILLING CODE 4410-01-M

Office of Juvenile Justice and Delinquency Prevention

Boot Camps for Juvenile Justice Offenders; Constructive Intervention and Early Support

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notices of changes to section VII and VIII. Procedures and criteria for selection.

This Notice is published to modify the application requirements and criteria for selection for the program announcement, "Boot Camps Juvenile Offenders Construction Intervention and Early Support", published in the Federal Register on July 12, 1990 Vol. 55. No. 134. The modfiication incorporates an additional criteria and application requirement entitled, "Problem to be Addressed" and revises the point distribution among the criteria accordingly. In addition, this Notice modifies the expected start up date for projects and the date for beginning services for juvenile offenders referred to the program.

The following section should be inserted as section VII A. in the Program Announcement.

A. Problem Statement

Applicants must provide a clear and concise discussion of the community's need for an intermediate sanction with regard to its current juvenile offender populations; the lack of intermediate sanction resources in the community; the community's willingness to coordinate its existing human resources as a component of such a program; and the availability of resources with which to implement the program design.

All subsequent paragraphs in section VII are hereby redesignated as paragraphs B–H.

Because the submission date for applications was extended to October 30, 1990 (see the Federal Register Notices Dated August 13, 1990, 55 FR No. 159), the date for anticipated project start up in section V. is February 1, 1991; the date for commencing services to youth in section IV. C. is now August 1, 1991.

The following will be substituted for section VIII in the Program Announcement.

VIII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the minimum program application requirements, problem statement, organizational capability, thoroughness and innovation in responding to strategic issues in project implementation. Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR part 34, subpart B, published August 2, 1985, at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

A. Problem to be Addressed (10 Points)

Clear and concise discussion of the community's need for an intermediate sanction with regard to its current juvenile offender population; the community's willingness to coordinate its exiting human resources as a component of such a program; and the availability of resources with which to implement the program design.

B. Organizational Capability (20 Points)

1. The extent and quality of organizational experience in the development, delivery and coordination of juvenile supervision programs. (5 points)

2. Adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of Federal funds. (5 points)

3. Demonstrated capability to obtain commitments of specific State and local resources to implement the program design called for in this solicitation. (10 points)

C. Soundness of the Proposed Strategy (25 Points)

Appropriateness and technical adequacy of the approach to each stage of the program for meeting the goals and objectives; and potential utility of proposed products.

D. Qualifications of Project Staff (15 Points)

1. The qualifications of staff identified to manage and implement the program including staff to be hired through contracts. (10 points)

2. The clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan. (5 points)

E. Clarity and Appropriateness of the Program Implementation Plan (15 Points)

Adequacy and appropriateness of the activities, and the project management structure; and the feasibility of the time-task plan.

F. Budget (15 Points)

Completeness, reasonableness, appropriations and cost-effectiveness of the proposed costs, in relationship to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will ordinarily be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews and site visits,

will assist the Administrator in considering competing applications and in selection of the applications for funding. The Administrator may also attempt to select projects that propose to serve different age groups. The final award decision will be made by the OJJDP Administrator.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquecy Prevention.

[FR Doc. 90-22810 Filed 9-26-90; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Open Meetings; Advisory Commission on United Mine Workers of America (UMWA) Retiree Health Benefits

SUMMARY: This notice announces three open meetings of the Advisory Commission on United Mine Workers of America Retiree Health Benefits. The Commission was established on March 12, 1990 to advise the Secretary of Labor on matters concerning health care issues arising from the United Mine Workers of America (UMWA) 1950 and 1974 Benefit Plans and the effects of resolving these issues on the coal industry as a whole.

Time and Place: 1. At 9 a.m. on Wednesday, October 10, 1990 a meeting of the Advisory Commission on United Mine Workers of America Retiree Health Benefits will be held in Conference Room S-2508 at the Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210-0001. This Advisory Commission has received requests for an additional meeting of the Commission to place on the record the views and opinions from interested members of the public, particularly regarding funding alternatives. The charter of this Advisory Commission states that the Commission is "* * * to make recommendations to the Secretary of Labor on health care issues arising from the 1950 and 1974 UMWA Benefit Plans and the effects of resolving these issues on the coal industry as a whole." 55 FR 9228 (March 12, 1990). The Chairman of the Commission requested comments from the general public at each of the three public meetings of the Commission. Additionally, all of the Commission's meeting notices, which have been published in the **Federal Register**, have solicited public comments, and provided detailed instructions regarding the procedures for submitting comments. The Commission has agreed to have an additional meeting to afford all interested persons a further opportunity to present views to the Commission. To allow all interested persons to be heard in the available time, persons presenting views are requested to submit a written statement, if possible, and to be prepared to summarize orally their views.

It is important for the Advisory Commission to consider as much information as possible and to be exposed to a wide range of views. For this reason, I find that an exceptional circumstance exists to justify providing notice of less than 15 days before the date of the meeting on October 10, 1990. 5 U.S.C. app. II, sec. 10(a)(2); 41 CFR 101-6.1007(d)(2).

2. At 9:00 a.m. on Thursday, October 11, 1990 a meeting of the Advisory Commission on United Mine Workers of America Retiree Health Benefits will be held in Conference Room S-2508 at the Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210-0001. Due to the schedules of members of the Advisory Commission, the Commission must meet on October 11, 1990. For this reason, I find that an exceptional circumstance exists to justify providing notice of less than 15 days before the date of the meeting on October 10, 1990. 5 U.S.C. app. II, sec. 10(a)(2); 41 CFR 101-6.1007(d)(2).

3. At 9 a.m. on Wednesday, October 17, 1990 a meeting of the Advisory Commission on United Mine Workers of America Retiree Health Benefits will be held in Conference Room S-2508, at the Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210-0001.

Agenda: 1. The purpose of the meeting on October 10, 1990 is to receive and discuss views from the public concerning alternative structures and financing, and other issues relating to the Commission's considerations.

2. The purpose of the meeting on October 11, 1990 is to receive and discuss the preliminary report from the Noncollective Bargaining Subgroup regarding revised arrangements for the delivery of health care benefits and the financial status of the UMWA 1950 and 1974 Pension and Benefit Plans.

3. The purpose of the meeting on October 17, 1990 is to receive the final reports from the Noncollective Bargaining Subgroup and the Collective Bargaining Subgroup, and to receive and announce the findings and recommendations of the Advisory Commission, and to discuss implementation of recommendations of the Advisory Commission.

Public Participation: These meetings will be open to the public. Approximately 50 seats will be available for the public, including five seats reserved for the media. Seats will be available on a first-come first-serve basis.

Submissions: Anyone may submit information or position papers to the Commission. Submissions shall be made by sending 20 copies to:

Executive Director, Coal Commission, room S-2508, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210-0001

- Submissions must identify the interest asserted by the submitter.
- Submissions shall be accompanied by a computer readable copy of the submission on a 5¼" or 3½" magnetic disk (floppy disk) in either ASCII or Word Perfect format.
- The label on the diskette must identify the submitter, the date, the file name or names, and the format of the file.
- A 5¼" or 3½" magnetic disk need *not* accompany paper submissions, if a brief statement is attached to the paper explaining why forwarding a computer readable copy of the submission on a floppy disk is an unreasonable burden on the submitter.
- Submissions not exceeding "five typed pages" also may be sent to the Commission by electronic mail.
- Electronic mail submissions should be sent to the Coal Commission via CompuServe, account number: >COAL:US.COAL
- Submissions also may be forwarded to the Commission by fax. Submissions sent to the Commission's fax number, 202-523-3442, must be followed by mailing to the Commission a copy of the submission on a 5¼" or 3½" magnetic disk, or by forwarding a copy of the submission to the Commission by electronic mail in the manner described above.

Submissions received on or before Monday, October 8, 1990 will be accepted and included in the record of the meeting scheduled for October 11, 1990.

FOR FURTHER INFORMATION CONTACT: Jan Horbaly, Executive Director, Advisory Commission on UMWA Retiree Health Benefits, U.S. Department of Labor, 200 Constitution Avenue, NW., room S-2508, Washington, DC 20210-0001, Telephone (202) 523-8271.

Signed at Washington, DC this 25th day of September, 1990.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 90-23054 Filed 9-26-90; 8:45 am]

BILLING CODE 4510-23-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum Services, Information Collection Submitted to OMB for Review

AGENCY: Institute of Museum Services, NFAH.

ACTION: Notice of information collection submitted to OMB for review.

SUMMARY: The Institute of Museum Services (IMS) is submitting an information collection entitled GOS Evaluation Survey for review by the Office of Management and Budget under the Paperwork Reduction Act.

IMS needs this information to assess the effects of the General Operating Support program, and to determine how the program could be improved. The information will be used for a statistical analysis.

The respondents will be directors of nonprofit museums open to the public in the U.S.

The estimated average burden hours per response is 0.88, the frequency of response is once, and the estimated number of respondents is 140. The total annual reporting and recordkeeping burden is 123 hours.

ADDRESSES: Submit comments to Mr. Daniel Chenok, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002 NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Submit requests for information, including copies of the proposed collection of information and supporting documentation, to GOS Program Office, Institute of Museum Services, room 609, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

Linda Bell,

Acting Director, Institute of Museum Services.

[FR Doc. 90-22894 Filed 9-26-90; 8:45 am]

BILLING CODE 7036-01-M

NATIONAL SCIENCE FOUNDATION

Agency Information Collections Activities Under OMB Review

In accordance with OMB Guidelines, the National Science Foundation is posting a final revised notice implementing "Changes in NSF Proposal Format," proposed in the Federal Register, Volume 54, No. 232, pages 50293–50294 on December 5, 1989, and amended in Federal Register, Volume 54, No. 238, page 51251 on December 13, 1989.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, (202) 357–7335.

TITLE: *Changes in NSF Proposal Format:* Importance of Education and Human Resources; and Importance of Quality of Publications in the Merit Review Process.

AFFECTED PUBLIC: Any institution/individual submitting a proposal to the National Science Foundation.

RESPONDENTS/BURDEN HOURS: NSF expects to receive over 37,000 proposals during FY 1991. It is estimated that 120 hours are required to submit a proposal. While some additional information is being requested, some information currently collected will now no longer be required. Therefore, this information collection will not affect the total amount of time required to submit a proposal.

SUPPLEMENTARY INFORMATION:

A. Background

The National Science Foundation (NSF) issued a public notice on December 13, 1989 (54 FR 51251). This notice announced proposed "Changes in NSF Proposal Format: Importance of Education and Human Resources; and Importance of Quality of Publications in the Merit Review Process." NSF received 32 public comments, as well as comments from OMB. Ten of those comments were from one institution. Twenty-five percent of the responses were strongly in favor of all changes. An additional 25 percent were supportive, but offered suggestions for change. Fifty percent offered negative comments. All comments have been considered in preparing this final rule. Significant comments received are discussed in detail below.

B. Public Notice

1. Importance of Education and Human Resources

Because of NSF's concern about the development of scientists and engineers for the future, NSF proposed a change that would require Principal Investigators (PIs) to specify the potential of the proposed research to contribute to the education and the development of human resources in science and engineering at the postdoctoral, graduate, and undergraduate levels. PIs are also asked to describe special effectiveness or achievement in the area of producing professional scientists and engineers from groups presently underrepresented.

• *Public Comment.* Comments concerning this area were centered around "excess paperwork" which some commenters thought would create an extra burden on the Principal Investigator in both preparation and record keeping.

• *NSF Response.* NSF has considerably reduced the proposed burden by focusing the information collection on demonstrated accomplishments. NSF will collect this informaiton for each proposal for renewed support of a research project as well as progress reports for continuing increments. While this may cause some minor additional burden, it should not be significant since the PIs would be aware of their accomplishments in the areas of education and human resource development.

Though there is an established merit review criterion dealing with the impact of research on development of human resources, the reviewer was left to infer the extent to which this criterion was met. There were no data upon which to judge directly contributions to education. NSF has a statutory responsibility for the health of education in the sciences, engineering and mathematics. This information, as a part of the results of prior support, will give reviewers data with which to make better assessments with respect to this impact. NSF's goal continues to be selection of the most meritorious research projects for support, as evaluated against all four key criteria.

• *Public Comment.* The question was raised as to how this requirement would apply to applicants that are not universities. Respondents stated the policy would unfairly handicap non-university research institutions in obtaining future grants.

• *NSF Response.* Some museums and many non-profit organizations are actively engaged in education. This requirement would certainly not put them at a disadvantage. In any event, NSF policy has not changed. Effect of the research on the infrastructure of science and engineering is one of the 4 merit review criteria established by the National Science Board in 1981. Human resource development can, and should, take place in all research environments.

2. Importance of Quality of Publications in the Merit Review Process

a. *Listing of Ten Publications.* Rather than listing all publications for the last five years, PIs are asked to list up to five publications most relevant to the research proposed and up to five other significant research publications. Only the list of up to ten are to be used in merit review.

• *Public Comment.* The public feared this policy would restrict the ability of the reviewers and panels to gauge properly the overall career of the applicants and that reviewers should see the listings of all publications for the last five years.

• *NSF Response.* This revised requirement is intended to reduce the burden on the Principal Investigator by having to prepare, and NSF to review, often lengthy curriculum vitae, the content of which is often marginally useful to reviewers and NSF staff. It will also replace long lists with fewer sheets of paper that include only ten or fewer relevant publications. The new format focuses attention on the scholarly publications specifically relevant to the application and furthers the overall quality of additional scholarly work.

b. *Names of Graduate Students.* NSF was asking that PIs submit a list of the names of graduate students with whom they have had an association as thesis advisor and postdoctoral scholars sponsored by the PI over the past five years, with a summary of the total number of graduate students advised and postdoctoral scholars sponsored.

• *Public Comment.* There was some objection to the data collection burden of this requirement.

• *NSF Response.* NSF will now only require that PIs identify those graduate students participating in the research projects specifically reported on in renewal applications.

c. *Inappropriate Reviewers.* To avoid potential biases or conflict of interests in merit review, PIs are asked to submit a list of scientists with whom they have had a long-term association and/or with whom they have collaborated on a project or a book, article, report or paper within the last 48 months; and their own graduate and postdoctoral advisors.

• *Public Comment.* Most comments stated that reviewers of NSF proposals should identify themselves if there was a conflict of interests or potential bias.

• *NSF Response.* This section has been revised to clarify and explain the requirements.

The conflict-of-interests regulations for NSF are very complex and not readily understood by casual reference in the course of reviewing a few proposals. NSF is responsible for making sure that documentation for recommending support is free of conflict of interests or other biases. Since NSF is responsible for avoiding situations where conflict of interests or other biases exist, it must be able to make those determinations and not rely solely on reviewers to do so.

Having this information when selecting appropriate reviewers permits NSF program officers to avoid obvious conflict of interests or bias situations. Previously, the information could be inferred from long, detailed publication lists. By reducing that requirement, potential conflicts could be overlooked. Further, failure to identify inappropriate reviewers in advance of review could delay the review process significantly.

Reading Room. All public comments are available for public inspection in room 208, at the above NSF address between the hours of 9 a.m. and 4 p.m.

Following is the full text of the revised NSF Important Notice No. 107, "Changes in NSF Proposal Format."

Important Notice to Presidents of Colleges and Universities and Heads of Other National Science Foundation Grantee Organizations

Notice No. 107.

Revision 1.

August 29, 1990.

This revision replaces Important Notice No. 107, issued September 11, 1989.

Subject: Changes in NSF Proposal Format.

The National Science Foundation is announcing two revisions in proposal format to underscore:

—The importance of education and human resources within research supported by the NSF; and

—The importance of quality of publications in the merit review process.

Importance of Education and Human Resources

Among the criteria established in 1981 by the National Science Board for the merit review of proposals is the effect of the proposed research on the infrastructure of science and engineering. This criterion permits reviewers to consider the potential of the proposal to improve the quality, institutional distribution, or effectiveness of the Nation's scientific and engineering research, education and work force.

NSF is especially concerned about the development of scientists and engineers for the future, To assure there is adequate information for merit review, PIs submitting proposals for renewed support will be asked to describe the relationship of the completed project to the infrastructure review criterion.

Importance of Quality of Publications in the Merit Review Process

Evaluation of scientific productivity places importance on the quality of published work rather than its quantity. To ensure this order of priority, NSF will now limit the number of publications considered in reviewing a grant application.

Reflecting these considerations, the following changes will apply to proposals submitted on or after January 1, 1991.

Proposal Format Changes

(1) Education and Human Resources: Each proposal for renewed support of a research project must include, as part of the required summary of results of the completed work, information describing its contribution to the development of human resources in science and engineering at the postdoctoral, graduate, and undergraduate levels. This may involve, but is not limited to, the role of the research in student training, course preparation, and siminars, particularly for undergraduates. Special accomplishments in the area of developing professional scientists and engineers from groups presently underrepresented should be described. Graduate students participating in the research should be identified by name.

Progress reports for continuing increments must also include the information described above, as appropriate.

(2) Biographical Sketches: In lieu of providing a complete list of publications for the past 5 years, senior personnel need only include a list of up to five publications most relevant to the research proposed and up to five other significant research publications. Items in press may be included.

Patents, copyrights, or software systems developed may be substituted for publications.

Publications listed may overlap with the continuing requirement for a list of all publications resulting from and citing prior NSF support. Only the list of up to ten publications will be considered in merit review.

NSF also requests that senior personnel identify those scientists, other than co-authors already listed, with whom they have had a long-term association and/or with whom they have collaborated on a project or a book, article, report or paper within the last 48 months; and their graduate and postdoctoral advisors. This information will help avoid delays in the review process caused by inadvertent selection of inapproprite reviewers.

These changes will be incorporated into the next revision of Grants for

Research and Education in Science and Engineering (GRESE).

Erich Bloch,

Director.

Dated: September 21, 1990.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 90–22826 Filed 9–26–90; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Revision of SF 85 and SF 86 and of New Form SF 85p

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, chapter 35), this notice announces a proposed revision of two forms, and a new form, that collect information from the public.

The Standard Form 85, Questionnaire for Non-Sensitive Postions, is completed by appointees to Non-Sensitive duties with the Federal government. The information collected on this form is used by the Office of Personnel Management to initiate the background investigation required to determine basic suitability for Federal employment in accordance with 5 U.S.C. 3301, E.O. 10577 (5 CFR Rule V), issued 11/23/54, or by various public laws. The number of respondents annually who are not Federal appointees is expected to be 1500 with total reporting hours of 630.

The Standard Form 86, Questionnaire for Sensitive Positions (For National Security), is completed by persons performing, or seeking to perform, national security duties for the Federal government. The information collected on this form is used by the Office of Personnel Management and by other Federal agencies to initiate the background investigation required under E.O. 10450, Security Requirements for Government Employment, issued April 27, 1953; or by various public laws. The number of respondents annually who are not Federal employees is expected to be 42,600 with total reporting hours of 63,900.

The Standard Form 85P, Questionnaire for Public Trust Positions, is completed by persons seeking placement in positions that meet the moderate or high risk levels of the suitability and computer/ADP position criteria. The information collected on this form is used by the Office of Personnel Management and by other Federal agencies to initiate the background investigation required to determine suitability for placement in public trust positions in accordance with 5 U.S.C. 3301, E.O. 10577 (5 CFR Rule V), issued 11/23/54, Office of Management and Budget Circular A–130, Management of Federal Information Resources, and its appendix III, Security of Federal Automated Computer Systems, issued 12/12/85, or by various public laws. The number of respondents annually who are not Federal employees is expected to be 1800 with total reporting hours of 1800.

For copies of this proposal call C. Ronald Trueworthy, on (202) 606–2261.

DATES: Comments on this proposal should be received by October 29, 1990.

ADDRESSES: Send or deliver comments to: Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW., Room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Peter Garcia, (202) 376–3800.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 90–22787 Filed 9–26–90; 8:45 am]

BILLING CODE 6325–01–M

Privacy Act of 1974; Proposed New Routine Use for an Existing System of Records

AGENCY: Office of Personnel Management.

ACTION: Notice of a proposed new routine use for an existing system of records.

SUMMARY: The purpose of this document is to propose a new routine use for the Office of Personnel Management's Civil Service Retirement and Insurance Records system (OPM/CENTRAL–1). The routine use, once in effect, will permit the disclosure of information from this system of records to enrollees in the Federal Employees Health Benefits Program (FEHBP) and their family members or authorized representatives and to health plans participating in the FEHBP.

The information will be used only for duly authorized reviews of disputed health benefits claims in accordance with 5 U.S.C. 8902(j). The information will not be disseminated for purposes other than for those required to adjudicate disputed health benefits claims.

DATES: Any interested party may submit written comments regarding this proposal. To be considered, comments must be received by October 29, 1990. Unless a notice to the contrary is published, this amendment will become effective 30 days after the end of the comment period.

ADDRESSES: Address comments to: Assistant Director for Retirement and Insurance Policy, Office of Personnel Management (Room 4351), 1900 E Street, NW., Washington, DC 20415. Comments received will be available for public inspection at the above address from 9 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ellie Goodwin, Insurance Policy Division, Office of Retirement and Insurance Policy, Retirement and Insurance Group, (202) 606–0775, ext. 207.

SUPPLEMENTARY INFORMATION: Federal law (5 U.S.C. 8902(j)) requires carriers participating in the FEHBP to pay for or provide a health service or supply if OPM finds that the enrollee or covered family member is entitled to the service or supply under the terms of the contract. Federal regulation (5 CFR 890.105(d)) sets up the procedure for OPM's review of disputed health benefits claims following a reconsideration by the carrier. Before beginning such a review, OPM asks that the patient (or the person with legal responsibility for the patient) complete form RI 77–6, "Medical Release and Privacy Act Authorization," which provides the patient's consent to the disclosure of the results of OPM's review to the health plan and to the enrollee (if the patient is someone other than the enrollee). The time required to obtain this consent can be an impediment to the prompt adjudication of disputed claims.

Federal law states, at 5 U.S.C. 552a(b), that such information may be disclosed without the patient's consent only if disclosure is in accordance with a published routine use. The following routine use, which will permit disclosure without consent, will be added to the OPM's system of records (OPM/CENTRAL–1). The current notice of this system is published at 55 FR 3816 et seq. (February 5, 1990).

The comment period on this addition to the existing routine uses of OPM/CENTRAL–1 ends at the close of business 30 days after the date of this notice. Unless a notice to the contrary is published, this new routine use, designated mm, will become effective 30 days after the end of the comment period.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

OPM/CENTRAL–1

SYSTEM NAME:

Civil Service Retirement and Insurance Records.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

To disclose to a health plan participating in the Federal Employees Health Benefits Program (FEHBP) and to an FEHBP enrollee or covered family member or an enrollee or covered family member's authorized representative, in connection with the review of a disputed claim for health benefits, from information maintained within this system of records, the decision of OPM regarding the disputed claim review.

[FR Doc. 90–22870 Filed 9–26–90; 8:45 am]
BILLING CODE 6325–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2452; Amendment #1]

Iowa, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated September 13, 14, and 17, 1990, to the President's major disaster declaration of September 6, to include the Counties of Bremer, Clinton, Howard, Johnson, Pottawattamie, Winneshiek, and Worth in the State of Iowa as a disaster area as a result of damages caused by severe storms and flooding between July 25 and August 31, 1990.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Cass, Harrison, Louisa, Muscatine, Shelby, Scott, and Washington in the State of Iowa; Freeborn, Fillmore, Houston, and Mower in the State of Minnesota; Douglas, Sarpy, and Washington in the State of Nebraska; and Carroll, Rock Island, and Whiteside in the State of Illinois, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The number for economic injury for the State of Minnesota is 713400 and for the State of Illinois the number is 712100.

All other information remains the same, i.e., the termination date for filing applications for physical damage is November 5, 1990, and for economic injury until the close of business on June 6, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: September 19, 1990.
Michael E. Deegan,
Acting Assistant Administrator for Disaster Assistance.
[FR Doc. 90–22844 Filed 9–26–90; 8:45 am]
BILLING CODE 8025–01–M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of the Little Rock, will hold a public meeting at 10 a.m. on Tuesday, October 16, 1990, at the Capital Hotel, 111 W. Markham, Little Rock, Arkansas, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Donald L. Libbey, District Director, U.S. Small Business Administration, 321 W. Capitol, Suite, 601, Little Rock, Arkansas 72201, phone (501) 378–5871.

Dated: September 20, 1990.
Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 90–22840 Filedd 9–26–90; 8:45 am]
BILLING CODE 8025–01–M

Region IX Advisory Council Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of the Honolulu, will hold a public meeting at 9:30 a.m. on Wednesday, October 17, 1990, at the Prince Kuhio Federal Building, Conference Room 4113A, 300 Ala Moana Boulevard, Honolulu, Hawaii, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Charles T.C. Lum, District Director, U.S. Small Business Administration, 300 Ala Moana Boulevard, Room 2213, Honolulu, Hawaii 96850, phone (808) 541–2990.

Dated: September 20, 1990.
Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 90–22841 Filedd 9–26–90; 8:45 am]
BILLING CODE 8025–01–M

Region VI Advisory Council Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Oklahoma City, will hold a public meeting from 1 p.m. to 5 p.m. on Tuesday, October 23, 1990, at Metro Tech Conference Center, 1900 Springlake Drive, Oklahoma City, Oklahoma, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Truman Branscum, District Director, U.S. Small Business Administration, 200 NW. 5th Street, Suite 670, Oklahoma City, Oklahoma 73102 phone (405) 231–5237.

Dated: September 20, 1990.
Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 90–22842 Filed 9–26–90; 8:45 am]
BILLING CODE 8025–01–M

Region III Advisory Council Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Washington, DC, will hold a public meeting at 10 a.m. on Tuesday, October 2, 1990, at 1441 L Street, NW., 2nd Floor Conference Room, Washington, DC, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Donald A. Stadtler, District Director, U.S. Small Business Administration, Washington District Office, P.O. Box 19993, Washington, DC 20036, phone (202) 634–1500, extension 205.

Dated: September 20, 1990.
Jean M. Nowak,
Director, Office of Advisory Councils.
[FR Doc. 90–22843 Filed 9–27–90; 8:45 am]
BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1271]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Working Group on Fire Protection; Meeting

The Working Group on Fire Protection of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on October 12, 1990 at 9 a.m. in room 6319 at Coast Guard Headquarters,

2100 Second Street, SW., Washington, DC.

The purpose of this Working Group meeting is to review the outcome of the 35th Session of the International Maritime Organization Subcommittee on Fire Protection (FP), which was held July 2 to 6, 1990 and develop initial U.S. response to those items which will be considered at the next IMO Fire Protection Sub-Committee meeting. There were three items discussed at the 35th Session which could have a major impact on the industry. These are: the role of the human element in marine casualties, major new regulations for passenger vessel design, and upgrading of fire protection on older passenger vessels not meeting SOLAS 74, as amended. This could include eventual phasing out of these older vessels.

Additional items of discussion will include the following: fire drills and on board training, formulation of fire test procedures for ignitability of primary deck coverings; testing criteria for mattresses and bedding, criteria for smoke and toxicity, revision of resolution A.517(13) (fire test procedures for A, B, and F Class bulkheads); and round robin tests of PV valves (DPPF's); analyses of research results in smoke control; analyses of fire casualty records; review of SOLAS requirements related to the use of Halons and its possible accelerated phase out; fire main and fire pump sizing; use of Halon 2402; interpretations of and amendments to regulations of SOLAS as approved by the Maritime Safety Committee; materials other than steel for pipes; fire-protection systems for passenger ship safety (this includes: maximum stowage height of survival craft, fire protection for survival craft, low-level lighting and escape route markings, main vertical zone length, "A–60" main vertical zones, uniform application of amended regulations II–1/8 and 20 of SOLAS, openings in "B" class corridors and bulkheads, fire doors in main vertical zone bulkheads, dead-end corridors, retrofitting of sprinkler and fire detection systems in existing ships); guidelines for the performance and testing criteria, and surveys of foam concentrates; protection of cargo spaces in non-purpose-built ships in which casks containing irradiated nuclear fuel are stowed; review of ventilation requirements of vehicle decks on ro-ro ships during loading and unloading; vapor emission control systems; provisions for helicopter facilities on ships; international shore connection for fire extinguishing gases; revision of fire protection requirements in the 1977 Torremolinos Convention; and the work program for FP 36.

Members of the public are invited to attend this meeting.

For further information contact Ms. Murtagh or Ms. Kupferman at (202) 267–2997, U.S. Coast Guard Headquarters (G–MTH–4), 2100 Second Street, SW., Washington, DC 20593–0001.

Dated: September 17, 1990.

Thomas J. Wajda,

Chairman, Shipping Coordinating Committee.

[FR Doc. 90–22861 Filed 9–26–90; 8:45 am]

BILLING CODE 4710–07–M

Office of the Acting Secretary

[Public Notice 1270, Delegation of Authority No. 183]

Delegation to the Chief of Transportation of the Authority To Request Insurance From the Department of Transportation Under the Provisions of Title XIII of the Federal Aviation Act of 1958, as Amended

By virtue of the authority vested in me as Acting Secretary of State, including by subsections 1304 (a) and (b) of the Federal Aviation Act of 1958, as amended, I hereby delegate to the Chief of Transportation, and any person acting in that position due to absence, disability or vacancy in office, the function delegated to me of requesting insurance from the Department of Transportation.

Dated: September 14, 1990.

Lawrence S. Eagleburger,

Deputy Secretary of State.

[FR Doc. 90–22860 Filed 9–26–90; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

UMTA Section 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1990, Public Law 101–164, signed into law by President George Bush on November 21, 1989, contained a provision requiring the Urban Mass Transportation Administration to publish announcement in the **Federal Register** every 30 days of grants obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., Room 9301, Washington, DC 20590, (202) 366–2053.

SUPPLEMENTARY INFORMATION: The section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The section 9 forumla program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to the statute UMTA reports the following grant information:

SECTION 3 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
Livermore-Amador Valley Transit Authority San Francisco-Oakland, CA	CA–03–0334–00	$5,266,155	08/29/90
Massachusetts Bay Transportation Authority Boston, MA	MA–03–0157–00	53,356	08/29/90
Red Rose Transit Authority Lancaster, PA	PA–03–4007–00	72,336	09/10/90
Milwaukee County Milwaukee, WI	WI–03–0042–02	1,757,002	08/3/90

SECTION 9 GRANTS

Transit property	Grant No.	Grant amount	Obligation date
City of Phoenix Phoenix, AZ	AZ-90-X025-00	$15,640,930	08/15/90
Livermore-Amador Valley Transit Authority San Francisco-Oakland, CA	CA-90-X368-00	5,017,632	08/30/90
San Francisco Bay Area Rapid Transit District San Francisco-Oakland, CA	CA-90-X371-00	1,275,763	09/04/90
Greater Bridgeport Transit District Bridgeport, CT	CT-90-X165-00	1,058,800	08/23/90
Transit Authority of the Lexington-Fayette Urban County Govt. Lexington-Fayette, KY	KY-90-X050-00	1,750,203	09/12/90
Suburban Mobility Authority for Regional Transportation Detroit, MI	MI-90-X121-00	447,043	08/17/90
Kalamazoo Metro Transit Kalamazoo, MI	MI-90-X123-01	142,200	09/05/90
Capital Area Transportation Authority Lansing, MI	MI-90-X124-00	3,218,096	09/05/90
York Area Transportation Authority York PA	PA-90-X196-00	699,426	08/08/90
Spokane Transit Authority Spokane, WA	WA-90-X104-00	2,830,939	08/21/90

Brian W. Clymer,

Administrator.

[FR Doc. 90-22834 Filed 9-26-90; 8:45 am]

BILLING CODE 4910-57-M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 188
Thursday, September 27, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 55 F.R. 35756.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 11:30 a.m., Friday, September 28, 1990.

CHANGE IN THE MEETING: The Commission has cancelled the closed meeting to discuss a rule enforcement review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-22958 Filed 9-25-90; 11:10 pm]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, September 28, 1990.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 90-22959 Filed 9-25-90; 11:10 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION:

TIME AND DATE: Thursday, September 27, 1990, 10:00 a.m.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance Status Report.

The staff will brief the Commission on the status of various compliance matters.

For a Recorded Message Containing the Latest Agenda Information, Call: 301-492-5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 90-22995 Filed 9-25-90; 12:43 pm]

BILLING CODE 6355-01-M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 90-22468.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, September 27, 1990; 10:00 a.m.

Meeting Open to the Public

The Following Item Has Been Added to the Agenda:

AO 1990-10—
Carolyn F. Bigda on behalf of the Texas Air Corporation PAC

DATE AND TIME: Tuesday, October 2, 1990, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings of arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Wednesday, October 3, 1990, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be Open to the Public.

Oral Presentation by the Larouche Democratic Campaign, Pursuant to 11 C.F.R. § 9038.2(c)(3).

DATE AND TIME: Thursday, October 4, 1990, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be Open to the Public.

MATTERS TO BE CONSIDERED:

Correction and Approval of Minutes
Draft Advisory Opinion 1990-18:
Marshall D. Chinen on behalf of the Oahu Educational Employees' Federal Credit Union in Honolulu, Hawaii
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer
Telephone: (202) 376-3155.

Hilda Arnold,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 90-23064 Filed 9-25-90 3:49 p.m.]

BILLING CODE 6715-01-M

Corrections

Federal Register
Vol. 55, No. 188
Thursday, September 27, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0687]

Truth in Lending; Home Equity Disclosure and Substantive Rule

Correction

In rule document 90-21974 beginning on page 38310 in the issue of Tuesday, September 18, 1990, make the following corrections:

§ 226.5b [Corrected]

1. On page 38312, in the second column, in § 226.5b(f)(3)(i), in the second line "extension" should read "extensions".

§ 226.9 [Corrected]

2. On the same page, in § 226.9(c)(3), in the same column, in the fourth line from the end, "actions" should read "action".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 205

[Docket No. 88N-0258]

RIN 0905-AC81

Applicability to Blood and Blood Components Intended for Transfusion; Guidelines for State Licensing of Wholesale Prescription Drug Distributors

Correction

In proposed rule document 90-21617 beginning on page 38027 in the issue of Friday, September 14, 1990, make the following correction:

On page 38027, in the first column, under the **DATES** caption, "October 13, 1990" should read "November 13, 1990".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR-3, Notice No. 2]

RIN 2130-AA44

Railroad Accidents/Incidents; Reports Classification and Investigations

Correction

In rule document 90-21508 beginning on page 37818 in the issue of Thursday, September 13, 1990, make the following corrections:

1. On page 37818, in the third column, in the third full paragraph, in the third line "railroad's" should "railroads' ".

2. On the same page, in the same column, in the next to last line, "issued" should read "issue".

3. On page 37819, in the third column, in the next to last line, insert "to" before "include".

4. On page 37823, in the second column, in the first full paragraph, in the seventh line, "rule" should read "rules".

5. On page 37825, in the second column, in the second full paragraph, in the next to last line, "constituting" was misspelled.

6. On page 37826, in the third column, in the table-of-contents entry for § 225.12, in the fourth line "Attachment" should be capitalized.

§ 225.12 [Corrected]

7. On page 37827, in § 225.12(g)(3), in the third column, in the sixth line from the end of the paragraph "PRS-13" should read "RRS-13,"

BILLING CODE 1505-01-D

federal register

Thursday
September 27, 1990

Part II

Department of Health and Human Services

Office of Human Development Services

45 CFR Parts 1355, 1356 and 1357

Title IV-B and Title IV-E of the Social Security Act: Data Collection for Foster Care and Adoption; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1355, 1356 and 1357

RIN 0980-AA 35

Title IV-B and Title IV-E of the Social Security Act: Data Collection for Foster Care and Adoption

AGENCY: Office of Human Development Services, Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is issuing this Notice of Proposed Rulemaking in order to implement the requirements of section 479 of the Social Security Act. This section requires the Secretary to publish regulations that implement a system for the collection of adoption and foster care data in the United States. All States that administer State plans under title IV-B and title IV-E of the Social Security Act are subject to the proposed rule.

DATE: Comments must be received on or before December 26, 1990.

ADDRESSES: Comments should be mailed to the Associate Commissioner, Children's Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013, Attention: Dan Lewis.

Comments received in response to this notice may be reviewed in room 2070, Switzer Building, 330 "C" Street, SW., Washington, DC 20201, between the hours of 9 a.m. and 5:30 p.m., Monday through Friday, except Federal holidays, beginning two weeks after the close of the comment period.

In addition, any comments pertaining to the information collection requirements in this proposed rule should be filed with the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002, Washington, DC 20503. ATTN: Angela Antonelli, Desk Officer for the Office of Human Development Services.

FOR FURTHER INFORMATION CONTACT:

Dan Lewis, (202) 245-0618,
or
Beverly Stubbee, (202) 245-0821.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

Title: Adoption and Foster Care Analysis and Reporting System.

Description: The proposed data collection system is designed to collect uniform, reliable information on all children, under the authority of the State title IV-B/IV-E agency, who are in foster care or who are adopted. The collection of adoption and foster care data is mandated by section 479 of the Social Security Act. The Department will use this information to respond to Congressional requests for current data on children in foster care or who have been adopted and to respond to questions and requests from other departments and agencies, the General Accounting Office, the Office of Inspector General, national advocacy organizations, States and others.

The Department will aggregate the data both by State and nationally and will issue quarterly summaries to each of the States and to any other group or organization on request. In addition, the data will be analyzed within the Department and used for preparing Congressional testimony and reports; proposing policy and legislative changes; determining foster care and adoption trends and projections; and making budget forecasts. The data also will be made available to researchers and evaluators.

Description of Respondents: State Title IV-B/IV-E Agencies.

Estimated Annual Reporting and Recordkeeping Burden:

The public reporting burden for the recordkeeping and reporting of information required in this proposed regulation, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and submitting the data in the required formats is as follows:

Section No.	Annual number of respondents	Average annual frequency	Average burden hours per response [2]	Annual burden hours
§ 1355.40(a) Recordkeeping:				
Foster Care:				
In care (336,000)	204	4	1,323.14	[3] 269,920
Entering care (253,000)	204	4	1,860.29	379,500
Exiting care (229,000)	204	4	112.25	22,900
Subtotal Foster Care				672,320
Adoption—Mandatory (35,000)	204	4	85.78	17,500
Adoption—Subsidy Cessation (5,000)	204	4	2.45	500
Adoption—Voluntary (115,000)	204	4	281.86	57,500
Subtotal Adoption				75,500
Total Recordkeeping Burden				747,820
§ 1355.40(b) Reporting:				
Foster Care	[4] 5,004	4	8	40,032
Adoption—Mandatory	[4] 5,004	4	4	20,016
Adoption—Cessation	[4] 5,004	4	1	5,004
Adoption—Voluntary	[4] 5,004	4	3	15,012
Total Reporting Burden				80,064
Total Annual Burden				827,884

[1] Number of respondents is based on 51 States reporting four times annually.
[2] Average burden is for each quarterly response.
[3] This number reflects both the start-up (initial input) activity and maintenance activity averaged over the first three years.
[4] The number in this column takes into account State supervised, County administered programs where the counties must submit information to the State prior to its aggregation and submittal to OHDS.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Children's Bureau, Administration for Children, Youth and Families, PO Box 1182, Washington DC 20013 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3002, Washington, DC 20503. ATTN: Angela Antonelli, Desk Officer for the Office of Human Development Services.

II. Summary of the Notice of Proposed Rulemaking

Section 479 of the Social Security Act (the Act), 42 U.S.C. 679, directs the Secretary to promulgate regulations for the implementation of a system to collect data relating to adoption and foster care in the United States.

This Notice of Proposed Rulemaking (NPRM) proposes that State agencies administering or supervising the administration of titles IV–B and IV–E of the Act must implement data collection systems and report quarterly on data elements set forth in this proposed rule. States must report data on all children for whom the State agency is responsible who are in foster care or who have been adopted.

The proposed data elements and methodology for data collection are described in appendices to the proposed rule. These Appendices define the data elements and propose the specifications for submission format, record layouts and quality standards for data, including logic edits to assess the internal consistency of the data.

The NPRM proposes that States whose reports for any given quarter do not fully meet the reporting standards will be considered to be substantially out of compliance with the title IV–E State plan. Such States will be assessed penalties each quarter from title IV–E administrative expenditures. A finding of substantial noncompliance will be made when States do not report data or report data that are late, erroneous or otherwise defective. Penalties set forth in this proposed rule will be applied in all cases save those in which a State can document that an act of God, or some other circumstances beyond its control prevented the collection and transmission of the required data.

Finally, the NPRM proposes that the States' costs for the establishment and maintenance of data collection systems be matched as an administrative cost under title IV–E at the matching rate of 50 percent. The proposed rule requires States to allocate the costs of data collection and limits the amount a State may claim for the initiation, implementation and operation of a data collection system to a proportionate share of the children adopted and in foster care who are eligible under title IV–E.

III. Program Description

Title IV–B of the Act, Child Welfare Services, is a formula grant program. Each State receives a basic grant representing its share of $141 million and is eligible for a share of incentive funds beyond the basic grant if it provides certain protections, as required by section 427 of the Act, for children in foster care. The basic grant and the incentive funds provide States with Federal support for a wide variety of State child welfare services including preplacement preventive services to strengthen families and avoid placement of children, services to prevent abuse and neglect, and to provide foster care, and adoption services. The basic grant and incentive funds can be used to support services regardless of the income of the families and children who are in need of such services.

Title IV–E of the Act is an entitlement program whereby there is Federal financial participation (FFP) in the costs of foster care maintenance and adoption assistance payments. Federal matching of State foster care maintenance payments is available for children in foster care who meet certain eligibility criteria that are based, in part, on the child's eligibility under the Aid to Families With Dependent Children (AFDC) program. The adoption assistance program under title IV–E is designed to assist States in placing special needs children with adoptive families by the provision of an adoption assistance payment. In order to be eligible for this program, a child must be eligible for AFDC, title IV–E foster care or Supplemental Security Income for the Blind and Disabled (SSI) and must meet the statutory definition of "a child with special needs" according to section 473(c) of the Act.

Under section 473(c), the State title IV–E agency makes a determination as to whether or not a child has special needs, according to the following factors: (1) The child cannot or should not be returned to the home of the parents; (2) there exists a specific factor or condition (such as the child's age, ethnic background, emotional, physical or mental disability, or membership in a minority or sibling group) because of which it is reasonable to conclude that the child cannot be placed for adoption without providing adoption assistance; and, (3) except where it would be against the best interests of the child, a reasonable, but unsuccessful, effort has been made to place the child without adoption assistance.

There are several Federal programs which fund foster care and adoption assistance payments and services. For FY 1990, $1.2 billion was appropriated for title IV–E foster care maintenance payments and $125 million for title IV–E adoption assistance. Federal funds appropriated for child welfare services under title IV–B for the basic grant and incentive awards amounted to $253 million in FY 1990. Another major funding source to States for social services is the Social Services Block Grant (title XX of the Act), totaling $2.8 billion in FY 1990. While no specific figures are available on the amounts allocated by the States to adoption and foster care services under title XX, in FY 1988 31 States used some of these funds for adoption services and 27 States provided foster care services with these funds.

According to State agency information gathered by the American Public Welfare Association (APWA) under the Voluntary Cooperative Information System (VCIS), there were approximately 282,000 children in foster care on the last day of 1986. In fiscal year 1989, States claimed Federal funds under title IV–E for a monthly average of 152,000 children in foster care.

Although title IV–E of the Act is the major single source of Federal support for foster care and adoption assistance payments, over half the funds for adoption and foster care services come from State and local governments and the private sector.

In 1985, the most recent year for which complete data have been analyzed, a total of approximately 276,000 children were in foster care. Of these children, 37,264 had a plan for adoption and 16,197 had parental rights terminated and were waiting for adoptive homes.

IV. Past and Current Data Collection Efforts

From the late 1940's through the early 1970's, the Children's Bureau (and later, the former Social and Rehabilitation Service) collected data on foster care and adoption from the States on an annual and voluntary basis. When those voluntary efforts were terminated, national data on foster care and adoption were not available. However, the need for reliable and consistent data has always been a critical concern, especially for planning services and developing policy.

In 1978, the Child Abuse Prevention and Treatment and Adoption Reform

Act (Pub. L. 95–266) was enacted. It required the Secretary to provide (either directly or by grant or contract) for the establishment and operation of a national adoption and foster care data gathering and analysis system. 42 U.S.C. 5113. Before 1978, there had never been a legislatively mandated national data collection system for foster care and adoption with standards and methodology set by Federal law and regulation.

In 1980, landmark legislation reforming the foster care system and initiating Federal financial participation in adoption assistance payments was passed. This Act is known as the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. 96–272), 42 U.S.C. 670. It contains two sections which address the subject of data collection. Section 476 of title IV–E of the Act states that, "Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care." In addition, States which apply for additional incentive funds under section 427 of title IV-B must have implemented and be operating a statewide information system that can readily identify the status, demographic characteristics, location and goals for placement of every child in foster care within the preceding 12 months. This requirement applies to all children in foster care under the responsibility of the State title IV–B/IV–E agency, not just those children eligible for title IV–E payments.

As indicated in the hearings prior to the passage of Public Law 96–272 (see *Congressional Record* for July 26, 1977, October 25 and 29, 1979), the impetus behind the passage of the Adoption Assistance and Child Welfare Act was the belief that the public child welfare system has become a receiving and holding system for children in foster care. *The National Study of Social Services to Children and Their Families*, conducted in 1977, documented that thousands of children remained in foster care with little hope of being reunited with their parents or placed with adoptive families. The prospect of adoption was particularly bleak if the child was a member of an ethnic or racial minority group, an older child, a member of a sibling group, or mentally or physically disabled.

Repeatedly in hearings and in testimony before the Congress, child advocates and practitioners expressed concern that the public child welfare systems in many of the States did not know how many children were actually in foster care; how long they had been in care; where they resided; their race, age, sex and special needs; or the plan for each child. They indicated that, although this was a problem at the State and local level, national attention and incentives were needed to focus attention on this lack of information and provide ways to encourage States and localities to develop this information. If the goal of permanency for each child was to be encouraged and achieved, national attention needed to be called to the importance of knowing the locations and characteristics of children in foster care so that those who could not return home might find families through adoption.

In 1982, in response to the legislative requirements in Public Law 95–266 and Public Law 96–272, the Department, through a grant to the American Public Welfare Association (APWA), implemented the Voluntary Cooperative Information System (VCIS) which collects aggregate information annually about children in foster care and special needs adoption from State child welfare agencies.

This voluntary system has been characterized by variation from State to State in reporting periods, the lack of common definitions for data elements and services, and inconsistent methodologies in reporting. In addition, the nature of the aggregate data limits the analyses that can be performed and does not have sufficient usefulness for purposes of planning or policy development at either the Federal or State levels.

V. Legislation Establishing New Data Collection Requirements

Section 9943 of the Omnibus Budget Reconciliation Act (OBRA) of 1986 (Pub. L. 99–509) amended title IV–E of the Social Security Act by adding section 479. This section sets forth directives for establishing and implementing an adoption and foster care data collection system. The law requires:

(1) The establishment of an Advisory Committee to the Secretary, the composition and tasks of which are mandated by the Act, and which include a Report to the Secretary and to the Congress on the results of a study on the development of a data collection system;

(2) The submission to the Congress, by the Secretary, of a subsequent report that, based on the Advisory Committee's Report, recommends a method of establishing, administering and financing a system for data collection on foster care and adoption in the United States; and

(3) The promulgation of regulations that set forth the requirements governing this data collection system.

Although prior legislation authorized data collection efforts, the 1986 OBRA amendments clearly reflected Congressional interest in establishing, administering and financing a system for the collection of data with respect to adoption and foster care.

The Advisory Committee on Adoption and Foster Care Information was established by the Secretary and included representation from private, nonprofit organizations, organizations representing State and local governmental agencies, Federal agencies and other major groups interested in adoption and foster care, as required by the statute. The Advisory Committee was to:

- Identify the types of data necessary to assess on a continuing basis the incidence, characteristics, and status of adoption and foster care in the U.S.;
- Develop appropriate national policies with respect to adoption and foster care;
- Evaluate the feasibility and appropriateness of collecting data with respect to privately arranged adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies;
- Assess the validity of various methods of collecting data with respect to adoption and foster care; and
- Evaluate the financial and administrative impact of implementing each method.

The Advisory Committee concluded its work and submitted its study findings and recommendations to the Secretary by the legislative deadline of October 1, 1987. Highlights of the report are summarized below:

- Despite some progress over the past decade, there remains a serious shortfall in the availability of adoption and foster care information, particularly for policy purposes.
- The VCIS, initiated by the Federal government in 1982 in concert with the APWA, is the major vehicle for collecting child welfare and adoption data through the voluntary participation of the States. However, not all States have provided reports over the years, reporting periods differ, common definitions and methodologies are lacking, and the nature of aggregate data limits the analyses that can be carried out.
- The VCIS should be phased out gradually so as to avoid a gap in the availability of data, and a mandatory data collection system should be created

with separate components for adoption and foster care.

• Adoption data should be collected on all legalized adoptions, including relative and non-relative adoptions and adoptions under both public and private auspices, as well as privately arranged adoptions.

• Foster care data should be collected on all children under the care and responsibility of the State child welfare agency. The foster care data system should also include children placed privately in licensed private agencies.

• Foster care information should include demographic information on the child (sex, birth date, race, ethnicity, previous stays in foster care, service goals, availability for adoption, duration of care, funding sources, and what happens to the child after the period of foster care is concluded). Each child's data should also include relevant demographic information about that child's biological and foster parents.

• Similar information should be collected for all adoptions at the time the adoption is legalized.

• Special provisions need to be made for Indian children who are affected by requirements in the Indian Child Welfare Act of 1978, 25 U.S.C. 1901, especially section 1951 mandating submission of adoption data to the Bureau of Indian Affairs (BIA) of the Department of the Interior. Indian children served by the tribe would be reported to the BIA which would, in turn, report to ACYF.

• Individual child case data should be the basis of the data collection. The data must be kept confidential as the purpose of the data collection system is the conduct of program and policy analyses and not the tracking of individual children at the national level.

• Individual child and family identifiers should be eliminated in the data provided for Federal reporting purposes to preserve confidentiality.

• Nationwide data should be a subset of the same data used by State and local agencies in managing adoption and foster care programs on a day-to-day basis.

• Legislation should be enacted to require the Governor of each State to designate a lead institution to compile and transmit to ACYF Statewide data on adoptions.

• Foster care and adoption data should be maintained in computer files at the State level and the data transmitted electronically to ACYF on a quarterly basis.

• ACYF should generate reports on an annual basis to coincide with the Federal fiscal year. Summary reports should also be produced each quarter so data would be available for use by all States that would coincide with each State's annual fiscal period.

• There should be appropriate penalties for noncompliance and incentives to encourage timely compliance.

• Incentives should include, at a minimum, new Federal funding for 100 percent of add-on developmental expenses incurred by States in the transition to the new data collection system, plus Federal participation at 50 percent for ongoing operational costs.

• ACYF should also provide training and technical assistance support to the States in establishing the data collection system, commencing in FY 1989. An ongoing work group should be established by ACYF so that there is consultation with appropriate State officials as well as representatives from appropriate groups on the planning and design of the new data collection system.

• ACYF should be encouraged to conduct a variety of special studies to complement information compiled under the data collection system. Data from the system would contribute to the conduct of many of those studies.

The Secretary, as required by section 479(b)(1) of the Act, reviewed the Advisory Committee's Report and submitted to the Congress a report with recommendations for a new system. The Secretary's report proposed a method of establishing, administering, and financing a system for the collection of data relating to adoption and foster care in the United States; evaluated the feasibility and appropriateness of collecting data with respect to privately arranged foster care placements, adoptions and adoptions arranged through private agencies without assistance from public child welfare agencies; and evaluated the impact of the system on the agencies with responsibility for implementing it.

This proposed rule is based on the Secretary's report and his recommendations to the Congress. The Secretary's report indicated that reporting frequency would be at least annually, and no more frequently than each quarter. This NPRM proposes quarterly reporting. All other aspects of the Secretary's proposed system are included in this NPRM.

Section 479 directs the Secretary to promulgate regulations that provide for full implementation of a data collection system for adoption and foster care no later than October 1, 1991.

According to section 479, this data collection system shall:

(1) Avoid unnecessary diversion of resources from agencies responsible for adoption and foster care;

(2) Assure that any data that are collected are reliable and consistent over time and among jurisdictions through the use of uniform definitions and methodologies;

(3) Provide comprehensive national information with respect to—

• Demographic characteristics of adoptive and foster children and their biological and adoptive or foster parents,

• The status of the foster care population (including the number of children in foster care, length of placement, type of placement, availability for adoption, and goals for ending or continuing foster care),

• The number and characteristics of children placed in or removed from foster care and children adopted or with respect to whom adoptions have been dissolved, and

• The extent and nature of assistance provided by Federal, State and local adoption and foster care programs and the characteristics of the children with respect to whom such assistance is provided; and

(4) Utilize appropriate requirements and incentives to insure that the system functions reliably throughout the United States.

VI. Overview of Proposed Data Collection System

We are proposing several changes to the existing regulations in 45 CFR parts 1355, 1356 and 1357, as well as a new § 1355.40 entitled Foster care and adoption data collection. The new section, § 1355.40, along with appendices A through G, implement the data collection system as required by section 479 of the Act.

The objective of the proposed data collection system is to collect uniform, reliable information on all children, under the authority of the State title IV–B/IV–E agency, who are in foster care or who are adopted. The data to be collected are a subset of data States currently record on each affected child in order to provide for good case management. A simple electronic reporting procedure is being proposed whereby States will copy ("dump") the latest information on all children and submit it quarterly to the Department in an electronic form. This information, while child-specific, will not be reported in such a way that comprises the confidentiality of any client served by the reporting agency.

The Congress expects the Secretary to implement a system that can produce reliable and timely data on children in foster care and children who are adopted. In order to meet that expectation, we are proposing that failure to meet the levels of timeliness, completeness and internal consistency of the data proposed in this rule constitute substantial noncompliance with the State's title IV–E plan, and that

the penalties outlined in this proposed regulation will be imposed until such time as the State establishes to the satisfaction of the Secretary, acting through ACYF, that it can fully comply with the State plan.

Recognizing that States will incur costs for establishing, operating and maintaining their data collection systems, the proposed rule makes clear that a portion of the costs of the system may be claimed as an administrative cost of title IV–E with Federal matching funds available at a 50 percent rate of reimbursement.

In addition, the Department is making arrangements to provide technical assistance, to any States desiring it, on the planning, development and implementation of the required system.

Because of our concern that such a system be implemented in the most effective manner possible, we encourage States, organizations and individuals to comment on the proposed data collection system, including:

- Frequency of reporting.
- 100 percent dump vs. sampling.
- Cost and time estimates for implementation.
- Penalties and sanctions.
- Five percent missing data standard.
- Reporting and administrative burden on States.
- Data collection and transmission method.

A. Data Elements and Definitions

There are four appendices attached to this proposed rule which contain the data elements and definitions for the information reported by the States. The terms used in each appendix are similarily defined and each appendix contains its own glossary.

Appendix A (Foster Care Data Elements), Appendix B (Adoption Data Elements—State Agency Form) and Appendix C (Adoption Data Elements—Subsidy Cessation—State Agency Form) contain the data elements required to be reported by States to the Department on a quarterly basis. Also included is Appendix D (Adoption Data Elements—General Adoption Form). The use of this appendix is optional because reporting on these data elements is voluntary. It contains the data element set for all adoptions completed in the State, including those with which the State agency had no involvement. For States which voluntarily report using this optional appendix, the data transmitted under appendix D will be processed by the Department.

For each child in foster care, the set of data elements in appendix A must be submitted each quarter. For adoption, the data in appendix B and appendix C must also be submitted quarterly on all children adopted that quarter as well as any adopted child whose adoption assistance ceased during that quarter. If States choosing to use optional appendix D, they should report quarterly.

A reporting number will be used to identify each child included in the State's report. The identity of the individual children, however, will be known only by the reporting State. This reporting number must be unique to each child and remain with the child throughout every reporting quarter. This same number must be used whenever the child re-enters the foster care or adoption system in that State.

In order to establish a standard reporting period, we propose that the child-specific information, along with a summary file of the quarter's data, shall be submitted for the foster care part and the adoption part of the report within 45 days of the quarter's end. The data must reflect the status of the child on one of the first five calendar days after the end of each quarter on which the State is reporting.

B. Submission of the Data

States must transmit the data on all children for whom they must report within 45 days following the end of the quarter on which they are reporting, or else the State will be cited or substantial noncompliance with the title IV–E State plan. In permitting a 45 day period for transmission of the data, we recognize that each State will have to follow its own system for internal clearance and data validation on the data report which may take several weeks to complete.

The way the data is to be submitted is described in appendix E. Appendix E proposes an electronic method, using either a modem or diskette for transmission, and describes the specifications that are to be used. Emphasizing the importance of the uniformity of data submission, the rule proposes record layouts (appendix F) for the individual child report as well as for the summary file of the quarterly child-specific data.

C. Standards for Compliance

Standards for compliance will be based on three criteria: timeliness of submission, adequacy of information, and timeliness of data entry.

Regarding timeliness of submission, if a foster care report is not submitted within 45 days, it becomes virtually useless because the data are supplemented with more current information in less than 90 days. A late submittal is considered the same as no submittal and invokes a penalty.

States which do not report adoption data in a timely way, i.e., within 45 days after the end of the reporting quarter, are subject to a compliance penalty. Furthermore, the penalty will continue to be assessed each subsequent quarter until the missing adoption data are transmitted and the Secretary is reasonably satisfied that the noncompliance will not recur.

The standards by which judgements about the adequacy of the information will be made are described in appendix G. A variety of internal data verification checks will be used to judge the internal coinsistency of the quarterly data submissions. The level of missing, inconsistent and untimely data should not be so great as to raise concerns about the quality of the State's data submission. Therefore, as long as each element has no more than five percent missing data, including data initially missing and data converted to missing because they failed internal consistency tests, no compliance action will be taken.

Regarding the third criterion, this NPRM proposes a standard of compliance for timeliness of data entry only in relation to foster care data. A minimum of 60 percent of the children reported as new entrants in foster care for the quarter must have actually entered foster care during that quarter and 60 percent of the children reported as exiting foster care in the quarter must have actually left foster care during the quarter. Using this standard, States are permitted to be approximately one month behind in data entry while at the same time assuring that most of the data are for the quarter for which the data are reported.

This standard is not applicable to adoption reports. We believe that the necessity to have the adoption data, even if they are late, outweighs the need to have them on time.

D. Plan Compliance and Penalties

The existence of reliable complete data on children in foster care and completed adoptions in essential to the data collection and information system envisioned by the Congress when it passed section 479 of the Act. In order to implement a reliable information system, States must be encouraged by some means to report fully in a timely way. The NPRM proposes to make the submission of the required data and the form and method of its transmission a matter of compliance with the provisions of the State plan under title IV–E. A finding of substantial noncompliance with the State plan for title IV–E will be made when States do

not report data or report data that are late, erroneous or otherwise defective. As a result, compliance action will be initiated by the Department in all such cases. When it is determined that a State has failed to comply substantially with the State plan under title IV–E, after notice and opportunity for a hearing, the penalties set forth in this proposed rule shall be imposed. The penalties shall endure until such time that the Department is assured that there will be no recurrence of the noncompliance.

Without complete and accurate collection and transmission of data, the goal of obtaining reliable timely data from the information system on adoption and foster care cannot be met. The Advisory Committee recommended in its report that there be appropriate penalties for noncompliance and incentives to encourage timely compliance. Legislative authority does not extend to providing incentives; however, there is authority in the existing statute to apply sanctions based on substantial noncompliance with the State plan. We believe that when States are faced with the possibility of a finding of substantial noncompliance with the State plan, and the consequent imposition of penalties being proposed, they will be strongly motivated to ensure that correct data are submitted within the specified timeframes.

In developing the proposed system of penalties, we analyzed information related to compliance matters in the program of child welfare. Based on an analysis of appeals to the Departmental Appeals Board (DAB) related to the denial of incentive funds available under section 427 of the Act, we found that, in cases where States appealed, the amount of section 427 funds in jeopardy was at least twice as likely to exceed the range of 15 to 20 percent of the total IV–B allotment than in States which did not appeal.

It can be concluded that, once the amount of money at risk reaches a significant level (somewhere between 15 to 20 percent), a State considers such a loss of funds sufficient to initiate action to attempt to prevent the loss. We intend that the penalties for not complying with the requirements of the data collection system will be such that States will not want to risk the loss of funds and will be encouraged to report the foster care and adoption data accurately and in a timely way.

No compliance action (and no penalties) will be imposed during the first two years of reporting. Years One and Two (Federal fiscal years (FFY) 1992 and 1993) provide States a period when errors or mistakes may be made without fear of penalty. This period gives States the opportunity to refine their systems and take corrective action in order to avoid compliance action and penalties in the future.

During the third year of reporting (FFY 1994), States will be required to follow completely and fully the requirements for collecting and reporting data on adoption and foster care. However, the proposed penalties will be assessed at a lesser rate in Year Three. Should there be a Departmental finding of substantial noncompliance because data reports have greater than five percent missing data in any element, or do not meet the timeliness standard for any quarter during Year Three, the Department will assess fixed penalties for substantial noncompliance cumulative to a maximum of 10 percent of the portion of a State's title IV–E administrative expenditures subject to the penalty. For Year Four (FFY 1995) and thereafter, a finding of substantial noncompliance will result in fixed penalties being assessed cumulative to a maximum of 20 percent of that portion of a State's title IV–E administrative expenditures, subject to the penalty.

The penalties will be imposed not only for the quarters in which the State does not meet the requirements, but may continue until the Secretary is satisfied that the noncompliance will not recur. Therefore, States may incur penalties for quarters in which the data are reported without errors if the Secretary believes that it is necessary in order to assure that there will not be a recurrence of the noncompliance.

The standards by which judgments about the adequacy of the information will be made are described in appendix G. A variety of internal data verification checks will be used to judge the internal consistency of the quarterly data submissions. Failure to meet these standards or the standard for timeliness for the foster care data reports is considered a substantial failure to meet the provision of the title IV–E State plan.

VII. Section-by-Section Discussion of Proposed Rules

A. Definitions

In § 1355.20, definitions for the terms "adoption" and "foster care" have been added. Because definitions often vary from State to State, both these terms are defined so as to assure consistency in usage and understanding across States. The definition of "adoption" identifies the act of legalization as the point at which an adoption exists. All activity concerning children under the care and responsibility of the State agency before that point is considered pre-adoptive and, as such, falls under the definition of foster care.

The definition of "foster care" encompasses all out-of-home, 24 hour, substitute care for children under the responsibility and care of the title IV–B/IV–E agency regardless of who provides the substitute care, whether or not there is a State payment, or whether or not the foster care facility is licensed.

B. Population on Whom Data Are To Be Collected

Paragraph (a) of § 1355.40 describes the population on whom data are to be collected. For purposes of foster care, this includes all children in foster care as defined by § 1355.20.

The Department did not adopt the recommendation of the Advisory Committee that the system include children placed privately in foster care. While appreciating the concern that a comprehensive system cover all children in foster care placements, there is no legislative authority at this time which supports the collection of information on the private placement of children in private facilities. As the State does not have responsibility for the placement and care of these children, there is no statutory basis for the Department to require the reporting of data on these children.

For the purposes of adoption data collection, data are required to be reported by the State on all adopted children who were placed by the State title IV–B/IV–E agency, and all adopted children for whom the State agency is providing adoption assistance (either ongoing or for nonrecurring expenses), care or services directly or by contract or agreement with other private or public agencies. This includes all children whether they are adopted by a relative or non-relative, as well as children for whom the State has entered into an agreement with the adoptive parents for the payment of ongoing adoption assistance, the provision of services, or reimbursement of nonrecurring expenses of adoption.

The scope of the population for the adoption component of the data collection system also differs from that proposed by the Advisory Committee. The Advisory Committee report recommended that all adoptions under both public and private auspices be included. In the NPRM, we are proposing that adoption data encompass all legalized adoptions, including relative and non-relative adoptions, of children for whom the State title IV–B/IV–E agency consented to adoption or for whom the same State agency is providing adoption assistance.

Appendix D includes the data element set for all adoptions, not just those with which the title IV–B/IV–E agency is associated. As indicated earlier, the use of appendix D by a State is optional; however, data transmitted to the Department under appendix D will be processed. We strongly encourage States that have the authority to collect data from courts, bureaus of vital statistics and other agencies that maintain records of adoptions to use appendix D and take advantage of the opportunity the Department is offering to process and analyze these data.

Case specific information on the individual child is the source of data in the collection system. The data elements to be maintained in the computerized State data collection system and reported nationally are uniformly defined. To preserve confidentiality, the data reported to the Federal government do not include any information that would enable specific children to be identified. The name, social security number and address of the child are not included in the data reported to the Department. The State will assign a reporting number to allow records to be distinguished and the State alone retains the information that identifies this number with the actual case. The proposed definitions of the data elements are contained in appendices A B, C and optional appendix D.

The data elements are similar to the elements recommended by the Advisory Committee. The changes that were made are based on an extensive review and analysis for relevance to Federal needs. The number of data elements was reduced and some were revised and simplified.

Information to be submitted on each child in foster care includes identifying data (i.e., State, child's reporting number); demographic information (e.g., date of birth, sex, race, ethnicity, nationality); disability (if any); school status; circumstances surrounding the child's removal from the home; termination of parental rights; type of current placement; goal of the permanent placement plan; sources of financial support; and date and reason for discharge from substitute care. Data on foster children also include the number of siblings as well as selected information on their biological and foster parents.

Information to be submitted on each adopted child includes the State's reporting number; demographic information; date of termination of parental rights; and placement information and status. Data on adoptive children also include information on the number of siblings as well as selected information on their biological and adoptive parents.

For certain adoptions that involve special funding support, whether from title IV–E, State or other public sources, additional information must be provided. This information includes whether the child meets the State's definition of special needs; the type of disability (if any); whether the adoption involves a non-recurring cost subsidy; and the sources of financial support.

For purposes of gathering adoption information, the data collection system requires input in the quarter that a child is adopted. However, in order to get baseline information on all children for whom a title IV–E adoption assistance agreement is in effect, we are proposing at § 1355.40(a)(4) that States be required by the end of the first quarter of Year Two to provide information on all children already adopted under a title IV–E adoption assistance agreement with the State. The information to be supplied is specified in appendix B.

Racial and ethnic categories for both foster care and adoption data are consistent with those reported in the U.S. Census. There are special provisions to identify Indian children that are consistent with the Indian Child Welfare Act of 1978.

C. Data Collection System Requirements: Foster Care and Adoption

Paragraph (b) of § 1355.40 describes the date collection system requirements for foster care and adoption. States are required to transmit information quarterly. Within 45 days of the end of each quarter for which it is reporting, the State must have provided official certification of the State's approval of the electronically transmitted data reports. The child-specific information, along with a summary file of the quarter's data, shall be submitted for the foster care part and the adoption part of the report within 45 days of the quarter's end. The data must reflect the status of the child on one of the first five calendar days after the end of each quarter on which the State is reporting. We believe this range of five calendar days is broad enough to accommodate processing considerations at the State level while providing sufficient standardization for the data across States.

1. Transmission of Data

Paragraph (b)(1) of § 1355.40 proposes that States transmit the required data to the Department in an electronic form. Appendix E, referenced in § 1355.40(b), requires that the records be written in ASCII standard characters and be transmitted to the Department via modem or on data diskettes.

We evaluated various alternatives for the transmission and receipt of the data, including an assessment of the States' and the Department's computer hardware, and attempted to project the status of computer technology at the time when the data collection system will be implemented.

A survey of States conducted by APWA in 1988 provides the most timely basis for estimating the likely immediate impact of the proposed data collection system on the responsible agencies at the State and local level. The APWA survey collected the following types of information:

- Data processing capacity (availability of computers at the State and local levels);
- Estimated costs to acquire the needed computers or software where they are lacking;
- Extent to which data elements recommended by the Advisory Committee are now collected;
- Additional staffing, if any, that might be required; and
- Time required for full implementation.

The survey revealed considerable diversity in the extent to which States and localities use information systems in managing their foster care and adoption programs. Few States claim they possess a complete adoption and foster care data collection system and none indicated that they presently meet all of the characteristics of the system proposed by the Advisory Committee. They, nonetheless, increasingly seem to accept the value and necessity of data collection as an integral part of their foster care and adoption program management. Computers, particularly microcomputers, are becoming more and more available, even at the county level.

A majority of responding States (26 out of 47, or 55 percent) reported that all their local agencies currently have automated data processing (ADP) capability to collect and store the recommended data. Virtually all States responded that they have an ADP system that can collect, process and analyze the data transmitted from local agencies. Most States indicated that their present child welfare information systems are automated, with 21 out of 47 States (45 percent) indicating a 100 percent level of automation. Several States reported that they were in the process of upgrading their foster care and adoption information system, usually with the caveat that they would defer critical actions until after the Department promulgates its regulations pursuant to section 479 of the Act.

We particularly wish to hear from States regarding their ability to meet the requirements specified in this NPRM based on the systems they are currently using or are in the process of developing.

With respect to the specific data items under consideration, the responses varied widely. All of the States collect at least some of the data elements, and 16 of the 47 respondents (34 percent) reported that they collect 80 percent or more of the data elements on a Statewide basis.

Cost estimates for hardware and software by the 47 reporting jurisdictions amounted to nearly $39 million; extrapolated to cover all States and the District of Columbia, costs for the hardware and software were estimated at $40 million. These costs span a three year period, since State estimates of the amount of time required to implement the system varied widely. An additional $6 million or more in annual staffing costs at the State and local level would also be required. Local needs represent two-thirds of the $46 million.

Hardware plus software cost projections typically averaged from $6,000 to $9,000 for microcomputer workstations. States that utilize minicomputer workstations. States that utilize minicomputers or mainframes tended to estimate substantially greater costs. These were explained as necessary to upgrade an existing computer system, to tie adoption and foster care into related programs at the State level, or to link with closely allied functions, most often financial management. Typical per person costs for additional staff reflected an annual salary of $24,000 to $30,000.

In response to a question about how long it would take to design the changes, advise staff, modify existing procedures or software, and implement the changes likely to be included in the new adoption and foster care data collection system, State estimates were diverse, but generally consistent with the timetable spelled out in section 479 of the Social Security Act which calls for full implementation by October 1, 1991. Three States replied that they could do it within one to two months. At the other extreme, three States indicated that it would take three years. Two-thirds of the States (30 out of the 47 respondents, or 64 percent) reported one year or less would be required to implement the changes. State estimates of the amount of time to train workers and managers to utilize the system ranged even more widely, with an average training calendar of approximately six months.

Information also indicates that while mainframe computers are being used in many States for the maintenance of the "corporate" databases, most States are doing their daily processing on personal computers (PC) with file transfer capabilities. We have, therefore, designed our proposed approach for the collection of national data on foster care and adoption to capitalize on the PC hardware functioning mode. We feel that computer tape as a transfer medium is outdated since most systems now process data using random access devices instead of sequential ones.

We chose the more prevalent DOS environment because we believe that it is a general standard and it, or OS2, or any other operating system implemented in the future will be capable of producing DOS readable files. We propose the three most common diskette drive capacities currently available, but encourage discussion of alternate recommendations.

The proposed rule also permits a telephonic transfer method via modem. appendix E provides detailed specifications for how the data are to be configured to use this method. We are setting a record limit of 5,000 cases to limit the transmission time and the possibility of erroneous data. Either the diskette or modem method is acceptable and a State may opt for one or the other in any given quarter. Whatever method is chosen, there must also be indication that the data submitted have been sent with official approval.

Our deliberations also included discussion on how to deal with new and improved technology that becomes available in the future, such as large capacity laser disks. We concluded that, as these methods mature and their reliability is documented, we will issue a prior notification to all States of a beginning date on which data may be transmitted on a new medium.

These new methods will be in addition to previously accepted methods. If some technology becomes so obsolete as to not warrant continued support, we will issue a formal notice of proposed rulemaking, permit public comment, and provide sufficient lead time so that the transition to a new method can be accomplished smoothly.

2. Format of Data

Paragraph (b)(1) of § 1355.40 also proposes, by reference to appendix E, a format for the electronic transmittal of the report of foster care and adoption data. The proposed record layouts are described in appendix F. For foster care, these data will contain the status of all children who were or are still in foster care during the quarter. If counties are the unit of data collection in the State, then the counties should submit their data to the State for transmission to the Department.

For the foster care part (appendix A), there will be data on new entrants as well as children still in care and children who exited during the quarter. The records should show the status of all these children as of the day the data "dump" was conducted. Using this data "dump" methodology means that each quarter's data submission represents the status of children in foster care in the country and that, by adding the "exits" from the first three quarters of the Federal fiscal year to the fourth quarter data, we can develop the annual data base on children in foster care.

For the adoption part (appendices B and C), the data will contain reports on the children adopted that quarter as well as any adopted child whose adoption assistance ceased that quarter. Paragraph (b)(4) of § 1355.40 proposes that, for any quarter in which no adoption activity required to be reported takes place, a report must be filed indicating that there are no data to be reported.

There have been discussions about establishing a longitudinal sample to support the study of the flow of children in the foster care system. We have not proposed such a sample because we believe the entire data base to be longitudinal. We believe that the proposed procedure for reporting data permits the study of the changing characteristics of the foster care population in ways that are meaningful to policy development and planning.

We believe that the "dump" method is efficient and that 100 percent collection of data is more economical for reporting and processing than sampling would be, given current technology. Comments are requested, especially from large States, on this proposed requirement for 100 percent data collection rather than sampling.

3. Reporting frequency

The proposed rule requires quarterly reporting, based on the calendar year. The proposal in the Secretary's report to the Congress indicated "* * * at least annually, and no more frequently than each quarter * * *" as the timeframe for required submittal. We considered and rejected annual reporting, as is done in VCIS, for a number of reasons. First, with annual reports the information has not been current and will not be current. If the proposed reporting system were to operate on an annual basis, information up to 15 months old would have to be used for policy purposes before the next

year's data would be available. With quarterly reporting, useable information would be no more than three months old.

Secondly, with quarterly reports, detailed information would be obtained on the number of times the child was placed in or removed from a foster care setting (placement episode) without requiring additional data elements. Also, with quarterly reports, detailed information would be lacking only on placement episodes and settings which occurred during the approximately 90 days between reports, although the fact that they occurred would be reported.

However, with annual reporting, detailed information would be missing on placement episodes and settings which occurred during the entire 12 month period between reports unless several extra data elements were added to the report. Accordingly, quarterly reporting provides more detailed information utilizing fewer data elements than in annual reporting.

Finally, there are three major uses of the term "year" that are used for reporting purposes: The Federal fiscal year (October through September), the calendar year (January through December), and the State fiscal year (July through June). Attempting to describe a "year's" data when they are reported for three different time periods presents serious analytic problems. Therefore, we are proposing to require quarterly reporting based on the calendar year and, thus, will have the ability to create a year's data on any or all of the three most commonly used schedules.

We believe that quarterly reporting will generate only minimum burden for States because we are requiring only that they "dump" the data which is already in their system. Public comments are requested specifically on this requirement for quarterly reporting.

The NPRM proposes in paragraph (b)(1) of § 1355.40 that the States transmit the completed report, which includes both foster care and adoption data, to the Department within 45 days after the end of the quarter on which it is reporting. Failure by a State to comply with the requirements for the data collection system for foster care and adoption shall be considered a substantial failure in complying with the title IV–E State plan. A period of 45 days is being proposed because we believe it to be a reasonable period of time for States to prepare and transmit the data reports to the Department. Under this 45 day period, States that submit their data reports early (within 15 days of the end of the quarter) have the opportunity of making corrections based on preliminary Departmental analyses and resubmitting corrected data before the end of the 45 day period. Early submission of data reports minimizes the likelihood of a finding of substantial non-compliance, thereby offering States the possibility of avoiding penalties for defective reports as described in the NPRM at § 1355.40(e).

Paragraph (b)(2) proposes that the data be "dumped" on one of the first five days after the end of the quarter on which the State is reporting. We believe this range of five days is broad enough to accommodate processing considerations at the State level while providing sufficient standardization for the data across States.

4. Data Processing

As proposed in paragraph (b)(3) of § 1355.40 and appendix G, four types of assessments will be conducted on the data submitted. They are:

- Comparisons of the detailed data to summary data;
- Internal consistency checks of the detailed data;
- An assessment of the status of missing data; and
- Timeliness, i.e., an assessment of how current the submitted data are.

We intend to perform the preliminary data checks as promptly as possible and will notify States of any problems encountered with their data in a timely fashion. If the data are reported within 15 days of the end of the quarter, States are assured of feedback in time to correct and resubmit the data within the required 45 days. Although no such assurances can be given for data reported after the first 15 days, the earlier in the 45 day reporting period that the data are submitted, the greater the opportunity the State has to resubmit corrected data and meet the requirement for substantial compliance with title IV–E.

Paragraph (b)(4) of § 1355.40 requires that even when no adoption activity specified in Appendices B and C has taken place, negative reports must be submitted for that quarter.

Departmental processing of the data will be done on a PC. We intend to produce some standard descriptive reports that are routinely processed. The data will also be available to provide reports back to the States and to support special analyses.

Initial processing of the data will verify that the data that are sent match the data received and will also determine the internal consistency, currency and completeness of the data.

For example, proposed Appendix G requires a summary data record that asks for some specific count totals derived from the detailed data, e.g., the number of children by age. An initial computer run will duplicate the numbers from the detailed data and match the output with the numbers in the summary data supplied by the State. If all of these numbers match, we will assume we have correctly received what the State sent.

Another review includes an assessment of the internal consistency of the data. The specific logic edits to be used are outlined in Appendix G. Inconsistencies will result in the data being converted to missing values as described in proposed paragraph (c) of § 1355.40 of the NPRM.

In general, as long as 95 percent of the records contain data on each element, including data initially missing and data converted to missing because they failed internal consistency tests, no compliance action will be taken. We believe that a zero error rate would be unreasonable expectation for a new program and are therefore proposing a five percent error rate. We have set this level of acceptable error rate based on our experience with the data reported under the Voluntary Cooperative Information System (VCIS).

On a national basis, reported VCIS data indicates that when States collect a particular data element, missing data is very rare, usually under three percent. However, missing data in VCIS do not include data which are converted to missing due to inconsistency. Therefore, a level of five percent maximum missing data would be large enough to include both initially missing data and inconsistent data later converted to missing. This standard is both realistic and does not seriously compromise the integrity of the data set.

Some data items, however, such as State designation or Child's Reporting Number, are essential to the data report and must be present in every record or the data will be rejected in total. The reason for this is that records from different States will not be distinguishable, nor would records of different children be distinguishable from each if these elements are not completed.

Paragraph (d) in § 1355.40 of the NPRM proposes a standard of timeliness for data input in relation only to foster care data. A minimum of 60 percent of the children reported as new entrants in foster care for the quarter must have actually entered foster care during that quarter and 60 percent of the children reported as exiting foster care in the quarter must have actually left foster care during the quarter. Using this standard, States are permitted to be

approximately one month behind in data entry while at the same time assuring that most of the data are for the quarter for which the data are reported.

We further propose the failure to achieve this standard for foster care data will result in a penalty of five percent in Year Three and ten percent in Year Four and thereafter. (Proposed penalties are described in § 1355.40(e).)

D. State Plan Requirements

Under sections 471(a)(6) and (b) and 476(b) of the Act, the Secretary has the authority to require reports with respect to children for whom payments are made under title IV–E. In addition, section 422(b)(8) of title IV–B states that States must furnish information and reports and participcate in evaluations as the Secretary may require. Therefore, in order to make clear the Federal authority that permits the Department to require mandatory reporting on all children in foster care and those adopted who come under the care and responsibility of the State IV–B/IV–E agency, we have proposed changes in § 1355.30, § 1356.20 and § 1357.15.

We are proposing at § 1355.30(e) that at any compliance hearing convened under this part, the only issues to be heard are the timeliness of the data submittals, the number of errors in the data and whether there are any circumstances beyond the control of the States that affected negatively the State's ability to provide the required data. Since this proposed rule sets forth (as will the final rule) the standards for transmission, timeliness and accuracy below which no State may fall and still be in substantial compliance with the title IV–E State plan, we believe that there is adequate and complete notice to States of expectations for compliance. The only matter for discussion is whether an Act of God or some other event beyond the control of the State or any subdivision of the State prevented the State from meeting the required standards. Only evidence, including testimony, relating to these issues may be admitted at the compliance hearing.

We are proposing at § 1356.20 that failure by a State to report the required information in a complete and timely manner as prescribed at § 1355.40 will be considered a substantial failure in complying with the State's title IV–E plan and, therefore, subject to compliance action. Since we are defining in regulation what substantial compliance is in relation to the data collection system and the level of error that will be tolerated before a determination is made by the Department that the State has failed to comply substantially with the title IV–E State plan, we believe that it is reasonable to limit evidence for consideration in a compliance hearing to matters relevant to the standards set forth in the regulation. Fixed penalties for substantial noncompliance, as described in the regulation, will be assessed from the relevant portion of the title IV–E administrative funds claimed by the State.

In addition, a change is also being proposed in § 1357.15(h) which will require States receiving title IV–B grants to agree to incorporate in their title IV–B plan the requirements of the data collection system for foster care and adoption as described in § 1355.40 and to report the required data in the form and manner prescribed in that rule.

E. Penalties

In the development of the NPRM, Department personnel discussed what might be the best way to encourage the accurate and timely submittal of information so that current data would be available, especially on children in foster care. Inasmuch as there is no legislative authority to provide financial incentives, the one alternative available is to impose financial assessments for failures to comply with the State plan provision on data collection. The matter of penalties was thoroughly discussed, particularly the fact that once a State failed to substantially comply with the requirements for data collection, the penalties imposed could affect a minimum of two quarters and most likely several quarters of a portion of a State's title IV–E administrative expenditures. Once it is determined that a State is failing to substantially comply with the State title IV–E plan, the funds at risk are those for the quarter for which the State substantially failed to comply and ensuing quarters until such time that the Department makes the determination that not only is the State in compliance, but that corrective action has taken place so that it is reasonable to conclude that the noncompliance will not recur.

We are proposing that there be no compliance finding for not adhering to the standards as prescribed in the regulation and that no penalties be assessed in Years One (FFY 1992) and Two (FFY 1993) in order to permit States to resolve any start-up problems in their data collection systems. However, full adherence to the standards set forth in this proposed rule will be expected in Year Three (FFY 1994). Penalties imposed during Year Three will be less than penalties imposed for Year Four (FFY 1995) and thereafter. Stiffer penalties are imposed for Year Four and thereafter based on the assumption that the State agency has had time to purge the system of start-up problems and has staff trained and knowledgeable about the data collection system.

The proposed penalties are fixed and are set at amounts we believe to be large enough to encourage a State to provide the data fully and in a timely way in order to avoid a finding of substantial noncompliance and the ensuing penalties. It is not our intention to make the penalties so great as to significantly interfere with State efforts to provide services to families and children; however, we do want to encourage full reporting. As stated earlier, the method for calculating the penalties is based on the standards for completeness and timeliness of a State's data reports.

In the matter of assessing penalties, we concluded that claims for title IV–E administrative expenditures would be the most appropriate focus for penalties. By amending § 1356.20, we propose to treat a failure by a State to comply with the requirements for the data collection system set forth in the proposed § 1355.40 as a substantial failure in complying with the title IV–E State plan.

We believe that the penalty for not providing data as required by § 1355.40 should be substantial, but not overwhelming. For this reason, we are proposing in § 1355.40(e)(1) that only a portion of a State's title IV–E administrative expenditures be in jeopardy: The penalties for noncompliance are fixed and are assessed against part of the State's title IV–E administrative costs for the quarter in which the defects occurred. The amount of the title IV–E administrative costs against which the fixed penalties are assessed in any quarter of the fiscal year is equal to one quarter's (25%) worth of the amount of the title IV–B incentive funds (under section 427) available to the State for that year or, in the case of States ineligible for title IV–B incentive funds, the amount of such funds that the State would receive if it were eligible to receive them. The actual amount to be deducted as a penalty is cumulative up to a maximum of 10 percent in Year Three and 20 percent in Year Four.

The incentive funds used in the calculations do not include any transfer funds or reimbursement for voluntary placements to which a State may be entitled. The dollar amounts available under the basic grant and the incentive funding beyond the basic grant are published each year by the Commissioner, ACYF, in the table of allotments under title IV–B.

The following example is provided to help clarify the proposed penalties: State Q receives title IV–B incentive funds (over its share of the base amount of $141,000,000) in fiscal year 1995 of $4,000,000. The State's share for any quarter in fiscal year 1995 is 25%×$4,000,000 or $1,000,000. Therefore, the maximum amount of penalty that can be imposed in any quarter on State Q in 1995 (Year Four) is 20%×$1,000,000 or $200,000, which will be deducted from the FFP for its title IV–E administrative costs for that quarter.

In reaching the decision to use the section 427 incentive funds available under title IV–B as the base for calculating the amount of penalty to be assessed against a State's claims for administrative expenditures under title IV–E, consideration was given to several factors. We sought a method for calculating penalties that (1) permitted the dollar amount of the maximum penalty for substantial noncompliance to be known to the States prior to the time the data are submitted, (2) provided an upper limit on the amounts of money that could be in jeopardy, and (3) could be consistently applied to all States. We concluded that by utilizing section 427 incentive funds available under title IV–B to the State agency (which by statute must administer both title IV–B and title IV–E), all three of our objectives were met. As the title IV–B incentive funds represent a fixed number of dollars allocated to the States on a formula basis prior to each fiscal year, the States will know the maximum amount of dollars at risk of penalty prior to their submission of the data; there is a limitation on the amount of dollars at risk; and the amount of penalty can be calculated on a consistent basis across States.

In paragraph (e)(2) of § 1355.40 we have proposed that the penalties be deducted quarterly against a State's claims for title IV–E administrative expenditures for the quarter in which the noncompliance occurred and for any subsequent quarters of noncompliance. This also includes any subsequent quarters when the penalty is applied because the Secretary is not yet satisfied that the noncompliance has been corrected and will not recur. Following a decision sustaining the noncompliance finding, funds will be recovered for all quarters in which the penalties apply.

Paragraph (e)(3) proposes to limit the maximum penalty for any quarter in Year Three (FFY 1994) to 10 percent and in Year Four (FFY 1995) and thereafter to 20 percent quarterly of the relevant portion of a State's title IV–E administrative expenditures.

The collection of complete accurate data is the goal of the information system for adoption and foster care. The level of missing, inconsistent and untimely data should not be so great as to raise concerns about the quality of the State's data submission. However, we recognize that there will be some errors in the data. As long as each element has no more than five percent missing data, including data initially missing and data converted to missing because they failed internal consistency tests, and the data report meets the standard for timeliness, no compliance action will be taken.

Paragraph (e)(4) outlines the circumstances under which a State will incur the maximum penalty. We propose to apply the maximum penalty when a State fails to submit both the foster care part and the adoption parts of the data report within 45 days; or submits each part within the timeframe, but in each part there is one element which exceeds the level of tolerance for missing data as described in Appendix G; or fails to submit one part on time and in the data that are submitted, one element or more exceeds the level of tolerance for missing data.

Paragraph (e)(5) proposes that each part of the completed report (i.e., the foster care and adoption parts) be treated separately for purposes of applying the penalties. In other words, the parts of the report will not be added together. Each part will be reviewed separately for the purposes of applying penalties. For example, if a State submits adoption data and foster care data on time, but the foster care data exceeds the level of tolerance for missing data, then the penalty imposed in Year Three is 5 percent and 10 percent in Year Four and thereafter. The following chart illustrates the application of the penalties.

ASSESSMENT OF PENALTIES ADOPTION AND FOSTER CARE DATA COLLECTION SYSTEM

(In Percentages of Title IV–E Administrative Cost Claims Capped at Incentive Amounts Available Under Section 427 of Title IV–B)

	Adoption Data			
	Absence of errors*	40% not in quarter**	Missing data	No submittal
Year 3 (Oct. 1, 1993–Sept. 30, 1994)				
Foster:				
Absence of Errors*	0	0	5	5
40% not in Quarter**	5	5	10	10
Care: Missing Data	5	5	10	10
Data: No Submittal	5	5	10	10
Year 4 (Oct. 1, 1994–September 30, 1995) and Beyond				
Foster:				
Absence of Errors*	0	0	10	10
40% not in Quarter**	10	10	20	20
Care: Missing Data	10	10	20	20
Data: No Submittal	10	10	20	20

*Data meet the standards described in Appendix G.
**Standard applicable only to Foster Care Data. (See appendix G)

In any given quarter, it is very important that foster care data reflect the number of the children who enter and exit foster care in that quarter. Given the proposed standard for timeliness in paragraph (d) of § 1355.40 discussed earlier, paragraph (e)(6) proposes that States which fail to meet the timeliness standard be penalized. For Year Three, the penalty is five percent and for Year Four and thereafter, the penalty is 10 percent.

While a penalty is proposed in paragraph (e)(6) on foster care submissions if at least 60 percent of the submitted entrant and exit dates in a given report did not occur during the reporting quarter, this standard is not

applicable to adoption reports. We believe that the necessity to have the adoption data, even if they are late, outweighs the need to have them on time. We do not wish to discourage the submission of adoption data.

The reason for the distinction between the foster care data and the adoption data is that each quarterly foster care report is one of a continuing series of submissions which builds on previous quarterly submissions. When a new quarterly report is submitted, it builds on previous reports, reflecting the updated status of information, and replaces the previous quarterly submissions in all aspects (items) except exits.

Accordingly, if a foster care report is not submitted in a timely manner, within 45 days, it becomes virtually useless because the data are supplemented with more current information in less than 90 days. Therefore, a late submittal in foster care (after 45 days) is considered the same as no submittal and invokes a penalty.

Adoption data must be reported independently from foster care data. Information in each adoption report is new and, except for the elements "cessation of subsidy" and "reason for cessation," supplements nothing that was reported previously. If the adoption data are not submitted, the totality of the information is lost forever. While it is important that adoption information be submitted on time, it is even more crucial that the data not be lost.

Adoption reports, even if they are late, are extremely important in the collection of the adoption data. States which do not report adoption data in a timely way, i.e., within 45 days after the end of the reporting quarter, are subject to a penalty of five percent in Year Three and 10 percent in Year Four and thereafter. Furthermore, § 1355.40(e)(7) proposes that the penalty will continue to be assessed each subsequent quarter until the missing adoption data are transmitted and the Secretary is reasonably satisfied that the noncompliance will not recur.

F. Financing the Data Collection System

We propose to amend paragraph (c)(2) of § 1356.60 by adding subparagraph (x) to include data collection as an allowable administrative cost of title IV–E.

We propose to add a new paragraph (d) to § 1356.60 to address the matter of Federal financial participation (FFP) for the costs of data collection. Paragraphs (d) (1), (2), (3) and (4) of § 1356.60 state that, in the absence of any legislative changes, the costs for the initiation, implementation and operation of the data collection system must be borne by the States with Federal matching funds being available only for those children included in the reporting system who are eligible for title IV–E foster care maintenance payments or adoption assistance payments or services. The proposed rules specify that only a proportionate share of the costs of beginning the system, operating it and collecting the data can be charged to title IV–E foster care administrative expenditures at a Federal matching rate of 50 percent. The charges for the title IV–E foster care portion of the system must be allocated to title IV–E foster care based on the percentage of title IV–E eligible children in foster care actually being counted in the system. For all other children counted in the system, the State may use title IV–B or other appropriate funds.

Paragraph (d)(5) states that the costs borne by title IV–E for information systems used for purposes other than those specified by section 479 of the Act must bear the same ratio as the title IV–E population bears to the total population contained in the information system. This ratio shall be verified by the reports of all other (non-title IV–E) programs.

III. Impact Analysis

Executive Order 12606: The Family

Executive Order 12606 requires Federal agencies, in formulating and implementing policies and regulations, to assess the impact on family formation, maintenance and general well being. We believe these proposed regulations will serve to strengthen and preserve family life insofar as the demographic information provided on children in foster care will aid in permanency planning for these children and their families. And, in the case of adoption, information on children will assist in the placement of children for adoption as well as aid in the development of policies and practices that will encourage and support families who care for children in foster care and those who adopt children.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or certain other specified effects. Nothing in the proposed rule is likely to create substantial costs. The Department has determined that these regulations are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. ch. 6), the Department tries to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities," an analysis is prepared describing the rule's impact on small entities. Small entities are defined in the Regulatory Flexibility Act to include small businesses, small non-profit organizations, and small governmental entities.

The primary impact of these regulations is on the States, which are not "small entities" within the meaning of the Act. For this reason, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

List of Subjects

45 CFR Part 1355

Adoption and foster care, Child welfare, Data collection, Definitions, Grant programs—Social programs.

45 CFR Part 1356

Adoption and foster care, Administrative costs, Child welfare, Fiscal requirements (title IV–E), Grant programs—Social programs, Statewide Information System.

45 CFR Part 1357

Adoption and foster care, Child welfare, Child welfare services state plan, Indians, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Nos. 13.658, Foster Care Maintenance, 13.659, Adoption Assistance and 13.645, Child Welfare Services—State Grants)

Dated: February 7, 1990.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

Approved: April 3, 1990.

Louis W. Sullivan,

Secretary.

For the reasons set forth in the preamble, we are proposing to amend 45 CFR parts 1355, 1356 and 1357 as follows:

PART 1355—GENERAL

1. The authority citation for part 1355 continues to read as follows:

Authority: 42 U.S.C. 620 et seq.; 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

2. Section 1355.20(a) is amended by adding definitions for the terms "adoption" and "foster care" as follows:

§ 1355.20 Definitions.

* * * * *

Adoption means the method provided by law which establishes the legal relationship of parent and child between persons who are not so related by birth, with the same mutual rights and obligations that exist between children and their birth parents. This relationship can only be termed "adoption" after the legal process is complete.

* * * * *

Foster care means 24 hour substitute care for all children placed away from their parents or guardians and for whom the State agency has placement and care responsibility. This includes, but is not limited to, family foster homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes regardless of whether the foster care facility is licensed and whether payments are made by the State or local agency for the care of the child or whether there is Federal matching of any payments that are made.

* * * * *

3. Section 1355.30 is amended by revising paragraph (e) as follows:

§ 1355.30 Other applicable regulations.

* * * * *

(e) Section 201.6, Withholding/Reduction of FFP. Pursuant to the requirements under § 1355.40 of this part for data collection, the only evidence relevant at hearings under § 201.6 are those matters related to the standards set forth in § 1355.40 and whether there were circumstances beyond the control of the State or political subdivisions that should be considered by the Secretary.

* * * * *

4. A new § 1355.40 is added to read as follows:

§ 1355.40 Foster care and adoption data collection.

(a) *Scope of the data collection system.* (1) Each State which administers or supervises the administration of titles IV–B and IV–E must have a data collection system operational by October 1, 1991 that meets the requirements of § 1355.40(b) and electronically reports certain data regarding children in foster care and adoption. The foster care data elements are listed and defined in appendix A to this part and the adoption data elements are listed and defined in appendices B and C to this part.

(2) For purposes of foster care, each State's data report must include all children in foster care for whom the State title IV–B/IV–E agency has responsibility for placement, care, or supervision.

(3) For the purposes of adoption data collection, data are required to be reported by the State on all adopted children who were placed by the State title IV–B/IV–E agency, and all adopted children for whom the State agency is providing adoption assistance (either ongoing or for nonrecurring expenses), care of services directly or by contract or agreement with other private or public agencies.

(4) By the end of the first quarter of Year Two, States must have provided all the information specified in Appendix B to this part for all adopted children for whom a title IV–E adoption assistance agreement is in effect.

(b) *Foster care and adoption data collection requirements.* (1) The State agency shall submit quarterly, within 45 days of the end of the quarter, information on each child in foster care and each child adopted during the quarter. The information to be reported consists of the data elements found in appendices A, B and C to this part. The data must be submitted in electronic form as described in appendix E to this part and in record layouts as delineated in appendix F to this part.

(2) The child-specific data to be reported must reflect the status of the child as of the day the data are run, which must be within the first five calendar days after the end of each quarter. In addition to the child-specific data, a record layout for each file must accompany the submission. These record layouts must spell out each field and its size for current submittal. A summary file of the quarter's data must also be submitted and will be used to verify the completeness of the State's detailed quarterly submission.

(3) A variety of internal data verification checks will be used to judge the internal consistency of the quarterly detailed data submission. These are specified in appendix G to this part.

(4) Negative reports for the adoption section of the report must be submitted for any quarter in which no adoption activity specified in appendices B and C to this part has taken place.

(c) *Missing data standards.* (1) The term "missing data" refers to the number of records with the code indicating that the data are "unknown." In addition, other data, which under certain conditions will be converted to missing, are specified in Appendix G to this part.

(2) The penalties for missing data are specified in paragraph (e) of this section.

(d) *Timeliness of foster care data reports.* (1) A minimum of 60 percent of the children reported entering foster care in the report for a given quarter must have entered during that quarter. A minimum of 60 percent of the foster care exits reported for that quarter must have exited during that quarter.

(2) Penalties shall be invoked as provided in paragraph (e) of this section.

(e) *Penalties.* (1) Failure by a State to meet any of the standards described in paragraphs (a) through (d) of this section is considered a substantial failure to meet the requirements of the title IV–E State plan. Penalties for substantial noncompliance will be assessed quarterly against that portion of a State's title IV–E administrative expenditures that is equal to 25 percent of the State's annual share of title IV–B funds above the base appropriation of $141 million (incentive funds available under section 427 of the Act). In the case of States ineligible to receive title IV–B incentive funds, the penalty shall be equal to 25 percent of the amount of title IV–B incentive funds that a State would receive if it were eligible to receive them.

(2) Penalties will be assessed quarterly against a State's claims for title IV–E administrative expenditures for the quarter in which the noncompliance occurred and any subsequent quarter of noncompliance. This also includes any subsequent quarters when the penalty is applied because the Secretary is not yet satisfied that the noncompliance will not recur. Following a decision sustaining ACYF's proposed action, funds will be recovered for all quarters in which the penalties apply.

(3) The maximum penalty for any quarter in Year Three (Federal Fiscal Year (FFY) 1994) is 10 percent of the State's claim for title IV–E administrative expenditures as described in paragraph (e)(1) of this section and 20 percent quarterly for Year Four (FFY 1995) and thereafter of the relevent title IV–E administrative expenditures.

(4) The maximum penalty will be applied when a State:

(i) Fails to submit both the foster care data and the adoption data reports within 45 days of the due date as specified in paragraph (b)(1) of this section; or

(ii) Submits foster care data and adoption data on time, but there is one or more element in each part which exceeds the level of tolerance for

missing data as defined in appendix G to this part; or

(iii) Fails to submit one part on time, and in the data that are submitted on time, one element or more exceeds the level of tolerance as defined in appendix G to this part.

(5) For purposes of applying a penalty, each part of the quarterly report, i.e., the foster care data and the adoption data, will be analyzed separately, and the level of tolerance described in appendix G to this part will be applied to each part.

(6) States will be assessed a fixed penalty of five percent in Year Three and 10 percent in Year Four and thereafter for foster care data reports which fail to achieve the standard for timeliness described § 1355.40(d) and appendix G to this part.

(7) States which do not submit adoption data will be penalized a fixed penalty of 10 percent each quarter until all previously unsubmitted adoption data are transmitted to the Department and the Secretary is satisfied that substantial noncompliance will not recur.

4a. Note: Appendices A through G to part 1355 are added in amendatory instruction paragraph 10 in this proposed rule.

PART 1356—REQUIREMENTS APPLICABLE TO TITLE IV-E

5. The authority citation for part 1356 continues to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

6. Section 1356.20 is amended by designating existing paragraphs (b) through (d) as (c) through (e) and adding a new paragraph (b) as follows:

§ 1356.20 State plan document and submission requirements.

* * * * *

(b) Failure by a State to comply with the requirements and standards for the data collection system for foster care and adoption (§ 1355.40) shall be considered a substantial failure by the State in complying with the State plan for title IV-E. Penalties as described in § 1355.40(e) shall apply.

* * * * *

7. Section 1356.60 is amended by adding a new paragraph (c)(2)(x), and new paragraph (d), and republishing the introductory text in paragraph (c)(2) to read as follows:

§ 1356.60 Fiscal requirements (title IV-E).

* * * * *

(c) * * *

(2) The following are examples of allowable administrative costs necessary for the administration of the foster care program:

* * * * *

(x) A proportionate share of costs related to data collection.

* * * * *

(d) *Allocation of costs of data collection system.* (1) A proportionate share of the costs of the system initiation, implementation and operation may be allocated as an administrative cost of title IV-E subject to the restrictions in paragraphs (d) (2) and (3) of this section.

(2) For children in foster care who are eligible for title IV-E foster care payments, the proportionate share of the costs of the initiation of the system, its operation and collection of the data may be charged to title IV-E foster care administrative costs. The charges for the title IV-E foster care portion of the system may be allocated to title IV-E foster care each quarter based on the percentage of eligible children actually reported for that quarter.

(3) For children who are receiving title IV-E adoption subsidies, either for nonrecurring expenses of adoption or ongoing payments or services, the proportionate share of the costs of the development of the system, its operation, and collection of data may be charged to title IV-E adoption assistance as an administrative cost. The charges for the title IV-E adoption assistance portion of the system may be allocated to title IV-E adoption assistance each quarter based on the percentage of eligible children actually reported for that quarter.

(4) Costs of the data collection system for children under the supervision, responsibility or care of the title IV-B/IV-E agency not eligible for title IV-E foster care or adoption assistance payments shall be borne by the State and may be paid from title IV-B or other funds.

(5) For information systems used for purposes other than those specified by section 479 of the Act, the title IV-E allocation must bear the same ratio as the title IV-E population bears to the total population contained in the information system as verified by the reports of all other (non-title IV-E) programs.

PART 1357—REQUIREMENTS APPLICABLE TO TITLE IV-B

8. The authority citation continues to read as follows:

Authority: 42 U.S.C. 620 et seq., 42 U.S.C. 670 et seq.; 42 U.S.C. 1302.

9. Section 1357.15 is amended by adding a new paragraph (h) as follows:

§ 1357.15 Child welfare services State plan requirements and submittal.

* * * * *

(h) In meeting the requirements of section 422(b)(8), each State must provide assurance that it will meet the requirements for data collection for foster care and adoption as described in 45 CFR 1355.40 and report the required data in the form and manner prescribed by that section.

PART 1355—GENERAL

10. Part 1355 is further amended by adding Appendices A through G to read as follows:

Appendix A—Foster Care Data Elements

A. Identification Information

1. State ..... _____ _____
2. Local Agency (City, County or District) Name ..... _____ _____
3. Child's Reporting Number ..... _____ _____
4. Reporting Date ..... _____ _____

B. Child's Demographic Information

1. Date of Birth ..... _____ _____
   mo da yr
2. Sex:
   Male ..... _____ _____
   Female ..... _____ _____
3. Race/Ethnicity:
   a. White (not Hispanic) ..... _____ _____
   b. Black (not Hispanic) ..... _____ _____

c. Hispanic
d. American Indian/Alaskan Native
e. Asian/Pacific Islander
f. Missing Data

4. Child is Disabled:
Yes
No

5. Type of Disability: (Check all that apply)
a. Mental Retardation
b. Blind or Visually Impaired
c. Deaf and Hard of Hearing
d. Physically Disabled
e. Emotionally Disturbed
f. Learning Disability
g. Medical Condition
h. AIDS
i. Other

C. School Status

1. Child is Enrolled in School:
Yes
No
2. Last Grade Completed

D. Removal/Placement Indicators

1. Date of Latest Removal from Home
mo da yr
2. Date of Placement in Current Substitute Care Setting
mo da yr
3. Number of Placements Since Latest Removal
4. Number of Previous Removals from Home
5. Date Child was Discharged from Last Substitute Care Setting Under Previous Removal
mo da yr
6. Child Entered Care by:
a. Voluntary Placement Agreement
b. Judicial Determination
c. Voluntary—followed by a judicial determination

E. Circumstances of Removal

1. PRIMARY Condition Leading to Child's Removal: (Check primary condition that applies):
a. Physical Abuse
b. Sexual Abuse
c. Neglect
d. Substance Abuse (Parent)
e. Substance Abuse (Child)
f. Child's Disability
g. Child's Behavior Problem
h. Death of Parents
i. Incarceration of Parents
j. Caretaker's Inability to Cope
k. Caretaker's Illness/Incapacity
l. Parental Abandonment
m. Other (Specify)

2. OTHER Conditions Leading to Child's Removal: (Check all that apply):
a. Physical Abuse
b. Sexual Abuse
c. Neglect
d. Substance Abuse (Parent)
e. Substance Abuse (Child)
f. Child's Disability
g. Child's Behavior Problem
h. Death of Parents
i. Incarceration of Parents
j. Caretaker's Inability to Cope
k. Caretaker's Illness/Incapacity
l. Parental Abandonment
m. Other (Specify)

F. Current Living Arrangement

1. Adoptive Home (not legalized)
2. Family Foster Home—Relative Home
3. Family Foster Home—Non-Relative Home
4. Group Foster Home
5. Emergency Shelter
6. Public Institution
7. Private Non-Profit Institution
8. Private For-Profit Institution
9. Independent Living

10. Other

G. Parental Rights Termination

		Mother	Father
		mo da yr	mo da yr
1. Voluntary (Relinquishment/Surrender)	a.		b.
2. Non-Voluntary (Court Ordered)	a.		b.

H. Current Permanent Placement Plan

1. Reunify with Parents or Relative
2. Adoption
3. Long Term Foster Care
4. Long Term Institutional Care
5. Independent Living
6. Guardianship
7. Other

I. Family Foster Home—Parents Data

1. Foster Parents of Child:
   a. Married Couple
   b. Single
   c. Other

Data on Foster Parents		Mother	Father
2. Date of Birth	a.		b.
		mo da yr	mo da yr
3. Race/Ethnicity:			
a. White (not Hispanic)	i.		ii.
b. Black (not Hispanic)	i.		ii.
c. Hispanic	i.		ii.
d. American Indian/Alaskan Native	i.		ii.
e. Asian/Pacific Islander	i.		ii.
f. Missing Data	i.		ii.

J. Outcome Information

1. Date of Discharge from Substitute Care

	mo da yr
2. Reason for Exit:	
a. Family Reunification	
b. Adoptive Placement	
c. Adoption Legalized	
d. Emancipation	
e. Guardianship	
f. Transfer to Another Agency	
g. Runaway	
h. Death of Child	
i. Other	

K. Principal Caretakers Information

1. Principal Caretakers at Time of Child's Removal from Home: (Check no more than two)
   a. Mother (Birth or Adoptive)
   b. Father (Birth or Adoptive)
   c. Stepmother
   d. Stepfather
   e. Grandparent(s)
   f. Aunt and/or Uncle
   g. Sibling
   h. Other
   i. Unable to Identify

		Female	Male
2. Date of Birth	a.		b.
		mo da yr	mo da yr
3. Race/Ethnicity:			
a. White (not Hispanic)	i.		ii.
b. Black (not Hispanic)	i.		ii.
c. Hispanic	i.		ii.
d. American Indian/Alaskan Native	i.		ii.
e. Asian/Pacific Islander	i.		ii.
f. Missing Data	i.		ii.

4. Marital Status of Principal Caretakers:
   a. Married, Spouse Present
   b. Married, Separated
   c. Never Married
   d. Divorced
   e. Widowed
   f. Other or Cannot Determine

5. Household Composition at Time of Current Removal:
   a. Number of Siblings (excluding this child) _____ _____
   b. Number of Other Relatives (excluding principal caretakers) _____ _____
   c. Number of Other Non-Relatives _____ _____

L. Source of Financial Support (Check all that apply)

1. Title IV–E (Foster Care) _____ _____
2. Title IV–E (Adoption Assistance) _____ _____
3. Title IV–D (Child Support) _____ _____
4. Title XIX/XX (Medicaid/SSBG) _____ _____
5. SSI or Other Social Security Act Benefits _____ _____
6. Child's Own Resources _____ _____
7. State Only _____ _____
8. Parents _____ _____
9. Other _____ _____
10. None _____ _____

Definitions of Foster Care Data Elements

Reporting population

The population to be included in this reporting system includes all children in foster care under the responsibility of the State agency administering or supervising the administration of the title IV–B child welfare State plan and the title IV–E State plan, this is, all children who are required to be provided the protections of section 427 of the Social Security Act (SSA).

This population includes all children supervised by or under the responsibility of another public agency with which the title IV–B/IV–E State agency has an agreement under title IV–E and on whose behalf the State makes title IV–E foster care maintenance payments.

Foster care is defined as a 24 hour substitute care for children outside their own homes, regardless of whether payments are being made or not or whether the home or facility is licensed or not. This includes, but is not limited to:

—family foster homes
—relative foster homes
—group homes
—emergency shelters
—residential facilities
—child care institutions
—pre-adoptive homes

Foster care *does not* include children who are in *their own homes* under the responsibility of the State agency—whether on a trial basis or not.

A. Identification Information

1. *State* ..... U.S. Postal Service two letter abbreviation for State submitting the report.
2. *Local Agency Name* ..... Identity of the sub-State county, district, region, or other unit used by the State to identify regional subdivisions.
3. *Child's Reporting Number* ..... This number, which must be unique to each child in the State and which the State used to transmit data to the Federal Department of Health and Human Services (DHHS), must remain with the child throughout every reporting quarter and must be used whenever the child re-enters the foster care system. It must allow analysts to track a record over a period of time. The reporting number cannot be linked to the child's case I.D. number except at the State of local level.
4. *Reporting Date* ..... The month and year that the record was electronically produced and sent to DHHS.

B. Child's Demographic Information

1. *Date of Birth* ..... Month, day and year of the child's birth.
2. *Sex* ..... Indicate as appropriate.
3. *Race/Ethnicity:*
   a. White (not Hispanic) ..... A person of European, North African, or Middle Eastern origin, and not Hispanic.
   b. Black (not Hispanic) ..... A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
   c. Hispanic ..... A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
   d. American Indian/Alaskan Native. A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
   e. Asian-Pacific Islander ..... A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
   f. Missing Data ..... The specific race/ethnicity category is unknown or has not been determined.
4. *Child is Disabled* ..... Indicate whether the child has one of the disabling conditions listed in B.5. below.
5. *Type of Disability:* ..... The disability may be identified either by documentation from specialist or by the caseworker working with the child:
   a. Mental Retardation ..... Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.
   b. Blind or Visually Impaired ..... Having visual impairment that may significantly affect educational performance or development.
   c. Deaf or Hard of Hearing ..... A hearing impairment, whether permanent or fluctuating, that adversely affects educational performance; a communication disorder, such as stuttering, impaired articulator; a language impairment or voice impairment that adversely affects educational performance.
   d. Physically Disabled ..... A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebal palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

e. Emotionally Disturbed	A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: an inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed.
f. Learning Disability	A disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to use mathematical calculations. The term includes such conditions as perceptual disability, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, or environmental, cultural or economic disadvantage.
g. Medical Condition	Clinically diagnosed disabling conditions other than those listed above.
h. AIDS	(Acquired Immunodeficiency Syndrome)—A disease caused by a retrovirus known as Human Immunodeficiency Virus (HIV) which attacks primarily the immune system and ultimately destroys the ability to ward off disease. HIV was previously termed HTLV III, Lav or ARV.
i. Other	Apparently disabling conditions other than those noted above.
C. School Status	
1. *Child is Enrolled in School*	Child is enrolled full or part-time in elementary, intermediate or high school or in a trade or vocational school.
2. *Last Grade Completed*	Last grade, K thru 12, completed by the child.
D. Removal Placement Indicators	
1. *Date of Latest Removal from Home*	Date the child was last removed from his home (emergency, judicial or voluntary removal or abandonment) prior to being placed in foster care.
2. *Date of Placement in Current Substitute Care Setting.*	Date the child moved into the current foster home, facility, residence, shelter, institution, etc. for purposes of continued foster care.
3. *Number of Placements Since Latest Removal.*	Include only placements intended to be continued foster care. Do not include 1–72 hour placements in emergency shelters.
4. *Number of Previous Removals from Home.*	The number of times the child was removed from home (emergency, judicial or voluntary) prior to the latest removal indicated in D.1.
5. *Date Child was Discharged from Last Substitute Care Setting.*	Date, prior to D.1. above, that child was last discharged from foster care. If current placement is the first and only placement, leave blank.
6. *Child Entered Care by:*	Child came into care on date in D.1. on the basis of:
a. Voluntary Placement Agreement.	A voluntary placement agreement which has not been followed by a judicial determination,
b. Judicial Determination	A judicial determination (court order) removing the child from home, or
c. Voluntary—Followed by a Judicial Determination.	A voluntary placement agreement which was subsequently followed by a judicial determination.
E. Circumstances of Removal	
1. *Primary Condition Leading to Child's Removal:*	In situations where many factors contributed to the reasons for removal, check the major factor or, if that is not easily determined, the factor that finally precipitated the removal from home:
a. Physical Abuse	Physical abuse, injury or maltreatement of the child by a person responsible for the child's welfare.
b. Sexual Abuse	Sexual abuse or exploitation of a child by a person who is responsible for the child's welfare.
c. Neglect	Negligent treatment or maltreatment, including failure to provide adequate food, clothing, shelter or care.
d. Substance Abuse (Parent)	Principal caretaker's compulsive use of alcohol or narcotics that is not of a temporary nature.
e. Substance Abuse (Child)	Child's compulsive use of or need for alcohol or narcotics. This element should include infants addicted at birth.
f. Child's Disability	Clinical diagnosis of one of more of the following: mental retardation; emotional disturbance; specific learning disability; hearing, speech or sight impairment; physical disability; or other clinically diagnosed disability.
g. Child's Behavior Problem	Behavior in the school and community that adversely affects socialization, learning, growth, and moral development. These may include adjudicated or nonadjudicated child behavior problems.
h. Death of Parents	Family stress or inability to care for child due to death of a parent or caretaker.
i. Incarceration of Parents	Temporary or permanent placement of a parent or caretaker in jail that adversely affects care for the child.
j. Caretakers' Inability to Cope	Problems of child or caretaker that adversely affect caretakers' ability to care for the child.
k. Caretakers' Illness or Incapacity.	Physical or emotional illness or disabling condition adversely affecting caretakers' ability to care for child.
l. Parental Abandonment	Child left alone or with others; caretakers did not return or make whereabouts known.
m. Other (Specify)	The child was removed from his/her own home for a reason other than those listed above.
2. *Other Conditions Leading to Child's Removal:*	Check all of the factors that contributed to the reasons for removal.
a. Physical Abuse	Physical abuse, injury or maltreatment of the child by a person responsible for the child's welfare.
b. Sexual Abuse	Sexual abuse or exploitation of a child by a person who is responsible for the child's welfare.
c. Neglect	Negligent treatment or maltreatment, including failure to provide adequate food, clothing, shelter or care.
d. Substance Abuse (Parent)	Principal caretaker's compulsive use of alcohol or narcotics that is not of a temporary nature.

e. Substance Abuse (Child)	Child's compulsive use of or need for alcohol or narcotics. This element should include infants addicted at birth.
f. Child's Disability	Clinical diagnosis of one of more of the following: mental retardation; emotional disturbance; specific learning disability; hearing, speech or sight impairment; physical disability; or other clinically diagnosed disability.
g. Child's Behavior Problem	Behavior in the school and community that adversely affects socialization, learning, growth, and moral development. These may include adjudicated or nonadjudicate child behavior problems.
h. Death of Parents	Family stress or inability to care for child due to death of a parent or caretaker.
i. Incarceration of Parents	Temporary or permanent placement of a parent or caretaker in jail that adversely affects care for the child.
j. Caretakers' Inability to Cope	Problems of child or caretaker that adversely affect caretaker's ability to care for the child.
k. Caretakers' Illness or Incapacity.	Physical or emotional illness or disability condition adversely affecting caretaker's ability to care for child.
l. Parental Abandonment	Child left alone or with others; caretaker did not return or make whereabouts known.
m. Other (Specify)	The child was removed from his/her own home for a reason other than those listed above.
F. Current Living Arrangement	
1. *Adoptive Home (not legalized)*	A foster home in which the family intends to adopt the child. The family may or may not be receiving a foster care payment or an adoption subsidy on behalf of the child.
2. *Family Foster Home Relative Home*	A licensed or unlicensed home of the child's relatives regarded by the State as a substitute care living arrangement for the child.
3. *Family Foster Home Non-relative Home.*	A family foster home regarded by the State as a substitute care living arrangement.
4. *Group Foster Home*	A home providing 24-hour care for children in a small group setting that generally has from seven to twelve children.
5. *Emergency Shelter*	A facility providing emergency temporary care (includes any substitute care arrangement designated by the agency for emergency purposes).
6. *Public Institution*	A child care facility operated by a public agency and providing 24-hour care and/or treatment for children who require separation from their own homes and group living experience. These facilities may include: —child care institutions; —residential treatment facilities; —maternity homes; etc.
7. *Private Non-Profit Institution*	Same as G.6. above, but operated by a private concern as a non-profit institution.
8. *Private For-Profit Institution*	Same as G.7. above, but operated on a for-profit basis.
9. *Independent Living*	An alternative transitional living arrangement in which the child is provided the opportunity for increased responsibility for self care and is receiving financial support from the child welfare agency.
10. *Other*	Substitute care living arrangements other than the ones specified above.
G. Parental Rights Termination	
	Respond to the question for both the mother and the father. If the exact date cannot be determined, indicate at least the month and year.
1. *Voluntary (Relinquishment/Surrender).*	The parent voluntarily terminates full parental rights and responsibilities—either to an agency or an individual, depending on State law.
2. *Non-Voluntary (Court Ordered)*	Full parental rights and responsibilities are terminated by court order.
H. Current Permanent Placement Plan	
	Indicate the most recent placement plan for the child based on the latest review of the child's case plan—whether a court review or an administrative review.
1. *Reunify with Parents or Relative*	The goal is to keep the child in substitute care for a limited time to enable the agency to work with the family with whom the child had been living prior to entering substitute care in order to reestablish a stable family environment.
2. *Adoption*	The goal is to facilitate the child's adoption by relatives, foster parents or other unrelated individuals.
3. *Long Term Foster Care*	Because of specific factors or conditions, it is not appropriate or possible to return the child home or place him or her for adoption, and the goal is to maintain the child in a long term foster care placement with a family.
4. *Long Term Institutional Care*	Mental, physical or behavioral problems of the child require that he or she be placed in long term institutional care.
5. *Independent Living*	The goal is to enable the child, upon reaching majority or emancipation, to assume responsibility for living in the community.
6. *Guardianship*	The goal is to facilitate the child's placement with an agency or unrelated caretaker, with whom he or she was not living prior to entering substitute care, and who a court of competent jurisdiction has designated as legal guardian.
7. *Other*	No case plan goal has been established other than the care and protection of the child.
I. Family Foster Home—Parents Data	
	Respond to these elements only if the child's current placement is in a foster *family* home. If the child is in a group home or other type of facility, go directly to section J.
1. *Foster Parents of Child:* a. Married Couple b. Single c. Other	Indicate marital status of foster parent.
Data on Foster Parents	Respond to elements with best data available for each parent.
2. *Date of Birth*	If exact dates are not available, use the first of the month; if the month is not available, use January 1.

3. *Race/Ethnicity:*

a. White (not Hispanic)	A person of European, North African, or Middle Eastern origin, and not Hispanic.
b. Black (not Hispanic)	A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
c. Hispanic	A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
d. American Indian/Alaskan Native.	A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
e. Asian/Pacific Islander	A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
f. Missing Data	The specific race/ethnicity category is unknown or has not been determined.

J. Outcome Information

This information is completed only when the child is no longer in foster care under the responsibility of the State agency, and thus no longer under the section 427 requirements.

1. *Date of Discharge from Substitute Care*	Date the child left foster care for one of the reasons indicated in J.2. below.

2. *Reason for exit:*

a. Family Reunification	The child was returned to his or her own home.
b. Adoptive Placement	The process of placing a child with a family with the expectation of adoption.
c. Adoption Legalized	The final decree of adoption was issued by the court. Note, when a child is placed in a pre-adoptive home, it is still in foster care until the adoption is legalized.
d. Emancipation	The child reached majority according to State law by virtue of age, marriage, etc.
e. Guardianship	Permanent custody of the child was awarded to an individual.
f. Transfer to Another Agency	Responsibility for the placement and care of the child was awarded to another agency—either in or out of the State.
g. Runaway	The child ran away from the substitute care placement.
h. Death of Child	The child died while in substitute care.
i. Other	An outcome not listed above.

K. Principle Caretakers Information

1. *Principal Caretakers at Time of Child's Removal from Home:* a. Mother (Birth or Adoptive) b. Father (Birth or Adoptive) c. Stepmother d. Stepfather e. Grandparent f. Aunt and/or Uncle g. Sibling h. Other i. Unable to identify	Indicate the one or two individuals who were primarily responsible for the care of the child at the time of removal from the home.

Respond to elements with best data available for each parent.

2. *Date of Birth*	If exact dates are not available, use the first of the month; if the month is not available, use January 1.

3. *Race/Ethnicity:*

a. White (not Hispanic)	A person of European, North African, or Middle Eastern origin, and not Hispanic.
b. Black (not Hispanic)	A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
c. Hispanic	A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
d. American Indian/Alaskan Native.	A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
e. Asian/Pacific Islander	A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
f. Missing data	The specific race/ethnicity category is unknown or has not been determined.
4. *Marital Status of Principal Caretakers.* a. Married, Spouse Present b. Married, Separated c. Never Married d. Divorced e. Widowed f. Other or Cannot Determine	Indicare marital status of the principal caretakers at the time the child was removed from the home.
5. *Household Composition at Time of Current Removal:*	
a. Number of Siblings (excluding this child).	Include half-brothers and half-sisters of the child.
b. Number of Other Relatives (excluding principal caretakers).	Include relatives of the child by both blood and marriage.
c. Number of Other Non-Relatives...	Include all other individuals living in the household.

L. Source of Financial Support (Check all that apply)

1. *Title IV–E (Foster Care)*	Title IV–E foster care maintenance payments are being paid on behalf of the child. When this is checked, it is understood that the State pays a matching amount; do not also check L.7.

2. *Title IV–E (Adoption Subsidy)*..... Title IV–E adoption subsidy is being paid on behalf of the child who is in an adoptive home, but the adoption has not been legalized. See F.1. When this is checked, it is understood that the State pays a matching amount; do not also check L.7.
3. *Title IV–D (Child Support)*..... Child support funds are being paid to the State agency on behalf of the child by assignment from the receiving parent.
4. *Title XIX/XX (Medicaid/SSBG)*..... Child is eligible for and may be receiving assistance under titles XIX or XX.
5. *SSI or Other Social Security Act Benefits.* Child is receiving support under title XVI or other Social Security Act titles not included in section L.
6. *Child's Own Resources*..... Child is supported by funds available from his or her own resources.
7. *State Only*..... Child is supported by a "State only" foster care maintenance payment (no Federal subsidy).
8. *Parents*..... Biological or adoptive parents are contributing to the support of the child in foster care, either voluntarily or by court order.
9. *Other*..... Source of support is other than those listed above.
10. *None*..... Child is in family foster care with no Federal or State foster care maintenance payment being made, e.g. with a relative.

Appendix B.—Adoption Data Elements; State Agency Form

A. Identification Information

1. State _____
2. Local Agency (City, County or District) Name _____
3. Child's Reporting Number _____

B. Child's Demographic Information

1. Date of Birth: mo____/da____/yr____
2. Sex: Male/Female _____
3. Race/Ethnicity
   a. White (not Hispanic) _____
   b. Black (not Hispanic) _____
   c. Hispanic _____
   d. American Indian/Alaskan Native _____
   e. Asian/Pacific Islander _____
   f. Missing Data _____

C. Special Needs Status

1. Child is Special Needs (State Definition):
   Yes _____ _____
   No _____ _____
2. Basis for Special Needs: (Check primary basis):
   a. Racial/Ethnic Background _____
   b. Age _____
   c. Membership in Sibling Group _____
   d. Medical Conditions or Mental, Physical or Emotional Disabilities; (see below _____
   e. Other _____
3. Type of Disability: (Check all that apply):
   a. Mental Retardation _____
   b. Blind or Visually Impaired _____
   c. Deaf or Hard of Hearing _____
   d. Physically Disabled _____
   e. Emotionally Disturbed _____
   f. Learning Disability _____
   g. Medical Condition _____
   h. Other _____

D. Birth Parents

	Mother	Father
	_____	_____
	mo da yr	mo da yr
1. Date of Birth	a. _____	b. _____
2. Race/Ethnicity		
a. White (not Hispanic)	i. _____	ii. _____
b. Black (not Hispanic)	i. _____	ii. _____
c. Hispanic	i. _____	ii. _____
d. American Indian/Alaskan Native	i. _____	ii. _____
e. Asian/Pacific Islander	i. _____	ii. _____
f. Missing Data	i. _____	ii. _____
3. Marital Status of Mother (At time of child's birth):		
a. Married	_____	_____
b. Single	_____	_____
c. Divorced	_____	_____
d. Widowed	_____	_____
e. Unknown	_____	_____

E. Parental Rights Termination

	Mother	Father
	_____	_____
	mo da yr	mo da yr
1. Date of Termination	a. _____	b. _____ _____

2. Voluntary (Relinquishment/Surrender) ..... a. _____ b. _____
3. Non-Voluntary (Court Ordered) ..... a. _____ b. _____

F. ADOPTIVE PARENTS

		Mother	Father
		mo da yr	mo da yr
1. Date of Birth	a. / b.	_____	_____
2. Race/Ethnicity			
a. White (not Hispanic)	i. / ii.	_____	_____
b. Black (not Hispanic)	i. / ii.	_____	_____
c. Hispanic	i. / ii.	_____	_____
d. American Indian/Alaskan Native	i. / ii.	_____	_____
e. Asian/Pacific Islander	i. / ii.	_____	_____
f. Missing Data	i. / ii.	_____	_____
3. Marital Status (At time adoption legalized)			
a. Married		_____	_____
b. Single		_____	_____
c. Divorced		_____	_____
d. Widowed		_____	_____
e. Unknown		_____	_____
4. Child Adopted by			
a. Stepparent		_____	_____
b. Relative of Child		_____	_____
c. Foster Parent of Child		_____	_____
d. None		_____	_____

G. PLACEMENT INFORMATION

1. Previous Adoptive Placements:
Yes ..... _____ _____
No ..... _____ _____
2. Siblings
a. Were there siblings in substitute care?
Yes ..... _____ _____
No ..... _____ _____
b. Was this child placed with own siblings?
Yes ..... _____ _____
No ..... _____ _____
3. Case Flow Data
a. Date of Adoptive Placement: mo____/da____/yr____
b. Date Adoption Legalized: mo____/da____/yr____

H. PLACEMENT STATUS

1. The Child was Placed from:
a. Within State ..... _____ _____
b. Another State ..... _____ _____
c. Specify ..... _____ _____
d. Another Country ..... _____ _____
e. Specify ..... _____ _____
2. The Child was Placed by:
a. Public Agency ..... _____ _____
b. Private Agency ..... _____ _____
c. Tribal Agency ..... _____ _____
d. Independent Person ..... _____ _____
e. Other ..... _____ _____

I. STATE/FEDERAL ADOPTION SUPPORT

1. Is this child receiving any type of Federal or State subsidy or service as a condition of adoption?
Yes ..... _____ _____
No ..... _____ _____
2. Is this a non-recurring cost subsidy only? (If "YES" go to "Source of Financial Support", P.L. 99-514 and Section 473 of the Social Security Act)
Yes ..... _____ _____
No ..... _____ _____
3. Date Subsidy Began: mo____/da____/yr____
4. Date Subsidy will Cease: mo____/da____/yr____
5. Date Subsidy has Ceased: mo____/da____/yr____
6. Reason for Cessation (if subsidy ceased)
a. Child is 18 Years Old ..... _____ _____
b. Adoptive Parents no Longer Responsible for or Supporting Child ..... _____ _____
c. Services Completed ..... _____ _____
d. Dissolution ..... _____ _____
e. Death of Child ..... _____ _____
f. Death of Parents ..... _____ _____
g. Other ..... _____ _____

J. SOURCE OF FINANCIAL SUPPORT (Check all that apply)

1. Title IV-E (Monthly Payment) ..... _____ _____

2. Title IV-E (Non-Recurring Costs)	_____	_____
3. Title XVI (SSI)	_____	_____
4. Titles XIX/XX with no Assistance Payment	_____	_____
5. State Only	_____	_____
6. Other	_____	_____
7. None of the Above—Parents Only	_____	_____

Definitions of Adoption Assistance Data Elements

State Agency Form

Reporting population

The State Agency Form is to be used by the State agency for *all* adoptions in which it has *any* involvement. This includes:

(a) all children who had been in foster care under the responsibility and care of the State agency and were subsequently adopted whether special needs or not and whether subsidies are provided or not;

(b) all special needs children, whether within the responsibility of the State agency or not, for whom non-recurring expenses are reimbursed; and

(c) all adoptive children for whom adoption assistance (payment or service) is being provided based on arrangements made by or through the State agency.

A. Identification Information

1. *State:* U.S. Postal Service two letter abbreviation for State submitting the report.

2. *Local Agency Name:* Identify the sub-State county, district, region, or other unit used by the State to identify regional subdivisions.

3. *Child's Reporting Number:* The number, which must be unique to each child in the State and which the State uses to transmit data to the Federal Department of Health and Human Services (DHHS), must remain with the child throughout every reporting quarter and must be used whenever the child re-enters the adoption/foster care system. The reporting number cannot be linked to the child's case I.D. number except at the State or local level.

B. Child's demographic Information

1. *Date of Birth:* Month, day and year of the child's birth.

2. *Sex:* Indicate as appropriate.

3. *Race/Ethnicity*

a. White (not Hispanic): A person of European, North African, or Middle Eastern origin, and not Hispanic.

b. Black (not Hispanic): A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.

c. Hispanic: A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.

d. American Indian/Alaskan Native: A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.

e. Asian/Pacific Islander: A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.

f. Missing Data: The specific race/ethnicity category is unknown or has not been determined.

C. Special Needs Status

1. *Child is Special Needs* (State Definition): The State definition of special needs as it pertains to a child eligible for an adoption subsidy under title IV–E.

2. *Basis for Special Needs:* Check only the primary basis and only as it is a factor or a condition in the State's definition and only as it is defined by the State.

a. Racial/Ethnic Background
b. Age
c. Membership in Sibling Group
d. Medical Conditions or Mental, Physical or Emotional Disabilities; (see below)
e. Other

3. *Type of Disability:* The disability may be identified either by documentation from specialists or by the caseworker working with the child.

a. Mental Retardation: Significantly subaverage general cognitive and motor functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period that adversely affect a child's/youth's socialization and learning.

b. Blind or Visually Impaired: Having visual impairment that may significantly affect educational performance or development.

c. Deaf or Hard of Hearing: A hearing impairment, whether permanent or fluctuating, that adversely affects educational performance; a communication disorder, such as stuttering, impaired articulator; a language impairment or voice impairment that adversely affects educational performance.

d. Physically Disabled: A physical condition that adversely affects the child's day-to-day motor functioning, such as cerebral palsy, spina bifida, multiple sclerosis, orthopedic impairments, and other physical disabilities.

e. Emotionally Disturbed: A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree: an inability to build or maintain satisfactory interpersonal relationships; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or tendency to develop physical symptoms or fears associated with personal problems. The term includes persons who are schizophrenic or autistic. The term does not include persons who are socially maladjusted, unless it is determined that they are also seriously emotionally disturbed.

f. Learning Disability: A disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to use mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, mental retardation, or environmental, cultural or economic disadvantage.

g. Medical Condition: Clinically diagnosed disabling conditions other than those listed above.

h. Other: Apparently disabling conditions other than those noted above.

D. Birth Parents

1. *Date of Birth:* If exact dates are not available, use the first of the month; if the month is not available, use January 1.

2. *Race/Ethnicity*

a. White (not Hispanic): A person of European, North African, or Middle Eastern origin, and not Hispanic.

b. Black (not Hispanic): A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.

c. Hispanic: A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.

d. American Indian/Alaskan Native: A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.

e. Asian/Pacific Islander: A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.

f. Missing Data: The specific race/ethnicity category is unknown or has not been determined.

3. *Marital Status* (At time of child's birth): Indicate marital status of the birth mother at the time of the child's birth.

a. Married
b. Single
c. Divorced
d. Widowed
e. Unknown

E. Parental Rights Termination

1. *Date of Termination:* Respond to the question for both the mother and the father. If the exact date cannot be determined, use the first day of the month.

2. *Voluntary (Relinquishment/Surrender):* The parent voluntarily terminates full parental rights and responsibilities—either to an agency or an individual, depending on State law.

3. *Non-Voluntary (Court Ordered):* Full parental rights and responsibilities were terminated by court order.

F. Adoptive Parents

1. *Date of Birth:* Indicate date of birth of adoptive parent(s).

2. *Race/Ethnicity*

a. White (not Hispanic): A person of European, North African, or Middle Eastern origin, and not Hispanic.

b. Black (not Hispanic): A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.

c. Hispanic: A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.

d. American Indian/Alaskan Native: A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.

e. Asian/Pacific Islander: A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.

f. Missing Data: The specific race/ethnicity category is unknown or has not been determined.

3. *Marital Status:* Indicate marital status of the adoptive parent at the time the adoption was legalized.

a. Married
b. Single
c. Divorced
d. Widowed
e. Unknown

4. *Child Adopted by:* Indicate what previous relationship the child had with an adoptive parent.

a. Stepparent: Spouse of the child's birth mother or birth father.

b. Relative of Child: A relative through the birth parents by blood or marriage.

c. Foster Parent of Child: Child was placed in a non-relative foster family home with a family which later adopted him or her.

d. None: Adoptive parent fits into none of the categories above.

G. Placement Information

1. *Previous Adoptive Placements:* Indicate whether the child had previously been placed in an adoptive (pre-adoptive) home which placement later disrupted, or the child had legally been adopted and the adoption subsequently dissolved.

2. *Siblings:* If the adopted child had been in substitute care, were any brothers/sisters or half brothers/half sisters in substitute care at the same time—but not necessarily in the same home or facility. Answer NOT APPLICABLE if the child had not been in substitute care prior to adoption.

a. Were there siblings in substitute care?

b. Was this child placed with own siblings?

3. *Case Flow Data*

a. Data of Adoptive Placement: Date child was placed in adoptive (pre-adoptive) home of family who intended to adopt him or her.

b. Date Adoption Legalized: Date court order was issued making the adoption legal.

H. Placement Status

1. *The Child was Placed from:* Indicate the location of the individual or agency that had custody or responsibility for the child at the time of initiation of adoption proceedings.

a. Within State: Responsibility for the child resided with an individual or agency within the State filing the report.

b. Another State: Responsibility for the child resided with an individual or agency in another State or territory of the U.S.

c. Specify: Use the U.S. Postal Service two letter abbreviation for the State or territory.

d. Another Country: Responsibility for the child resided with an individual or agency in another country.

e. Specify: Indicate the name of the country from which the child came.

2. *The Child was Placed by:* The adoption activity was accomplished with the assistance of or through the intervention of which of the following?

a. Public Agency: A unit of State or local government.

b. Private Agency: A *for-profit* or *non-profit* agency or institution.

c. Tribal Agency: A unit within one of the Federally recognized Indian tribes or Indian Tribal Organizations.

d. Independent Person: A doctor, a lawyer or some other individual.

e. Other: Some organization other than those listed above.

I. State/Federal Adoption Support

1. *Is this child receiving any type of Federal or State subsidy or service as a condition of adoption?*

Has this child been adopted with an adoption assistance agreement under which

1—regular subsidies (Federal or State) are paid, or

2—the child is eligible for services under titles XIX or XX, or

3—Federal or State funds are made available for other types of assistance or services (including the non-recurring costs of adoption)?

2. *Is this a non-recurring cost subsidy only?*

The *only* assistance or subsidy being paid or offered by the Federal, State or local governments are for the non-recurring costs of adoption. If the answer to this question is YES, go to "Source of Financial Support," Section J.

3. *Date Subsidy Began:* The date that the child was first covered by the conditions in the adoption assistance agreement. This can only be after the adoption assistance agreement has been signed and the child has been moved into the adoptive (per-adoptive) home.

4. *Date Subsidy will Cease:* The State projects the date for the cessation of a subsidy. Subsidy or assistance usually ceases on the child's 18th birthday unless State law allows and agreement specifies an earlier or later date, but not later than the 21st birthday for Federally assisted subsidy payments. Subsidy can also cease for any of the other reasons listed in I.6. below.

5. *Date Subsidy has Ceased:* Date subsidy actually ceased.

6. *Reason for Cessation* (if subsidy ceased): If subsidy continues, respond with a NOT APPLICABLE; if subsidy has ceased, indicate the appropriate reason.

a. Child is 18 Years Old: Unless otherwise determined, see I.4. above, the subsidy ceases at the child's 18th birthday.

b. Adoptive Parents no Longer Responsible for or Supporting Child: By virtue of some action of the child (e.g., marriage) or parents (e.g., they threw the child out), the child is no longer under the responsibility of the parents or is no longer being supported by them.

c. Services Completed: All the terms, conditions (other than reaching age 18) and services required under the agreement have been completed.

d. Dissolution: The parental rights of the adoptive parents have been terminated.

e. Death of Child: The child died prior to the expiration date of the adoption assistance agreement.

f. Death of Parents: Adoptive parents have died prior to the expiration date of the subsidy. Federal (title IV–E) subsidy cannot be paid to any guardians or other individuals once the adoptive parents have died.

g. Other: Subsidy or assistance ceased for reasons other than those listed above.

J. Source of Financial Support

(Check all that apply)

1. *Title IV–E (Monthly Payment):* Title IV–E *adoption subsidy payments* are being paid on behalf of the adopted special needs child. When this is checked, it is understood that the State pays a matching amount; do *not* also check J.5.

2. *Title IV–E (Non-Recurring Costs):* Title IV–E *non-recurring costs* are being paid on behalf of the adopted special needs child. When this is checked, it is understood that the State pays a matching amount; do *not* also check J.5.

3. *Title XVI (SSI):* Child is receiving support under title XVI of the Social Security Act.

4. *Titles XIX/XX with no Assistance Payment:* According to the terms of the adoption assistance agreement, the child is eligible for services and medical treatment under Medicaid (XIX) and the Social Service Block Grant (XX). *No* State or Federal subsidy payment is being made on his/her behalf.

5. *State Only:* Child is supported by a "State only" adoption subsidy payment (no Federal subsidy).

6. *Other:* Source of additional support, services or assistance is other than those listed above, but does not include the adoptive parents.

7. *None of the Above Adoptive Parents Only:* The child is not special needs and thus has been placed without an adoption assistance agreement and without any subsidy, services or other assistance as a condition of adoption.

APPENDIX C.—ADOPTION DATA ELEMENTS SUBSIDY CESSATION-STATE AGENCY FORM

A. Identification Information

1. State _____
2. Local agency (city, county or district) name _____
3. Child's reporting number _____

B. Child's Demographic Information

1. Date of birth ___/___/___ (mo da yr)
2. Sex: Male/Female _____
3. Race/Ethnicity:
   a. White (not Hispanic) _____
   b. Black (not Hispanic) _____
   c. Hispanic _____
   d. American Indian/Alaskan Native _____
   e. Asian/Pacific Islander _____
   f. Missing data _____
4. Date adoption legalized ___/___/___ (mo da yr)

C. STATE/FEDERAL ADOPTION SUPPORT

1. Date subsidy began ___/___/___ (mo da yr)
2. Date subsidy has ceased ___/___/___ (mo da yr)
3. Reason for cessation (if subsidy ceased)
   a. Child is 18 years old _____
   b. Adoptive parents no longer responsible for or supporting child _____
   c. Services completed _____
   d. Dissolution _____
   e. Death of child _____
   f. Death of parents _____
   g. Other _____

DEFINITION OF ADOPTION DATA ELEMENTS—SUBSIDY CESSATION—STATE AGENCY FORM

Reporting population

The State Agency Form is to be used by the State agency for *all* adoptions in which a recurring subsidy has been paid, whether it is a State subsidy or a Federal subsidy.

A. Identification Information

1. State — U.S. Postal Service two letter abbreviation for State submitting the report.
2. Local agency name — Identify the sub-State county, district, region, or other unit used by the State to identify regional subdivisions.
3. Child's reporting number — The number, which must be unique to each child in the State and which the State uses to transmit data to the Federal Department of Health and Human Services (DHHS), must remain with the child throughout every reporting quarter and must be used whenever the child re-enters the adoption/foster care system. The reporting number cannot be linked to the child's case I.D. number except at the State or local level.

B. Child's Demographic Information

1. Date of birth — Month, day and year of the child's birth.
2. Sex — Indicate as appropriate.
3. Race/Ethnicity:
   a. White (not Hispanic) — A person of European, North African, or Middle Eastern origin, and not Hispanic.
   b. Black (not Hispanic) — A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
   c. Hispanic — A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
   d. American Indian/Alaskan Native — A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
   e. Asian/Pacific Islander — A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
   f. Missing Data — The specific race/ethnicity category is unknown or has not been determined.
4. Date adoption legalized — Date court order was issued making the adoption legal.

C. State/Federal Adoption Support

1. Date subsidy began — The date that the child was first covered by the conditions in the adoption assistance agreement. This can only be after the adoption assistance agreement has been signed and the child has been moved into the adoptive (pre-adoptive) home.
2. Date subsidy has ceased — Date subsidy actually ceased.
3. Reason for cessation — When the subsidy has ceased, indicate the appropriate reason.
   a. Child is 18 years old — Unless otherwise determined, the subsidy ceases at the child's 18th birthday.
   b. Adoptive parents no longer responsible for or supporting child. — By virtue of some action of the child (e.g., marriage) or parents (e.g., they threw the child out), the child is no longer under the responsibility of the parents or is no longer being supported by them.
   c. Services completed — All the terms, conditions (other than reaching age 18) and services required under the agreement have been completed.
   d. Dissolution — The parental rights of the adoptive parents have been terminated.
   e. Death of child — The child died prior to the expiration date of the adoption assistance agreement.
   f. Death of parents — Adoptive parents have died prior to the expiration date of the subsidy. Federal (title IV-E) subsidy cannot be paid to any guardians or other individuals once the adoptive parents have died.
   g. Other — Subsidy or assistance ceased for reasons other than those listed above.

Appendix D.—Adoption Data Elements General Adoption Form (Use is Optional)

A. IDENTIFICATION INFORMATION

1. State _____
2. Local agency (city, county or district) name _____
3. Child's reporting number _____

B. CHILD'S DEMOGRAPHIC INFORMATION

1. Date of birth: Mo___ da___ yr___

2. Sex:
   - Male _____ _____
   - Female _____ _____
3. Race/Ethnicity:
   - a. White (not Hispanic) _____ _____
   - b. Black (not Hispanic) _____ _____
   - c. Hispanic _____ _____
   - d. American Indian/Alaskan Native _____ _____
   - e. Asian/Pacific Islander _____ _____
   - f. Missing Data _____ _____

C. BIRTH PARENTS

	Mother	Father
	_____	_____
	mo da yr	mo da yr
1. Date of birth	a. _____	b. _____
	mo da yr	mo da yr
2. Race/Ethnicity		
a. White (not Hispanic)	i. _____	ii. _____
b. Black (not Hispanic)	i. _____	ii. _____
c. Hispanic	i. _____	ii. _____
d. American Indian/Alaskan Native	i. _____	ii. _____
e. Asian/Pacific Islander	i. _____	ii. _____
f. Missing Data	i. _____	ii. _____

D. PARENTAL RIGHTS TERMINATION

	Mother	Father
	_____	_____
	mo da yr	mo da yr
1. Date of termination	a. _____	b. _____
2. Voluntary (relinquishment/surrender)	a. _____	b. _____
3. Non-Voluntary (Court Ordered)	a. _____	b. _____

ADOPTIVE PARENTS

	Mother	Father
	_____	_____
	mo da yr	mo da yr
1. Date of birth	a. _____	b. _____
2. Race-Ethnicity:		
a. White (not Hispanic)	i. _____	ii. _____
b. Black (not Hispanic)	i. _____	ii. _____
c. Hispanic	i. _____	ii. _____
d. American Indian/Alaskan Native	i. _____	ii. _____
e. Asian/Pacific Islander	i. _____	ii. _____
f. Missing Data	i. _____	ii. _____
3. Marital status (at time adoption legalized)		
a. Married	_____	_____
b. Single	_____	_____
c. Divorced	_____	_____
d. Widowed	_____	_____
e. Unknown	_____	_____
4. Child Adopted by:		
a. Stepparent	_____	_____
b. Relative of child	_____	_____
c. Foster parent of child	_____	_____
d. None	_____	_____

F. PLACEMENT INFORMATION

1. Previous adoptive placements
   - Yes _____ _____
   - No _____ _____
2. Was child placed with own siblings?
   - Yes _____ _____
   - No _____ _____
3. Date adoption legalized:

G. PLACEMENT STATUS

1. The child was placed from:		
a. Within State		
b. Another State		
c. (Specify)		
d. Another county		
e. (Specify)		
2. The child was placed by:		
a. Public agency		
b. Private Agency		
c. Tribal Agency		
d. Independent Person		
e. Other		

DEFINITION OF ADOPTION ASSISTANCE DATA ELEMENTS (GENERAL ADOPTION FORM) (USE IS OPTIONAL)

Reporting population

These data elements may to be used by the State to collect information on all children legally adopted in the State, including stepparent adoptions. What agency will be designated to collect this information is a State decision, but the Vital Statistics unit is assumed to be the most logical.

A. Identification Information	
1. State	U.S. Postal Service two letter abbreviation for State submitting the report.
2. Local agency name	Identify the sub-State county, district, region, or other unit used by the State to identify regional subdivisions.
3. Child's reporting number	The number which must be unique to each child in the State and which the State uses to transmit data to DHHS. The reporting number cannot be linked to the child's case I.D. number except at the State or local level.
B. Child's Demographic Information	
1. Date of birth	Month, day and year of the child's birth.
2. Sex	Indicate as appropriate.
3. Race/Ethnicity	
a. White (not Hispanic)	A person of European, North African, or Middle Eastern origin, and not Hispanic.
b. Black (not Hispanic)	A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
c. Hispanic	A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
d. American Indian/Alaskan Native	A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
e. Asian/Pacific Islander	A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
f. Missing data	The specific race/ethnicity category is unknown or has not been determined.
C. Birth Parents	
1. Date of birth	If exact dates are not available, use the first of the month; if the month is not available, use January 1.
2. Race/Ethnicity	
a. White (not Hispanic)	A person of European, North African, or Middle Eastern origin, and not Hispanic.
b. Black (not Hispanic)	A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
c. Hispanic	A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
d. American Indian/Alaskan Native	A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
e. Asian/Pacific Islander	A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
f. Missing data	The specific race/ethnicity category is unknown or has not been determined.
D. Parental Rights Termination	
1. Date of termination	Respond to the question for both the mother and the father. If the exact date cannot be determined, use the first day of the month.
2. Voluntary (relinquishment/surrender)	The parent voluntarily terminates full parental rights and responsibilities—either to an agency or an individual, depending on State law.
3. Non-voluntary (court ordered)	Full parental rights and responsibilities are terminated by court order.
E. Adoptive Parents	
1. Date of birth	Indicate date of birth of adoptive parent(s).
2. Race/Ethnicity	
a. White (not Hispanic)	A person of European, North African, or Middle Eastern origin, and not Hispanic.
b. Black (not Hispanic)	A person whose ancestry is any of the black racial groups of Africa, and not Hispanic.
c. Hispanic	A Mexican, Puerto Rican, Cuban, Central or South American person, or person of other Spanish cultural origin, regardless of race.
d. American Indian/Alaskan Native	A person whose ancestry is North American, and who maintains tribal affiliation or is so recognized in the community.
e. Asian/Pacific Islander	A person whose origin is the Far East, Southeast Asia, the Indian sub-continent, or the Pacific Islands. This includes, for example, China, India, Japan, Korea, the Philippine Islands, Samoa and Vietnam.
f. Missing data	The specific race/ethnicity category is unknown or has not been determined.
3. Marital status	Indicate marital status of the adoptive parent at the time the adoption was legalized.

DEFINITION OF ADOPTION ASSISTANCE DATA ELEMENTS (GENERAL ADOPTION FORM) (USE IS OPTIONAL)—Continued

a. Married	
b. Single	
c. Divorced	
d. Widowed	
e. Unknown	
4. Child adopted by	Indicate what previous relationship the child had with the adoptive parent.
a. Stepparent	Spouse of the child's birth mother or father.
b. Relative of child	A relative through the birth parents by blood or marriage.
c. Foster parent of child	Child was placed in a non-relative foster family home with a family which later adopted him or her.
d. None	Adoptive parent fits into none of the categories above.
F. Placement Information	
1. Previous adoptive placements	Indicate whether the child had previously been placed in an adoptive (pre-adoptive) home which placement later was disrupted, or the child had legally been adopted and the adoption subsequently dissolved.
2. Was child placed with own siblings	Was the child placed with any of his or her own brothers or sisters or half-brothers or half-sisters.
3. Date adoption legalized	Date court order was issued making the adoption legal.
G. Placement Status	
1. The child was placed from	Indicate the location of the individual or agency that had custody or responsibility for the child at the time of initiation of adoption proceedings.
a. Within State	Responsibility for the child resided with an individual or agency within the State filing the report.
b. Another State	Responsibility for the child resided with an individual or agency in another State or territory of the U.S.
c. Specify	Use the U.S. Postal Service two letter abbreviation for the State or territory.
d. Another Country	Responsibility for the child resided with an individual or agency in another country.
e. Specify	Indicate the name of the country from which the child came.
2. The child was placed by	The adoption was accomplished with the assistance of or through the intervention of which of the following?
a. Public Agency	A unit of State or Local Government.
b. Private Agency	A *for-profit* or *non-profit* agency or institution.
c. Tribal Agency	A unit within one of the Federally recognized Indian tribes or Indian Tribal Organizations.
d. Independent Person	A doctor, a lawyer or some other individual.
e. Other	Some organization other than those listed above.

Appendix E—Electronic Data Transmission Format

1. The foster care and adoption data to be sent from State Agencies/Indian Tribes are to be in an electronic form.

2. Records should be written in ASCII standard characters.

3. A field is comprised of the Alphanumeric or Numeric response as called for in Appendix F. Field length specifications in Appendix F refer to the maximum number of characters or numbers allowed in that field, for example.

6A=Alphanumeric data with maximum length of 6 characters
8I=Integer (numeric) data with a maximum length of 8 characters

4. There are two alternatives for transmission of these data—either data diskettes or via modem.

a. Diskette Specifications

(1) 360K double sided, 1.44 Meg or 1.2 Meg DOS compatible diskettes are acceptable.

(2) All data fields must be filled up to the maximum field length as specified in Appendix F. If the data value does not require all of the digits then the remaining characters must be filled with either ASCII blanks, right justified, for alphanumeric fields or zeros, left justified, for numeric fields.

(3) No record should be split across a diskette if more than one diskette is provided.

b. Modem Specifications

(1) Data submitted via modem must be transmitted at 1200 or 2400 baud, using the Xmodem (or equivalent) error checking protocol and should be limited to less than 5000 cases (records) per submission.

(2) The first character of each record should be an ASCII pound (#) sign.

(3) Each of the data fields must be represented and must be separated by a comma. The entire field length, however, does not have to, but may be, filled and transmitted. That is, for fields of length I8, if the answer (value) is 50, either . . . , 00000050, . . . or . . . , 50, . . . is acceptable, though the shorter version is preferable:

field1,50,00000050,field4,etc.

(4) Data should be transmitted in lines of no more than 80 characters. Should the line end in the middle of a field, continue the field on the next line with the comma at the end of the field as normal.

(5) At the end of the entire transmission, enter an ASCII asterisk (*) to signal that the last record has been transmitted.

Appendix F—Foster Care and Adoption Record Layouts

A. Foster Care

1. Individual foster care child record

a. The record will consist of 72 data fields.

b. Data must be supplied for each of the fields in accordance with these instructions:

(1) Enter the appropriate value in each field.

(2) For all elements where no data exist (missing), enter a 9.

(3) All date fields will be in year, month and day order (yymmdd), two digits each, e.g., 880110 for January 10, 1988.

(4) Elements 9–17, 27–39 and 63–72, the "select all that apply" elements:

- Enter a 1 to indicate a positive response (indicating that this option applies to this child), or
- enter a 2 to indicate that this option does not apply to this child.

c. Individual Child Foster Care Data Elements Record Layout

Element No.		Characters
	A. Identification Information	
01	1. State	2A
02	4. End of quarter of submission (yymm)	4I
03	2. Local agency (city, county or district) name	20A
04	3. Child's Reporting Number	10I
	B. Child's Demographic Information	
05	1. Date of Birth (yymmdd)	6I

Element No.		Characters
06	2. Sex	1I
07	3. Race/ethnicity	1I
08	4. Child is disabled	1I
	5 Type of disability:	
09	a. Mental retardation	1I
10	b. Blind or visually impaired	1I
11	c. Deaf or hard of hearing	1I
12	d. Physically disabled	1I
13	e. Emotionally distrubed	1I
14	f. Learning disability	1I
15	g. Medical condition	1I
16	h. AIDS	1I
17	i. Other	1I
	C. School Status	
18	1. Child is Enrolled in School	1I
19	2. Last Grade Completed	2I
	D. Removal/Placement Indicators	
20	1. Date of latest removal from home	6I
21	2. Date of placement in current substitute care setting	6I
22	3. Number of placements since latest removal	6I
23	4. Number of previous removals from home	2I
24	5. Date child was discharged from last substitute care setting under previous removal	6I
25	6. Child Entered Care by:	
	E. Circumstances of Removal	
26	1. Primary condition leading to child's removal	1I
	2. Other Conditions Leading to Child/s Removal	
27	a. Physical abuse	1I
28	b. Sexual abuse	1I
29	c. Neglect	1I
30	d. Substance abuse (parent)	1I
31	e. Substance abuse (child)	1I
32	f. Child's disability	1I
33	g. Child's behavior problem	1I
34	h. Death of parents	1I
35	i. Incarceration of parents	1I
36	j. Caretaker's inability to cope	1I
37	k. Caretaker's illness incapacity	1I
38	l. Parental abandonment	1I
39	m. Other	1I
40	F. Current Living Arrangement	1I
	G. Parental Rights Termination	
	1. Mother	
41	a. Date (yymmdd)	6I
42	b. Type	1I
	2. Father	
43	a. Date (yymmdd)	6I
44	b. Type	1I
45	H. Current Permanent Placement Plan	1I
	I. Family Foster Home—Parents Data	
46	1. Marital Status	1I
47	2. Date of Birth-Mother (yymmdd)	6I
48	3. Race/Ethnicity-Mother	1I
49	4. Date of Birth-Father (yymmdd)	6I
50	5. Race/Ethnicity-Father	1I
	J. Outcome Information	
51	1. Date of Discharge from Substitute Care	6I
52	2. Reason for Exit	1I
	K. Principal Caretakers Information	
	1. Principal Caretakers at Time of	
53	Child's Removal from Home Number 1	1I
54	Number 2	1I
55	2. Date of birth-female (yymmdd)	6I
56	3. Date of birth-male (yymmdd)	6I
57	4. Race/ethnicity-female	1I
58	5. Race/ethnicity-male	1I
59	6. Marital status of principal caretakers	1I
60	7. Number of siblings (exclusing this child)	2I
61	8. Number of other relatives (excluding principal caretakers)	2I
62	9. Number of other non-relatives	2I
	L. Source of Financial Support	
63	1. Title IV-E (Foster Care)	1I
64	2. Title IV-E (Adoption Assistance)	1I
65	3. Title IV-D (Child Support)	1I
66	4. Title XIX/XX (Medicaid/SSBG)	1I
67	5. SSI or Other Social Security Act Benefits	1I
68	6. Child's Own Resources	1I
69	7. State Only	1I
70	8. Parents	1I
71	9. Other	1I
72	10. None	1I

Element No.		Characters
	Total characters 179	

[1] A=Alphabetic Characters.
I=Integer Characters.

2. Foster Care Quarterly Summary Data File Record

a. The record will consist of 25 data fields.

b. Data must be supplied for each of the fields in accordance with these instructions:

(1) Enter the appropriate value in each field.

(2) For all elements where the total is zero, enter a 0.

(3) The date field will be in year, month order (yymm), two digits each, e.g. 9112 for December 1991

c. Foster Care Quarterly Summary Data File Record Layout

Element No.	Summary data file	Characters
01	Number of Records	6I
02	End of submission (yymm)	4I
03	Children in care under 1 year	8I
04	Children in care 1 year old	8I
05	Children in care 2 years old	8I
06	Children in care 3 years old	8I
07	Children in care 4 years old	8I
08	Children in care 5 years old	8I
09	Children in care 6 years old	8I
10	Children in care 7 years old	8I
11	Children in care 8 years old	8I
12	Children in care 9 years old	8I
13	Children in care 10 years old	8I
14	Children in care 11 years old	8I
15	Children in care 12 years old	8I
16	Children in care 13 years old	8I
17	Children in care 14 years old	8I
18	Children in care 15 years old	8I
19	Children in care 16 years old	8I
20	Children in care 17 years old	8I
21	Children in care 18 years old	8I
22	Children in care over 18 years old.	8I
23	Number of new entrants this quarter.	8I
24	Number who left care this quarter.	8I
25	Number remaining in care this quarter.	8I
	Record Length 186	

B. Adoption

1. Individual adoption child record.

a. The record will consist of 57 data fields.

b. Data must be supplied for each of the fields in accordance with these instructions:

(1) Enter the appropriate value in each field.

(2) For all elements where no data exist (missing), enter a 9.

(3) All date fields will be in year, month and day order (yymmdd), two digits each, e.g. 880110 for January 10, 1988.

(4) Elements 9–16, 51–57 the "select all that apply" elements:

• Enter a 1 to indicate a positive response (indicating that this option applies to this child), or

• Enter a 2 to indicate that this option does not apply to this child.

c. Individual child adoption record layout.

Element No.		Characters
	A. Identification Information	
01	1. State	2A
02	2. Local agency (city, county or district) name	20A
03	3. Child's reporting number	10I
	B. Child's Demographic Information	
04	1. Date of birth (yymmdd)	6I
05	2. Sex	1I
06	3. Race/ethnicity	1I
	C. Special Needs Status	
07	1. Child is special needs	1I
08	2. Basis for special needs (primary)	1I
	3. Type of Disibility:	
09	a. Mental retardation	1I
10	b. Blind or visually impaired	1I
11	c. Deaf or hard of hearing	1I
12	d. Physically disabled	1I
13	e. Emotionally disturbed	1I
14	f. Learning disability	1I
15	g. Medical condition	1I
16	h. Other	1I
	D. Birth Parents	
17	1. Mother date of birth (yymmdd)	6I
18	2. Father date of birth (yymmdd)	6I
19	3. Mother race/ethnicity	1I
20	4. Father race/ethnicity	1I
21	5. Marital status of mother (at time of child's birth)	1I
	E. Parental Rights Termination	
22	1. Mother—date of termination (yymmdd)	6I
23	2. Mother—voluntary (relinquishment/surrender)	1I
24	3. Mother—non-voluntary (court ordered)	1I
25	4. Father—date of termination (yymmdd)	6I
26	5. Father—voluntary (relinquishment/surrender)	1I
27	6. Father—non-voluntary (court ordered)	1I
	F. Adoptive Parents	
28	1. Mother date of birth (yymmdd)	6I
29	2. Father date of birth (yymmdd)	6I
30	3. Mother race/ethnicity	1I
31	4. Father race/ethnicity	1I
32	5. Marital Status (at time adoption legalized)	1I
33	6. Child adopted by:	1I
	G. Placement Information	
34	1. Previous adoptive placements	1I
	2. Siblings	
35	a. Were there siblings in substitute care?	1I
36	b. Was this child placed with own siblings?	1I
	3. Case Flow Data	
37	a. Date of adoptive placement (yymmdd)	6I
38	b. Date adoption legalized (yymmdd)	6I
	H. Placement Status	
	1. The child was placed from:	
39	a. Within state	1I
40	b. Another state	1I
41	c. Specify	2A
42	d. Another country	1I
43	e. Specify	20A
44	2. The child was placed by:	1I
	I. State/Federal Adoption Support	
45	1. Is this child receiving any type of Federal or State subsidy or service as a condition of adoption?	1I
46	2. Is this a non-recurring cost subsidy only?	1I
47	3. Date subsidy began (yymmdd)	6I
48	4. Date subsidy will cease (yymmdd)	6I
49	5. Date subsidy ceased (yymmdd)	6I
50	6. Reason for cessation (if subsidy ceased)	1I
	J. Source of Financial Support	
51	1. Title IV–E (monthly payment)	1I
52	2. Title IV–E (non-recurring costs)	1I
53	3. Title XVI (SSI)	1I
54	4. Title XIX/XX with no assistance payment	1I
55	5. State only	1I
56	6. Other	1I
57	7. None of the above—parents only	1I
	Total Characters 160	

2. Data on children whose subsidy ends.

a. The record will consist of 10 data fields.

b. Data must be supplied for each of the fields in accordance with these instructions:

(1) Enter the appropriate value in each field

(2) For all elements where no data exist (missing), enter a 9.

(3) All date fields will be in year, month and day order (yymmdd), two digits each, e.g. 880110 for January 10, 1988.

c. Subsidy cessation data record layout.

Element No.		Characters
	A. Identification Information	
01	1. State	2A
02	2. Local agency (city, county or district) name	20A
03	3. Child's reporting number	10I
	B. Child's Demographic Information	
04	1. Date of birth (yymmdd)	6I
05	2. Sex	1I
06	3. Race/ethnicity	1I
07	4. Date adoption legalized (yymmdd)	6I
	I. State/Federal Adopton Support	
08	3. Date subsidy began (yymmdd)	6I
09	5. Date subsidy ceased (yymmdd)	6I
10	6. Reason for cessation	1I
	Total characters 59	

3. Summary data on adopted children.

a. The record will consist of 24 data fields.

b. Data must be supplied for each of the fields in accordance with these instructions:

(1) For all elements where the total is zero, enter a 0.

(2) The date field will be in year, month order (yymmdd), two digits each, e.g., 9112 for December 1991

c. Adoption Summary data record layout.

Element No.	Summary data file	Characters
01	Number of Records	8I
02	End of Submission (yymm)	4I
03	Children Adopted Under 1 year.	8I
04	Children Adopted 1 year old.	8I
05	Children Adopted 2 years old.	8I
06	Children Adopted 3 years old.	8I
07	Children Adopted 4 years old.	8I
08	Children Adopted 5 years old.	8I
09	Children Adopted 6 years old.	8I
10	Children Adopted 7 years old.	8I
11	Children Adopted 8 years old.	8I
12	Children Adopted 9 years old.	8I
13	Children Adopted 10 years old.	8I
14	Children Adopted 11 years old.	8I
15	Children Adopted 12 years old.	8I
16	Children Adopted 13 years old.	8I
17	Children Adopted 14 years old.	8I
18	Children Adopted 15 years old.	8I
19	Children Adopted 16 years old.	8I
20	Children Adopted 17 years old.	8I
21	Children Adopted 18 years old.	8I
22	Children Adopted over 18 years old.	8I
23	Number of children adopted with subsidy.	8I
24	Number of children whose subsidy ended.	8I
	Record Length 196	

Appendix G—Data Standards

Four types of assessments will be conducted on the data submitted:

- Comparisons of the detailed data to summary date;
- Internal consistency checks of the detailed data;
- An assessment of the status of missing data; and
- Timeliness, an assessment of how current the submitted data are.

A. Foster Care

1. Submission Summary—A summary file must accompany the detailed data submission. This summary will be used to verify basic counts of records on the detailed data received.

a. The contents of this file are:

- The total number of records sent,
- The date of the end of the submission,
- A distribution of the children in care by age of child,
- The total new entrants,
- The number of children who left foster care during the quarter,
- The number of children who remain in care at the end of the quarter,

b. The equivalent totals will be generated from the quarterly detailed data and compared. If any of these initial comparisons do not match, the State will be notified immediately by phone and within five working days in writing. A log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

c. The summary file should be separate from the quarterly detailed data. The record layout for the summary file is included in appendix F, section A.2.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

2. Internal Consistency Data Checking—A number of internal consistency validations will be computed to help assure the reliability of the quarterly detailed data:

a. The number of children entering care in a quarter minus the number of children that left care plus the number "in care" at the conclusion of the previous quarter should equal the number "in care" in the current reporting quarter (+ or − 2%).

b. If a child is marked as disabled (element 8) then at least one Type of Disability Condition (elements 9–17) must be checked.

c. The Date of Latest Removal from Home (element 20) cannot be later than the Date of Placement in Current Substitute Care (element 21).

d. One element between 27 and 39 must be answered positively.

e. At least one element between number 63 and 72 must be answered positively.

f. If Number of Previous Removals from Home (element 23) is zero, then Date Child was Discharged from Last Substitute Care Setting (element 24) must be zero.

g. If Date Child was Discharged from Last Substitute Care Setting (element 24) is present, it must be less than Date of Latest Removal from Home (element 20).

h. If Current Living Arrangement (element 40) is a value that indicates that the child is not in a foster family or adoptive home, then elements 46–50, data about the Foster Family, must be blank.

i. If either element 63 or element 64, title IV–E, Source of Financial Support, is indicated, element 69, State Only, should not be indicated.

3. Missing Data Standards—The term "missing data" refers to records with the code indicating that the data are "unknown" for the element. This results from the fact that the data were uncollected.

a. In addition, the following will be converted to missing:

(1) Out-of-range data (e.g. for "sex" only 1 and 2 and 9 are acceptable entries. If a 3 or any other character is in that field, it will be converted to 9).

(2) Data fields which fail logical consistency tests 2b through 2i in the previous paragraph.

b. The *maximum* amount of missing data for each field permitted without penalty will be 5 percent *except* as follows:

Maximum amount of missing data	Element
No missing data allowed	01 State. 02 End of quarter submission. 04 Child's reporting number.
5 percent of those for whom response is applicable.	09–17 Type of disability. 19 Last grade completed. 52 Reason for exit.

Maximum amount of missing data	Element
No maximum established..	51 Date of discharge from substitute care. 27–39 Other conditions leading to child's removal.

4. Timeliness of Foster Care Data Reports.

A minimum of 60 percent of the children *reported* entering foster care in the report for a given quarter must have entered during that quarter. A minimum of 60 percent of the foster care exits reported for that quarter must have exited during that quarter.

B. Adoption

1. Submission Summary Standards—A summary file must accompany the detailed data submission. This summary will be used to verify basic counts of records on the detailed data received.

a. The contents of this file are:

- The total number of records sent,
- The date of the end of the submission,
- A distribution of the children adopted by age of child,
- The number of children adopted with a subsidy, and
- The number of children whose subsidy ended.

b. The equivalent totals will be generated from the quarterly detailed data (including the Subsidy Cessation File) and compared. If any of these initial comparisons do not match, the State will be notified immediately by phone and within five working days in writing. A log of these occurrences will be kept as a means of cataloging problems and offering suggestions on improved procedures.

c. The summary file should be separate from the quarterly detailed data. The record layout for the summary file is included in appendix F, section B.3.c. All data must be included. If the value for a numeric field is zero, zero must be entered.

2. Internal Consistency Data Checking Standards—A number of internal consistency validations will be computed to help assure the reliability of the quarterly detailed data.

a. The Date of Child's Birth (element 4) must be after both the Mother's and Father's Date of Birth, (elements 17 and 18) unless one of these is missing.

b. If Basis of Special Needs (element 8) is marked as disabled, then at least one element between elements 9–16, Type of Disability, must be completed.

c. Dates of Parental Rights Termination (elements 22 and 25) must be completed.

d. If Child Receiving Subsidy (element 45) is answered negatively, then elements 46–56 should be answered negatively and Parents Support (element 57) must be answered positively.

e. If Non-Recurring Subsidy Only (element 46) is positive, then elements 47–50 must be blank and Title IV–E, Non-Recurring Cost (element 52) must be positive.

f. If Child Receiving Subsidy (element 45) is positive and Non-Recurring Subsidy (element 46) is negative, then Date Subsidy Will Cease (element 48) must be greater than Data Subsidy Began (element 47).

g. In the Subsidy Cessation File, the Child's Reporting Number (element 3) must match the reporting number of a child receiving a subsidy in a prior submission.

h. Date Subsidy Ceased (element 9) must be greater than Date Subsidy Began (element 8).

3. Missing Data Standards—The term "missing data" refers to records with the code indicating that the data are "unknown" for the element. This results from the fact that the data were uncollected.

a. In addtion, the following will be converted to missing:

(1) Out-of-Range data (e.g., for "sex" only 1 and 2 and 9 are acceptable entries. If a 3 or any other character is in that field, it will be converted to 9);

(2) Data fields which fail logical consistency tests 2b through 2h in the previous paragraph;

b. The *maximum* amount of missing data for each field permitted without penalty will be 5% *except* as follows:

Maximum amount of missing data	Element
1No missing data allowed:	01 State. 03 Child's reporting number.
5 percent of those for whom response is applicable:	08 Basis for special needs. 09–16 Type of disability. 17–18 Birth parents-date of birth. 19–20 Birth parents-race/ethnicity. 41 Specific state child was placed from. 43 Specific country child was placed from. 50 Reason for cessation of subsidy. 51–57 Source of financial support.

4. Timeliness of Adoption Data Reports.

No specific timeliness standards apply. Data on adoptions should be submitted as promptly after finalization as possible.

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Thursday
September 27, 1990

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

29 CFR Part 510

Implementation of the Minimum Wage Provisions of the Fair Labor Standards Amendments of 1989 in Puerto Rico; Interim Final Rule

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

29 CFR Part 510

Implementation of the Minimum Wage Provisions of the Fair Labor Standards Amendments of 1989 in Puerto Rico

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Amendment to interim final rule.

SUMMARY: On March 30, an interim final rule was published in the **Federal Register** implementing the minimum wage provisions of the 1989 Amendments to the Fair Labor Standards Act (FLSA) in the Commonwealth of Puerto Rico and amending wage order procedures for American Samoa. This interim final rule contained, among other things, listings of industries in Puerto Rico according to appropriate Standard Industrial Classification Manual codes with applicable minimum wage or tier designations. However, applicable tiers for certain industries were not published in accordance with the standard practices of the U.S. Bureau of Labor Statistics and the Commonwealth of Puerto Rico in order to protect the confidentiality of data in those industries with fewer than three reporting employers. This supplement lists those industries in which all reporting employers have provided waivers of confidentiality. The Department of Labor has elected to publish applicable tiers for these industries as an amendment to the interim final rule rather than wait for publication of the final rule in order to make the relief provided for employers in Puerto Rico as a part of the 1989 FLSA Amendments available as soon as possible. This document also notes those categories where one or more employers has refused to provide such a waiver. Language has also been added to each appendix to make it clear that certain categories of employees are, by statutory language, subject to the wage rates specified under Tier 1 that are equal to the minimum wage rates required on the mainland. Also, the tier designation for SIC code Major Group 58, Eating and drinking places, has been changed to Tier 1 to reflect this fact.

EFFECTIVE DATE: This amendment is effective on September 27, 1990.

FOR FURTHER INFORMATION CONTACT: Samuel D. Walker, Acting 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:

I. Background

On March 30, interim final regulations were published in the **Federal Register** implementing the minimum wage provisions of the Fair Labor Standards Act (FLSA) in Puerto Rico, and amending wage order procedures applicable to American Samoa. This document included, among other things, a listing of industries in Puerto Rico classified according to categories established by the Standard Industrial Classification Manual (SIC), 1987, indicating the applicable minimum wage level, or tier, for each industry listed. In preparing the notice, the Department withheld tier designation for those industry classifications in which there were fewer than three establishments responding to the survey (non-manufacturing) or census (manufacturing) that was used to establish the appropriate minimum wage rate. Tier designations were also withheld, in the case of non-manufacturing, where one responding employer had more than 80 percent of the employment in the category. This was for the purpose of protecting the confidentiality of wage data.

In order to afford the full measure of relief intended by the Congress, the Commonwealth and the Department decided that applicable tiers should be published wherever possible. The Commonwealth therefore is seeking to secure a waiver of the confidentiality ordinarily afforded to each of the employers participating in the survey or census that are in industries with less than three respondents.

This document revises appendices A and B of the interim final rule to set forth the applicable tier for those industries with less than three respondents in which all respondents have provided waivers. In some cases, the resulting tier is lower than set forth in the interim final rule, and in other cases it is higher. In all cases, the designation and rates required by the interim final rule remain in effect until publication of this document, which takes effect today. Information in these documents, together with that provided in the interim final rule published on March 30, will provide employers in Puerto Rico with information as to the appropriate minimum wage rate applicable to the various SIC categories. Those categories in which any employer has refused to provide a waiver will be noted with a "b".

In preparing appendix B for nonmanufacturing, the Department originally included the designation of Tier 2 for SIC code 58, Eating and drinking places. Although this designation reflected the average hourly wage rate for that category, the designation should have been Tier 1. As noted elsewhere in the regulations, the 1989 Amendments require the application of Tier 1 to restaurants and "[a]ny other retail or service establishment that employs such employees in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of clubs * * *."

II. Procedural Matters

The application of the Paperwork Reduction Act, Executive Order 12291, Regulatory Flexibility Act and Administrative Procedure Act to this rule are discussed in the Preamble to the interim final rule published on March 30, 1990.

This document was prepared under the direction and control of Samuel D. Walker, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 510

Employment, Investigations, Labor, Law enforcement, Puerto Rico, Incorporation by reference.

Accordingly, title 29, chapter V, subchapter A, of the Code of Federal Regulations, is amended as set forth below.

Signed at Washington, DC, on this 20th day of September, 1990.

Elizabeth Dole,

Secretary of Labor.

William C. Brooks,

Assistant Secretary for Employment Standards.

Samuel D. Walker,

Acting Administrator Wage and Hour Division.

PART 510—IMPLEMENTATION OF THE MINIMUM WAGE PROVISIONS OF THE FAIR LABOR STANDARDS AMENDMENTS OF 1989 IN PUERTO RICO

1. The authority citation for part 510 continues to read as follows:

Authority: Sec. 4, Pub. L. 101–157, 103 Stat. 938; 29 U.S.C. 201 *et seq.*

2. Appendix A is amended by adding a new paragraph at the end of the fifth paragraph and revising the tier designation "a" for the industries listed in the **Federal Register** of March 30, 1990 to the designation noted below.

Appendix A—Manufacturing Industries Eligible for Minimum Wage Phase-In

* * * * *

Important: In referring to this appendix to determine appropriate tier designations, please note that certain categories of employees are subject to treatment under Tier 1 regardless of the average hourly wage rate for the industry and the tier designation contained herein. These employees, as listed in the 1989 Amendments, are those employed by:

(a) The United States

(b) An establishment that is a hotel, motel, or restaurant, or

(c) any other retail or service establishment that employs such employee in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of clubs.

Please note that these named categories may not correspond exactly to categories established by the SIC manual.

MANUFACTURING INDUSTRIES

Major group	Industry group	Industry No.	Tier	Industry
		2015	2	Poultry slaughtering and processing.
		2046	1	Wet corn milling.
		2082	1	Malt beverages.
		2084	3	Wines, brandy, and brandy spirits.
	221		1	Broadwoven fabric mills, cotton.
		2211	1	Broadwoven fabric mills, cotton.
		2254	3	Knit underwear and nightwear mills.
	226		1	Dyeing and finishing textiles, except wool fabrics and knit goods.
		2261	3	Finishers of broadwoven fabrics of cotton.
		2262	1	Finishers of broadwoven fabrics of manmade fiber and silk.
	227		1	Carpets and rugs.
		2273	1	Carpets and rugs.
	228		3	Yarn and thread mills.
		2281	3	Yarn spinning mills.
		2323	2	Men's and boys' neckwear.
		2385	3	Waterproof outerwear.
		2399	3	Fabricated textile products, not elsewhere classified.
	242		3	Sawmills and planing mills.
		2421	3	Sawmills and planing mills, general.
	245		3	Wood buildings and mobile homes.
		2451	3	Mobile homes.
	262		2	Paper mills.
		2621	2	Paper mills.
		2655	1	Fiber cans, tubes, drums, and similar products.
		2671	2	Packaging paper and plastics film, coated and laminated.
		2676	1	Sanitary paper products.
		2677	1	Envelopes.
		2678	3	Stationery, tablets, and related products.
		2732	3	Book printing.
		2754	1	Commercial printing, gravure.
		2822	2	Synthetic rubber (vulcanizable elastomers).
		2836	1	Biological products, except diagnostic substances.
		2865	1	Cyclic organic crudes and intermediates, and organic dyes and pigments.
		3082	3	Unsupported plastics profile shapes.
		3087	3	Custom compounding of purchased plastics resin.
		3142	b	House slippers.
	315		3	Leather gloves and mittens.
		3151	3	Leather gloves and mittens.
	316		3	Luggage.
		3161	3	Luggage.
		3171	3	Women's handbags and purses.
	321		2	Flat glass.
		3211	2	Flat glass.
	322		1	Glass and glassware, pressed or blown.
		3221	1	Glass containers.
		3261	3	Vitreous china plumbing fixtures and china and earthenware fittings and bathroom accessories.
		3274	1	Lime.

MANUFACTURING INDUSTRIES—Continued

Major group	Industry group	Industry No.	Tier	Industry
		*	*	* * * * * *
		3296	1	Mineral wool.
		*	*	* * * * * *
		3317	1	Steel pipe and tubes.
		*	*	* * * * * *
		3351	1	Rolling, drawing, and extruding of copper.
		*	*	* * * * * *
		3399	1	Primary metal products, not elsewhere classified.
		*	*	* * * * * *
		3412	1	Metal shipping barrels, drums, kegs, and pails.
		*	*	* * * * * *
		3421	3	Cutlery.
		*	*	* * * * * *
		3494	1	Valves and pipe fittings, not elsewhere classified.
		3495	2	Wire springs.
		*	*	* * * * * *
		3563	1	Air and gas compressors.
		*	*	* * * * * *
		3568	1	Mechanical power transmission equipment, not elsewhere classified.
		*	*	* * * * * *
		3579	1	Office machines, not elsewhere classified.
		*	*	* * * * * *
		3589	b	Service industry machinery, not elsewhere classified.
		*	*	* * * * * *
		3592	2	Carburetors, pistons, piston rings, and valves.
		*	*	* * * * * *
		3621	1	Motors and generators.
		*	*	* * * * * *
		3648	2	Lighting equipment, not elsewhere classified.
		*	*	* * * * * *
		3692	1	Primary batteries, dry and wet.
		*	*	* * * * * *
		3732	2	Boat building and repairing.
		*	*	* * * * * *
	381	.....	1	Search, detection, navigation, guidance, aeronautical, and nautical systems, instruments, and equipment.
		3812	1	Search, detection, navigation, guidance, aeronautical, and nautical systems, instruments, and equipment.
		*	*	* * * * * *
		3821	1	Laboratory apparatus and analytical, optical, measuring, and controlling instruments.
		*	*	* * * * * *
	387	.....	1	Watches, clocks, clockwork operated devices, and parts.
		3873	1	Watches, clocks, clockwork operated devices, and parts.
		*	*	* * * * * *
		3942	2	Dolls and stuffed toys.
		*	*	* * * * * *
		3951	3	Pens, mechanical pencils, and parts.
		*	*	* * * * * *
		3953	1	Marking devices.

3. "Appendix B—Non-manufacturing industries eligible for minimum wage phase-in" is amended by adding a new paragraph at the end of the sixth paragraph and by revising the tier designation "a" published in the **Federal Register** on March 30 to the designation noted below.

Appendix B—Non-manufacturing industries eligible for minimum wage phase-in

* * * * *

Important: In referring to this appendix to determine appropriate tier designations, please note that certain categories of employees are subject to treatment under Tier 1 regardless of the average hourly wage rate for the industry and the tier designation contained herein. These employees, as listed in the 1989 Amendments, are those employed by:

(a) the United States,

(b) an establishment that is a hotel, motel, or restaurant, or

(c) any other retail or service establishment that employs such employee in connection with the preparation or offering of food or beverages for human consumption, either on the premises, or by such services as catering, banquet, box lunch, or curb or counter service, to the public, to employees, or to members or guests of clubs.

Please note that these named categories may not correspond exactly to categories established by the SIC manual.

NON-MANUFACTURING INDUSTRIES

Major group	Industry group number	Industry number	Tier	Industry
		*	*	* * * * * *
		1429	1	Crushed and broken stone, not elsewhere classified.
		*	*	* * * * * *
		1742	1	Plastering, drywall, acoustical, and insulation work.

NON-MANUFACTURING INDUSTRIES—Continued

Major group	Industry group number	Industry number	Tier	Industry
		1743	1	Terrazzo, tile, marble, and mosaic work.
		1793	2	Glass and glazing work.
		4226	1	Special warehousing and storage, not elsewhere classified.
	492		1	Gas production and distribution.
		4925	1	Mixed, manufactured, or liquefied petroleum gas production and/or distribution.
	495		1	Sanitary services.
		4953	1	Refuse systems.
		5136	1	Men's and boys' clothing and furnishings.
		5139	2	Footwear.
		5171	1	Petroleum bulk stations and terminals.
	58		1	Eating and drinking places.
		[1] 581	1	Eating and drinking places.
	593		3	Used merchandise stores.
		5932	3	Used merchandise stores.
		6036	1	Savings institutions, not Federally chartered.
	609		2	Functions related to depository banking.
		6099	2	Functions related to depository banking, not elsewhere classified.
		7993	2	Coin-operated amusement devices.
		8063	1	Psychiatric hospitals.
	869		2	Membership organizations, not elsewhere classified.
		8699	2	Membership organizations, not elsewhere classified.

[1] Survey data reported on the basis of SIC code 5810. Data were not broken down by SIC 5812, Eating places, and 5813 Drinking places (Alcoholic beverages).

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federal register

Thursday
September 27, 1990

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 722 et al.

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Service of Documents; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 722, 723, 724, 843, 845, and 846

RIN 1029-AB41

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Service of Documents

AGENCY: The Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposes to revise its Initial and Permanent Regulatory Program rules governing enforcement actions and service of process to provide for greater consistency of phraseology and uniformity of service within these rules.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on November 27, 1990.

Public Hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC, at 9:30 a.m. local time on November 13, 1990. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and on dates to be announced prior to any requested hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on October 29, 1990. Individuals wishing to attend, but not testify at any hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearings: Department of the Interior Auditorium, 18th and C Streets NW., Washington, DC. The addresses for any hearings scheduled in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT"** by the time specified under **"DATES."**

FOR FURTHER INFORMATION CONTACT: John A. Trelease, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 208–2550 (Commercial) or 268–2550 (FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Discussion of Proposed Rule
III. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period (see **"DATES"**) or delivered to addresses other than those listed above, may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The times, dates, and addresses scheduled for the hearings are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The times, dates, and addresses for hearings in other locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Trelease (see **"FOR FURTHER INFORMATION CONTACT"**), either orally or in writing, of the desired hearing location by 5 p.m. Eastern time on October 29, 1990. If no one has contacted Mr. Trelease to express an interest in testifying in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held, and the results will be included in the Administrative Record.

If a hearing is held, it will continue until all persons in attendance wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that the persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advanced copy of their testimony.

II. Discussion of the Proposed Rule

Background

Section 518 of the Surface Mining Control and Reclamation Act of 1977 (the Act) provides authority to the Secretary of the Interior and his authorized representatives to impose penalties for violations of the Act. The regulations governing the assessment of civil penalties are found at 30 CFR parts 723 and 845. Part 723 contains the Initial Program regulations for the issuance of civil penalties which were first promulgated on December 13, 1977 (42 FR 62702), and subsequently revised on September 4, 1980 (45 FR 58780). Part 845 contains the Permanent Program regulations for the assessment of civil penalties first promulgated on March 13, 1979 (44 FR 15461), and subsequently revised on August 16, 1982 (47 FR 35640). The regulations governing the assessment of individual civil penalties are found at 30 CFR parts 724 and 846. Parts 724 and 846 contain the Initial Program and Permanent Program regulations respectively which were promulgated on February 8, 1988 (53 FR 3664).

Section 521 of the Act provides authority to the Secretary of the Interior and his authorized representatives to issue enforcement actions for violations of the Act. The regulations governing the service of process for notices and orders are found at 30 CFR parts 722 and 843. Part 722 contains the Initial Program regulations which were promulgated on December 13, 1977 (42 FR 62639). Part 843 contains the Permanent Program regulations which were first promulgated on March 13, 1979 (44 FR 15460), and subsequently revised on August 16, 1982 (47 FR 35631).

Purpose of the Proposed Rule

1. Consistent Phraseology

On September 4, 1980, OSM revised the Initial Program civil penalty regulations at 30 CFR part 723. (45 FR 58788). Much of this revision involved merely changes in phraseology. The term "permittee" was changed in all but two cases to "person to whom the notice or order was issued." These changes were made to conform part 723 to its Permanent Program counterpart at 30

CFR Part 845 previously promulgated on March 13, 1979 (44 FR 14902).

A subsequent review of the of 30 CFR parts 723 and 845 indicated that other similar changes could be made to further reduce inconsistent phraseology within these rules. Specifically, paragraphs 723.13(b)(3) and 845.13(b)(3) attribute negligence points to the "person to whom the notice or order was issued" in causing or failing to correct a violation, whereas sub-paragraphs 723.13(b)(3)(ii)(B) and 845.13(b)(3)(ii)(B) define "negligence" as a failure of a "permittee" to prevent or abate a violation.

Similarly, §§ 723.15 and 845.15 consistently use the phrase the "person to whom the notice or order was issued" except at paragraphs (b)(2) which speak of the "permittee" not abating the violation within 30 days.

One of the principal effects of both the revised Interim and Permanent Programs' use of the term "person to whom the notice or order was issued" rather than that of "permittee" was to allow regulatory authorities to assess civil penalties against both permittees and non-permittee operators named in a notice or order. Because operators are the parties most often attributed with actual on-site capacity to prevent or abate violations, and to make more consistent the phraseology used by the civil penalty rules, OSM proposes to revise §§ 723.13(b)(ii)(B), 723.15(b)(2), 845.13(b)(ii)(B) and 845.15(b)(2) by substituting the phrase "person to whom the notice or order was issued" for the more restrictive term "permittee."

OSM also proposes to revise the phraseology of 30 CFR 843.14(a)(2) which provides for alternative methods of service on the "permittee" or his designated agent for notice of violations, cessation orders and show cause orders. This rule was included in OSM's review of its service of process procedures which are also the subject of this rulemaking. The provisions of paragraph (a)(2) which provide for alternative methods of service on the "permittee" are inconsistent with those of sub-section (a) which provide that service shall be made on the "person" to whom the notice or order was issued or his or her designated agent.

As originally promulgated on March 13, 1979, 30 CFR 843.14 (a) and (a)(2) were consistent in providing for alternative methods of service on the "person" to whom the notice or order was issued or his designated agent. (44 FR 15312.) The corresponding Interim program rules at 30 CFR 722.14(a)(2) were revised on January 11, 1980 to provide for alternative methods of service on the "person" to whom the notice or order was issued or his designated agent. (45 FR 2626.) On August 16, 1982, subsection 843.14(a)(2) was revised without explanation to provide for alternative service on the "permittee" or his or her designated agent. (47 FR 35620.) OSM now proposes to return paragraph (a)(2) to its original 1979 language by substituting the phrase "person to whom the notice or order was issued or his or her designated agent" for the more restrictive phrase "permittee or his or her designated agent." This change would provide more consistent phraseology both within the rule and with its Interim Program counterpart at 30 CFR 722.14(a)(2).

2. Service of Process

A further purpose of this proposed rulemaking is to provide for increased flexibility and uniformity in the methods of service of process for notice of violations, cessation and show cause orders, and proposed civil penalty and individual civil penalty assessments. 30 CFR 722.14/843.14, 723.17/845.17, and 724.17/846.17 all vary in the methods by which their service of process is performed.

On December 13, 1977, OSM codified its Interim Program procedures for service of notices of violations, cessation orders, and orders to show cause at 30 CFR 722.14. (42 FR 62639.) On August 16, 1982, OSM codified its Permanent Program procedures at 30 CFR 843.14. (47 FR 35631.) Under both regulations, the prescribed methods for service of process are by personal delivery or by certified mail.

On December 13, 1977, OSM established its Initial Program procedures for service of civil penalty assessments at 30 CFR 723.17. (42 FR 62702.) On March 13, 1979, OSM established its Permanent Program procedures at 30 CFR 845.17. (44 FR 15461.) Both regulations provide for service of such assessments only by certified mail.

On February 8, 1988, OSM promulgated Initial and Permanent Program procedures for service individual civil penalty assessments at 30 CFR 724.17 and 846.17. (53 FR 3664.) Both these regulations provide that service of such assessments shall be sufficient if it satisfies Rule 4 of the Federal Rules of Civil Procedure for service of a summons and complaint. Rule 4 provides generally that service of process may be made to an individual or business entity through personal delivery or by regular mail, and if service is to be on an individual, also by leaving copies of the service document at the individual's dwelling or usual place of abode with some person of suitable age and discretion.

Subsequent OSM field experience with the various methods of service authorized by these regulations indicate that each method may, depending upon the unique circumstances of the individual enforcement action, provide specific advantages and/or disadvantages for accomplishing effective service of process. Therefore, to provide increased flexibility within each rule and uniformity among the rules, OSM proposes to revise 30 CFR 722.14/843.14, 723.17/845.17, and 724.17/846.17 to allow service by either personal delivery, certified mail, or any other alternative means consistent with Rule 4 of the Federal Rules of Civil Procedure for service of a summons and complaint. These revisions are not intended to alter either the means of enforcement or the sanctions prescribed under each rule.

Effect of the Rule in Federal Program States and on Indian Lands

The proposed revisions, if adopted, will apply through cross-referencing in the following States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The proposed rule, if adopted, will also apply through cross-referencing to Indian lands as provided in 30 CFR part 750. Comments are specifically solicited as to whether unique conditions exist in any of these States or on Indian lands relating to this proposal which should be reflected either as changes to the national rules or as specific amendments to any or all of the Federal programs.

Effect of the Rule in States With Primacy

Section 518(i) of the Act and 30 CFR 840.13(c) of the regulations require approved State programs to contain procedures the same or similar to the provisions of section 518 of the Act and consistent with those of 30 CFR parts 843, 845, and 846. To the extent that OSM is clarifying the rules proposed to include operators, States will need to demonstrate that their rules are as inclusive as the proposed Federal regulations, or amend their programs. Also, States which desire more flexibility in their method of service of documents may desire to amend their programs but are not bound to do so

because of the minor nature of the proposed changes.

III. Procedural Matters

Federal Paperwork Reduction Act

There are no information collection requirements in the proposed rule which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The Department of the Interior has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. The rule merely clarifies terminology for those issued notices, orders, and assessments, and allows for greater flexibility of service of documents.

National Environmental Policy Act

This proposed rule has been reviewed by OSM and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

Author

The author of this proposed rule is John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 208–2550 (Commercial) or 268–2550 (FTS).

List of Subjects

30 CFR Part 722

Law enforcement, Public health, Safety, Surface mining, Underground mining.

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR parts 722, 723, 724, 843, 845, and 846 as set forth below:

Dated: August 10, 1990.

David O'Neal,

Assistant Secretary, Land and Minerals Management.

SUBCHAPTER B—INITIAL PROGRAM REGULATIONS

PART 722—ENFORCEMENT PROCEDURES

1. The authority citation for part 722 continues to read as follows:

Authority: Secs. 201, 501, and 502, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201).

2. Section 722.14 is amended by revising paragraph (a)(2) to read as follows:

§ 722.14 Service of notices of violation, cessation orders, and orders to show cause.

(a) * * *

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his or her designated agent, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

* * * * *

PART 723—CIVIL PENALTIES

3. The authority citation for part 723 continues to read as follows:

Authority: Surface Mining Control and Reclamation Act of 1977, Sections 201, 501, 518 (30 U.S.C. 1211, 1251, 1268) and Pub. L. 100–34.

4. Section 723.13 is amended by revising paragraph (b)(3)(ii)(B) to read as follows:

§ 723.13 Point system for penalties.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(B) *Negligence* means the failure of a person to whom the notice or order was issued to prevent the occurrence of any violation of the permit or any requirement of the Act or this Chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

* * * * *

5. Section 723.15 is amended by revising paragraph (b)(2) to read as follows:

§ 723.15 Assessment of separate violations for each day.

* * * * *

(b) * * *

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the person to whom the notice or order was issued has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to section 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

6. Section 723.17 is amended by revising paragraph (b) to read as follows:

§ 723.17 Procedures for assessment of civil penalties.

* * * * *

(b) The Office shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order.

* * * * *

PART 724—INDIVIDUAL CIVIL PENALTIES

7. The authority citation for part 724 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); and Pub. L. 100–34.

8. Section 724.17 is amended by revising paragraph (c) to read as follows:

§ 724.17 Procedure for assessment of individual civil penalty.

* * * * *

(c) *Service.* For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. If the mail is tendered at the individual's dwelling or usual place of abode with some person of suitable age and discretion then residing therein and that person refuses to accept delivery, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

SUBCHAPTER L—PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

PART 843—FEDERAL ENFORCEMENT

9. The authority citation for part 843 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100–34.

10. Section 843.14 is amended by revising paragraph (a)(2) to read as follows:

§ 843.14 Service of notices of violation, cessation orders, and show cause orders.

(a) * * *

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it was issued or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

* * * * *

PART 845—CIVIL PENALTIES

11. The authority citation for part 845 continues to read as follows:

Authority: Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, Pub. L. 100–34; Pub. L. 100–202, and Pub. L. 100–446.

12. Section 845.13 is amended by revising paragraph (b)(3)(ii)(B) to read as follows:

§ 845.13 Point system for penalties.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(B) *Negligence* means the failure of a person to whom the notice or order was issued to prevent the occurrence of any violation of the permit or any requirement of the Act or this Chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack or reasonable care.

* * * * *

13. Section 845.15 is amended by revising paragraph (b)(2) to read as follows:

§ 845.15 Assessment of separate violations for each day.

* * * * *

(b) * * *

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the person to whom the notice or order was issued has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to section 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

14. Section 845.17 is amended by revising paragraph (b) to read as follows:

§ 845.17 Procedures for assessment of civil penalties.

* * * * *

(b) The Office shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons or complaint under Rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order.

* * * * *

PART 846—INDIVIDUAL CIVIL PENALTIES

15. The authority citation for part 846 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); Pub. L. 100–34.

16. Section 846.17 is amended by revising paragraph (c) to read as follows:

§ 846.17 Procedure for assessment of individual civil penalty.

(c) *Service.* For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure. If the mail is tendered at the individual's dwelling or usual place of abode with some person of suitable age and discretion then residing therein and that person refuses to accept delivery, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

[FR Doc. 90–22875 Filed 9–26–90; 8:45 am]

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federal register

Thursday
September 27, 1990

Part V

Environmental Protection Agency

40 CFR Part 710

Partial Updating of TSCA Inventory Data Base; Production and Site Reports; Technical Amendment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[OPTS-62081A; FRL-3770-4]

Partial Updating of TSCA Inventory Data Base; Production and Site Reports; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This notice announces a 60-day waiver of the 1990 reporting period, discusses the reporting exemption for small quantities for research and development, and amends the rule to update the reporting address and other information in the June 12, 1986 notice, to remove the reporting form from the rule, and to increase the types of magnetic media through which reporting may be accomplished.

DATES: This document is effective September 27, 1990. The 1990 reporting period is from August 25, 1990 to February 21, 1991.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of June 12, 1986 (51 FR 21438), EPA promulgated a rule (40 CFR part 710, subpart B) under the authority of section 8(a) of the Toxic Substances Control Act (TSCA) requiring manufacturers and importers of certain chemical substances included on the TSCA Chemical Substance Inventory to report current data on the production volume, plant site, and site-limited status of the substances. After initial reporting during 1986, recurring reporting is required every 4 years. On June 20, 1986 (51 FR 22521), EPA issued a notice correcting an error which appeared in the June 12 notice concerning the reporting period.

II. Waiver of 1990 Reporting Period

The initial reporting period was August 25, 1986 to December 23, 1986. Reporting periods recur every 4 years from August 25 to December 23, so that the next reporting period would normally be August 25, 1990 to December 23, 1990.

EPA is waiving the 1990 reporting period deadline until February 21, 1991. This waiver applies to the 1990 reporting period only; the 1994 and future reporting periods will terminate on December 23. EPA had anticipated the publication of this technical amendment and availability of a computer tape version of the 1990 supplement to the TSCA Chemical Substance Inventory, to be distributed by the National Technical Information Service, in June of 1990. Because availability of the reporting materials has been delayed, the 1990 reporting period is waived for 60 days.

III. Update of 1986 Information

A. The TSCA Chemical Substance Inventory

As an aid to submitters reporting during 1986, EPA published a 1985 edition of the TSCA Chemical Substance Inventory. This publication, available from the Government Printing Office (GPO), supersedes the 1979 edition and supplements prior to 1985. To aid reporters during 1990, EPA is issuing a 1990 supplement to the 1985 edition, which covers approximately 5,000 substances which have been added to the Inventory since the 1985 Edition. Together, the 1985 Edition and the 1990 Supplement constitute a revised Inventory representing a total of 68,000 chemical substances. Copies of both the "TSCA Chemical Substance Inventory: 1985 Edition" and the "TSCA Chemical Substance Inventory: 1990 Supplement" may be obtained by writing or calling: Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783-3238. The 1990 Supplement costs $15.00 in the U.S., $18.75 outside the U.S., and should be ordered by its Document Control Code, S/N 055-000-00361-1. The 1985 Edition costs $161.00 ($201.00 outside the U.S.), and its Document Control Code is S/N 055-000-00254-1.

Chemical substances added to EPA's Master Inventory file after February 1, 1990, are not included in the 1990 Supplement. In addition, substances whose identities are confidential are not included in the 1990 Supplement. Those who need to ascertain the Inventory status of such substances or of substances whose identity may be maintained as confidential must follow the procedures set forth in the instructional materials discussed below.

B. Reporting Address and Instructions

Section 710.39 of the rule is being amended to reflect current addresses and telephone numbers. In addition, a revised edition of "Instructions for Reporting for the Partial Updating of the TSCA Chemical Inventory Data Base" is available from the address listed in § 710.39(b).

IV. Reporting Form

Section 710.39 requires submitters to report using EPA's Form U, published in the June 12, 1986 notice. EPA is removing the form from the rule and making changes in the form to assist submitters in completing it and to facilitate processing of the form; none of the changes result in substantive revisions to the reporting requirements of the rule. The 1986 form is not acceptable for 1990 reporting.

A. Removal of the Form from the Rule; Optical Character Recognition

The Agency is amending the rule to remove Form U from the rule, substituting a notice of availability of the most current form and reporting instructions plus generic language that describes the form's reporting requirements. EPA is making this amendment for two basic reasons. First, as codified, the form must be printed every year in the CFR. Removing the form from the CFR will result in a significant cost savings for the Agency over time. Not printing the full text of final forms in the CFR has become a standard Agency practice. EPA has determined that, pursuant to the Administrative Procedures Act (APA), 5 U.S.C. 552(a)(1)(C), the Agency is obligated only to describe forms and give a source of availability, not to publish them in full text.

The second reason for removing the form from the CFR has to do with both the usefulness of a CFR copy of the form and the ability to provide submitters with the most current version. The form has been revised to make it readable by optical character recognition (OCR) technology, which involves printing in a special color transparent to OCR equipment. The form that appears in the CFR is of necessity both photoreduced and the incorrect color. Also, removing the form from the rule will provide the Agency with the flexibility to make necessary non-substantive editorial changes without having to amend the rule.

B. 1986 Reporting Errors

Several types of reporting errors occurred frequently enough during 1986 to merit discussion. The most frequent type of error was in the Dun & Bradstreet number. Numerous submitters reported numbers with extra or missing digits, numbers which belonged to their parent companies (rather than the Dun & Bradstreet number assigned to the plant site for

which the submitter was reporting), or no number at all. This problem forced EPA to send a large number of requests for correction of submitter errors. To avoid such errors in 1990 reporting, all submitters should verify the accuracy of the Dun & Bradstreet number they are reporting; those plant sites which do not have Dun & Bradstreet numbers may get them free of charge by calling their local Dun & Bradstreet office.

Another significant source of errors was the manner in which chemical identifying numbers were elicited. Several types of identifying numbers are allowed (e.g., Chemical Abstracts Service Registry Numbers and Premanufacture Notification Numbers), and the format of the reporting form contributed to confusion concerning how to properly report and designate a number. The new form invites fewer improper codes and numbers.

A large number of errors were made in plant site and technical contact information. The revised form now makes clear exactly what information is needed.

C. Confidentiality Claims

The previous form required chemical substances with confidential identities to be reported on separate forms from substances whose identities are nonconfidential. The 1990 form allows submitters to report both confidential and nonconfidential substances on the same form, and to indicate which substances on a form have confidential identities.

D. Other Changes

The form has also been modified to include a burden box pursuant to the Paperwork Reduction Reauthorization Act of 1986.

V. Electronic Reporting

Section 710.32 of the 1986 rule allowed submitters to report by paper or computer tape. Because of the ready availability of microcomputers, EPA is modifying this section to allow reporting using additional magnetic media, such as floppy diskettes. EPA's specifications for the format for electronic reporting are obtainable from the Agency by contacting the address set forth in § 710.39(b). EPA is investigating a format using the ANSI X12 standard. Electronic submissions not meeting EPA's format will not be in compliance with the rule. Detailed instructions may be obtained from the address listed in § 710.39(b). Because of security considerations, reporting via telecommunications lines will not be accepted.

The 1986 rule required that chemical substances whose identities are confidential to be reported by hard copy means only. This is being amended to allow reporting of such substances via magnetic media.

VI. Research and Development Exemption

Section 710.30(a) exempts a person who manufactures or imports a substance solely in small quantities for research and development from reporting on that substance. However, because § 710.32 requires reporting only for plant sites with annual production volumes of 10,000 pounds or greater, there is in effect a small quantity exemption apart from that for research and development. In the context of preliminary screening of existing chemicals, which this rule is intended to support, EPA considers data about any production of 10,000 pounds or more, as significant, whether or not for research and development purposes. The Agency is therefore contemplating a proposal to eliminate the § 710.30(a) exemption beginning with the 1994 round of reporting (no change will be made for 1990 reporting), in effect defining small quantities for research and development as under 10,000 pounds per year. EPA requests comment concerning research and development chemical substances with annual production volumes of 10,000 pounds or more, including a discussion of why quantities in excess of 10,000 pounds are needed for research and development.

List of Subjects in 40 CFR Part 710

Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 20, 1990.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 710 is amended as follows:

PART 710—[AMENDED]

1. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. Section 710.32 is revised to read as follows:

§ 710.32 Reporting information to EPA.

Any person who must report under this subpart must submit the information prescribed in this section for each chemical substance described in § 710.25 that the person manufactured for commercial purposes in an amount of 10,000 pounds (4,540 kilograms) or more at a single site during a corporate fiscal year described in § 710.28. (The site for a person who imports a chemical substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction, and may in some cases be the organization's headquarters office in the U.S.). A respondent to this subpart must report information in writing or by magnetic media as prescribed in this section, to the extent that such information is known to or reasonably ascertainable by that person. A respondent to this subpart must report information that applies to the specific corporate fiscal year for which the person is required to report.

(a) *Reporting in writing.* Any person who chooses to report information to EPA in writing must do so by completing the reporting form available from EPA at the address set forth in § 710.39(b). The form must include all information prescribed in paragraph (c) of this section. Persons reporting in writing must submit a separate form for each site for which the person is required to report.

(b) *Reporting by magnetic media.* Any person who chooses to report information to EPA by means of magnetic media must submit the information prescribed in paragraph (c) of this section. Magnetic media submitted in response to this subpart must meet EPA specifications, as described in the instruction booklet available from EPA at the address set forth in § 710.39(b).

(c) *Information to be reported.* Persons reporting information under this subpart must report the following:

(1) The name, company, address, city, State, Zip code, and telephone number of a person who will serve as technical contact for the respondent company, and will be able to answer questions about the information submitted by the company to EPA. Persons reporting by means of magnetic media must submit this information on the reporting form available from EPA at the address set forth in § 710.39.

(2) A certification statement signed and dated by an authorized official of the respondent company. Persons reporting by means of magnetic media must submit this information on the reporting form available from EPA at the address set forth in § 710.39.

(3) The specific chemical name and Chemical Abstracts Service (CAS) Registry Number of each chemical substance for which reporting is required under this subpart. A

respondent to this subpart may use other chemical identification numbers in lieu of CAS Registry Numbers when a CAS Registry Number is not known to the respondent as provided in the instruction booklet identified in § 710.39(b), including EPA-designated Accession Numbers for confidential substances, EPA-assigned numbers for *bona fide* or Premanufacture Notification submissions, or Test Market Exemption Applications, or original Inventory form numbers.

(4) The name, street address, city, State, and Zip code of each site at which 10,000 pounds (4,540 kilograms) or more of a chemical substance for which reporting is required under this subpart is manufactured or imported. (The site for a person who imports a chemical substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction, and may in some cases be the organization's headquarters office in the U.S.) A respondent to this subpart must include the appropriate Dun and Bradstreet Number for each plant site reported.

(5) A statement for each substance for which information is being submitted indicating whether the substance is manufactured in the United States or imported into the United States.

(6) A statement for each substance for which information is being submitted indicating whether the substance is site-limited.

(7) The total volume (in pounds) of each subject chemical substance manufactured or imported at each site. This amount must be reported to two significant figures of accuracy provided that the reported figures are within ±10 percent of the actual volume.

§ 710.38 [Amended]

3. Section 710.38 is amended by removing paragraph (c)(1) and redesignating paragraphs (c)(2) and (c)(3) as paragraphs (c)(1) and (c)(2), respectively.

4. Section 710.39 is revised to read as follows:

§ 710.39 Instructions for submitting information.

(a) All persons submitting written information in response to the requirements of this subpart must use original copies of Form U available from EPA at the address set forth in paragraph (b) of this section.

(b) Complete instructions for completing the reporting form and preparing a magnetic media report are given in the EPA publication entitled "Instructions for Reporting for the Partial Updating of the TSCA Chemical Inventory Data Base." Reporting forms and instruction booklets may be obtained by writing or calling the following office: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room E–105, 401 M St., SW., Washington, DC 20460, ATTN: Inventory Update Rule, (703) 534–1050.

(c) Completed reporting forms and magnetic media submissions must be submitted to the following address: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room E–105, 401 M St., SW., Washington, DC 20460, ATTN: Inventory Update Rule.

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