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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

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WASHINGTON, DC

WHEN: July 2, at 9:00 am
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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the U.S. Department of Agriculture (USDA) to reflect the creation of the position of Assistant Secretary for Natural Resources and Environment, and the abolition of the position of Assistant Secretary for Special Services.

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250, (202) 447–6035.

SUPPLEMENTARY INFORMATION: The act making further continuing appropriations for fiscal year 1988, Public Law No. 100–202, removed funding for the Office of the Assistant Secretary for Natural Resources and Environment and provided funding for a new Office of Assistant Secretary for Special Services. As a result of that action, in 53 FR 18253, May 23, 1988, the delegations of authority from the Secretary of Agriculture to the Assistant Secretary for Natural Resources and Environment were removed and delegations of authority to the Assistant Secretary for Special Services were made. In that **Federal Register** document, the Secretary made delegations of authority directly to the Chiefs of the Forest Service and the Soil Conservation Service. In the fiscal year 1989 appropriations act for Rural Development, Agriculture, and Related Agencies, Public Law No. 100–460, the Congress funded the positions of Assistant to the Secretary for Special Services, and Assistant to the Secretary for Natural Resources and Environment. While USDA established the positions in question and delegated authority to the officials occupying those positions, it never published revised delegations of authority in the **Federal Register** to reflect the new positions. In the fiscal year 1990 appropriations act for Rural Development, Agriculture, and Related Agencies, Public Law No. 101–161, the Congress removed funding for the positions of Assistant to the Secretary for Special Services, and Assistant to the Secretary for Natural Resources and Environment, and funded the position of Assistant Secretary for Natural Resources and Environment. Accordingly, this document makes delegations of authority to the Assistant Secretary for Natural Resources and Environment. It further makes delegations of authority from the Assistant Secretary to the Chiefs of the Forest Service and the Soil Conservation Service. The delegations of authority from the Secretary of Agriculture to the Assistant Secretary for Special Services and to the Chiefs of the Forest Service and the Soil Conservation Service are removed.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by Public Law No. 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

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

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.19 is revised and § 2.20 is added to read as follows:

§ 2.19 Delegations of authority to the Assistant Secretary for Natural Resources and Environment.

The following delegations of authority are made by the Secretary of Agriculture to the Assistant Secretary for Natural Resources and Environment:

(a) *Related to environmental quality.* (1) Administer the implementation of the National Environmental Policy Act for the United States Department of Agriculture (USDA).

(2) Provide representation for USDA on the National Response Team on hazardous spills pursuant to Public Law 92–500 (33 U.S.C. 1151 note), and section 4 of Executive Order 11735.

(3) Represent USDA in contacts with the United States Environmental Protection Agency, the Council on Environmental Quality, and other organizations or agencies on matters related to assigned responsibilities.

(4) Formulate and promulgate USDA policy relating to environmental activity and natural resources.

(5) Provide staff support for the Secretary in the review of environmental impact statements.

(6) Provide leadership in USDA for general land use activities including implementation of Executive Order 11988, Flood Plain Management, and 11990, Protection of Wetlands.

(b) *Related to forestry.* (1) Provide national leadership in forestry. (As used here and elsewhere in this section, the term "forestry" encompasses renewable and nonrenewable resources of forests, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative

values such as economic strength and social well-being.)

(2) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, including the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts, as follows: (Pub. L. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. 310, 78th Cong., 58 Stat. 227; Pub. L. 427, 76th Cong., 54 Stat. 46; Pub. L. 589, 76th Cong., 54 Stat. 297; Pub. L. 591, 76th Cong., 54 Stat. 299; Pub. L. 637, 76th Cong., 54 Stat. 402; Pub. L. 781, 84th Cong., 70 Stat. 632).

(3) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or less which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(4) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(5) For the purposes of the National Forest System Drug Control Act of 1986 (16 U.S.C. 559 b–f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 841) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on national forest lands;

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(6) Authorize the Forest Service to cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(7) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125 (a)–(c), 138, 202 (a)–(b), 203, 204 (a)–(h), 205 (a)–(d), 211, 317, 402(a)).

(8) Exercise the administrative appeal functions of the Secretary of Agriculture in review of decisions of the Chief of the Forest Service pursuant to 36 CFR part 217 and 36 CFR part 251, subpart C.

(9) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: Renewable resource management research, renewable resource environmental research; renewable resource protection research; renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(10) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(11) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(12) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 1643–1645).

(13) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (16 U.S.C. 3710a–3710c).

(14) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

(15) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(16) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas (16 U.S.C. 2102–2111).

(17) Provide assistance to States in forest resources planning (16 U.S.C. 2107).

(18) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(19) Administer rural fire protection and control programs (16 U.S.C. 2106).

(20) Provide technical assistance on forestry technology or the implementation of the conservation reserve and softwood timber programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(21) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(22) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(23) Under such general program criteria and procedures as may be established by the Soil Conservation Service:

(i) Administer the forestry aspects of the programs listed in paragraphs (b)(23)(i) (A), (B), and (C) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands.

(A) The cooperative river basin surveys and investigations program (16 U.S.C. 1006).

(B) The eleven authorized watershed improvement programs and emergency flood prevention measures program under the Flood Control Act (33 U.S.C. 701b–1).

(C) The small watershed protection program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009).

(ii) Exercise responsibility in connection with the forestry aspects of the resource conservation and development program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(24) Provide assistance to the Agricultural Stabilization and Conservation Service in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g–q).

(25) Jointly administer the Forestry Incentives Program with the Agricultural Stabilization and Conservation Service, in consultation with State Foresters (16 U.S.C. 2103).

(26) Provide assistance to the Farmers Home Administration in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(27) Coordinate mapping work of USDA including:

(i) Clearing mapping projects to prevent duplication;

(ii) Keeping a record of mapping done by USDA agencies;

(iii) Preparing and submitting required USDA reports;

(iv) Serving as liaison on mapping with the Office of Management and Budget, Department of Interior, and other departments and establishments;

(v) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(vi) Maintaining the mapping records formerly maintained by the Office of Operations.

(28) Administer the radio frequency licensing work of USDA, including:

(i) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(ii) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(iii) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith; and

(iv) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use.

(29) Represent USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(30) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under the Act and submitted to the Secretary of Commerce, consistent with section 306 (a) and (c).

(31) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 Note) for USDA.

(32) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(33) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(34) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(35) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278).

(36) Jointly administer gypsy moth eradication activities with the Assistant Secretary for Marketing and Inspection Services, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(37) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 et seq.).

(c) Related to soil conservation activities.

(1) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(i) Quality in the natural resource base for sustained use;

(ii) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(iii) Quality in the standard of living based on community improvement and adequate income.

(2) Provide national leadership in and evaluate and coordinate land use policy, and administer the Farmland Protection Policy Act (7 U.S.C. 4201 et seq.), except as otherwise delegated to the Assistant Secretary for Science and Education in § 2.30(a)(75) of this part.

(3) Administer the basic program of soil and water conservation under Public Law No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590 a–f, i–/, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(i) Technical assistance to land users in carrying out locally adapted soil and water conservation programs primarily through the conservation districts in the 50 States, Puerto Rico, and Virgin Islands, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(A) Comprehensive planning assistance in nonmetropolitan districts;

(B) Assistance in the field of income-producing recreation on rural non-Federal lands;

(C) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not

available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(D) Assistance in developing programs relating to natural beauty; and

(E) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*1*) To the Agricultural Stabilization and Conservation Service in the development and technical servicing of certain programs, such as the rural environmental assistance program, water bank program, Appalachian regional development program and other such similar conservation programs;

(*2*) To the Farmers Home Administration in connection with their loan and land disposition programs.

(ii) Soil Surveys, including:

(A) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing soil surveys;

(B) Conducting soil surveys for resource planning and development; and

(C) Performing the cartographic services essential to carrying out the functions of the Soil Conservation Service, including furnishing photographs, mosaics, and maps.

(iii) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. 4 of 1940 (5 U.S.C. App.);

(iv) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Soil Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(v) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(4) Administer the watershed protection and flood prevention programs, including:

(i) The eleven authorized watershed projects authorized under 33 U.S.C. 702b–1;

(ii) The emergency flood control work under 33 U.S.C. 701b–1;

(iii) The cooperative river basin surveys and investigations programs under 16 U.S.C. 1006;

(iv) The pilot watershed projects under 16 U.S.C. 590 a–f, and Public Law 156, 83rd Congress;

(v) The watershed protection and flood prevention program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Under Secretary for Small Community and Rural Development;

(vi) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(vii) The Emergency Conservation Program under 16 U.S.C. 2201.

(5) Administer the Great Plains conservation program under 16 U.S.C. 590p(b).

(6) Administer the Resource Conservation and Development Program under 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Under Secretary for Small Community and Rural Development.

(7) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(8) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 et seq.).

(9) Administer rural water quality cost-sharing program and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251 et seq.).

(10) Monitor actions and progress of USDA in complying with Executive Order Nos. 11988 and 11990 regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(11) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(12) Perform the following functions in connection with the administration of the Colorado River Basin Salinity Control Act:

(i) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(ii) Conduct salinity control studies of irrigated salt source areas;

(iii) Provide technical assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(iv) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(v) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(vi) Coordinate salt source planning and monitoring and evaluation activities with USDA and with the Bureau of Reclamation, other Federal agencies and representatives of the seven basin states participating in the Colorado River Basin Salinity Control Program (43 U.S.C. 1592(c)).

(13) Provide technical assistance on soil and water conservation technology for the implementation and administration of the conservation reserve program authorized in sections 1231–1244 of the Food Security Act of 1985 (16 U.S.C. 3831–3844), and carry out responsibilities for conservation of highly erodible lands and wetlands pursuant to sections 1211–1233 of the Food Security Act of 1985 (16 U.S.C. 3821–3823).

(14) Approve and transmit to the Congress comprehensive river basin reports.

(15) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(d) Related to committee management. Establish and reestablish regional, state, and local advisory committees for activities under his authority. This authority may not be redelegated.

(e) Related to defense. Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.) and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. 2251 App. et seq.) relating to agricultural land and water, forests and forest products, rural fire defense, and forestry research.

(f) Related to surface mining control and reclamation. Administer responsibilities and functions assigned to the Secretary of Agriculture under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.).

(g) Related to environmental response.

(1) Exercise the functions delegated to the Secretary by Executive Order No. 12580 to act as Federal trustee for natural resources in accordance with section 107(f)(2)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607(f)(2)(A) and section 311(f)(5) of the Federal Water Pollution Control Act, 33 U.S.C. 1321.

(2) With respect to land and facilities under his authority, to exercise the functions delegated to the Secretary by Executive Order No. 12580 under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and

other remedial action in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104(e)–(h) of the Act (42 U.S.C. 9604(e)–(h)), with respect to information gathering and access; compliance orders; compliance with Federal health and safety standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) Section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action;

(x) Section 116(a) of the act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Section 117 (a) and (c) of the act (42 U.S.C. 9617(a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to selecting cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to entering into settlement agreements.

§ 2.20 Reservations of authority.

The following authorities are reserved to the Secretary of Agriculture:

(a)–(b) Reserved.

(c) *Related to soil conservation activities.*

Designation of new project areas in which the resoyrce conservation and development program assistance will be provided.

3. The heading for subpart D is revised to read as follows:

Subpart D—Delegations of Authority to Other General Officers and Agency Heads

4. Sections 2.42 through 2.45 are removed.

5. Subpart G is revised to read as follows:

Subpart G—Delegations of Authority by the Assistant Secretary for National Resources and Environment

Sec.

2.59 Deputy Assistant Secretary for Natural Resources and Environment.

2.60 Chief, Forest Service

2.61 Reserved.

2.62 Chief, Soil Conservation Service.

Subpart G—Delegations of Authority by the Assistant Secretary for Natural Resources and Environment

§ 2.59 Deputy Assistant Secretary for Natural Resources and Environment.

Pursuant to § 2.19 of this part and subject to policy guidance and direction by the Assistant Secretary, the following delegation of authority is made by the Assistant Secretary for Natural Resources and Environment to the Deputy Assistant Secretary for Natural Resources and Environment, to be exercised only during the absence or unavailability of the Assistant Secretary: Perform all the duties and exercise all the powers which are now or which may hereafter be delegated to the Assistant Secretary for Natural Resources and Environment.

§ 2.60 Chief, Forest Service.

(a) *Delegations.* Pursuant to § 2.19 (a), (b), (e), (f) and (g)(2), the following delegations of authority are made by the Assistant Secretary for Natural Resources and Environment to the Chief of the Forest Service:

(1) Provide national leadership in forestry. (As used here and elsewhere in this section, the term "forestry" encompasses renewable and nonrenewable resources of forests, forest-related rangeland, grassland, brushland, woodland, and alpine areas including but not limited to recreation, range, timber, minerals, watershed, wildlife and fish; natural scenic, scientific, cultural, and historic values of forests and related lands; and derivative values such as economic strength and social well being.

(2) Protect, manage, and administer the national forests, national forest purchase units, national grasslands, and other lands and interests in lands administered by the Forest Service, which collectively are designated as the National Forest System. This delegation covers the acquisition and disposition of lands and interest in lands as may be authorized for the protection, management, and administration of the National Forest System, except that the authority to approve acquisition of land under the Weeks Act of March 1, 1911, as amended, and special forest receipts acts, as follows: (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 State. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) is limited to acquisitions of less than $250,000 in value.

(3) As necessary for administrative purposes, divide into and designate as national forests any lands of 3,000 acres or less which are acquired under or subject to the Weeks Act of March 1, 1911, as amended, and which are contiguous to existing national forest boundaries established under the authority of the Weeks Act.

(4) Plan and administer wildlife and fish conservation rehabilitation and habitat management programs on National Forest System lands, pursuant to 16 U.S.C. 670g, 670h, and 670o.

(5) For the purposes of the National Forests System Drug Control Act of 1986 (16 U.S.C. 559–f), specifically designate certain specially trained officers and employees of the Forest Service, not exceeding 500, to have authority in the performance of their duties within the boundaries of the National Forest System:

(i) To carry firearms;

(ii) To enforce and conduct investigations of violations of section 401 of the Controlled Substance Act (21 U.S.C. 481) and other criminal violations relating to marijuana and other controlled substances that are manufactured, distributed, or dispensed on national forest lands.

(iii) To make arrests with a warrant or process for misdemeanor violations, or without a warrant for violations of such misdemeanors that any such officer or

employee has probable cause to believe are being committed in that employee's presence or view, or for a felony with a warrant or without a warrant if that employee has probable cause to believe that the person being arrested has committed or is committing such a felony;

(iv) To serve warrants and other process issued by a court or officer of competent jurisdiction;

(v) To search, with or without a warrant or process, any person, place, or conveyance according to Federal law or rule of law; and

(vi) To seize, with or without warrant or process, any evidentiary item according to Federal law or rule of law.

(6) Cooperate with the law enforcement officials of any Federal agency, State, or political subdivision, in the investigation of violations of, and enforcement of, section 401 of the Controlled Substances Act (21 U.S.C. 841), other laws and regulations relating to marijuana and other controlled substances, and State drug control laws or ordinances, within the boundaries of the National Forest System.

(7) Administer programs under section 23 of the Federal Highway Act (23 U.S.C. 101(a), 120(f), 125 (a)–(c), 138, 202 (a)–(b), 203, 204 (a)–(h), 205 (a)–(d), 211, 317, 401(a)).

(8) Administer provisions of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272, 1305) as they relate to management of the National Forest System.

(9) Conduct, support, and cooperate in investigations, experiments, tests, and other activities deemed necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas in the United States and foreign countries. The activities conducted, supported, or cooperated in shall include, but not be limited to: Renewable resource management research; renewable resource environmental research; renewable resource protection research, renewable resource utilization research, and renewable resource assessment research (16 U.S.C. 1641–1647).

(10) Use authorities and means available to disseminate the knowledge and technology developed from forestry research (16 U.S.C. 1645).

(11) Coordinate activities with other agencies in USDA, other Federal and State agencies, forestry schools, and private entities and individuals (16 U.S.C. 1643).

(12) Enter into contracts, grants, and cooperative agreements for the support of scientific research in forestry activities (7 U.S.C. 427i(a), 1624; 16 U.S.C. 1643–1645).

(13) Enter into cooperative research and development agreements with industry, universities, and others; institute a cash award program to reward scientific, engineering, and technical personnel; award royalties to inventors; and retain and use royalty income (16 U.S.C. 3710a–3710c).

(14) Enter into contracts, grants, or cooperative agreements to further research, extension, or teaching programs in the food and agricultural sciences (7 U.S.C. 3318).

(15) Enter into cost-reimbursable agreements relating to agricultural research, extension, or teaching activities (7 U.S.C. 3319a).

(16) Administer programs of cooperative forestry assistance in the protection, conservation, and multiple resource management of forests and related resources in both rural and urban areas (16 U.S.C. 2102–2111).

(17) Provide assistance to States in forest resources planning (16 U.S.C. 2107).

(18) Conduct a program of technology implementation for State forestry personnel, private forest landowners and managers, vendors, forest operators, public agencies, and individuals (16 U.S.C. 2107).

(19) Administer rural fire protection and control program (16 U.S.C. 2106).

(20) Provide technical assistance on forestry technology or the implementation of the conservation reserve and softwood timber programs authorized in sections 1231–1244 and 1254 of the Food Security Act of 1985 (16 U.S.C. 3831–3844; 7 U.S.C. 1981 note).

(21) Administer forest insect, disease, and other pest management programs (16 U.S.C. 2104).

(22) Exercise the custodial functions of the Secretary for lands and interests in lands under lease or contract of sale to States and local agencies pursuant to title III of the Bankhead-Jones Farm Tenant Act and administer reserved and reversionary interests in lands conveyed under that Act (7 U.S.C. 1010–1012).

(23) Under such general program criteria and procedures as may be established by the Soil Conservation Service:

(i) Administer the forestry aspects of the programs listed in paragraphs (a)(23)(i)(A), (B), and (C) of this section on the National Forest System, rangelands with national forest boundaries, adjacent rangelands which are administered under formal agreement, and other forest lands.

(A) The cooperative river basin surveys and investigations program (16 U.S.C. 1006).

(B) The eleven authorized watershed improvement programs and emergency flood prevention measures program under the Flood Control Act (33 U.S.C. 701b–1).

(C) The small watershed protection program under the Pilot Watershed Protection and Watershed Protection and Flood Prevention Acts (7 U.S.C. 701a–h; 16 U.S.C. 1001–1009).

(ii) Exercise responsibility in connection with the forestry aspects of the resource conservation and development program authorized by title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(e)).

(24) Provide assistance to the Agricultural Stabilization and Conservation Service in connection with the agricultural conservation program, the naval stores conservation program, and the cropland conversion program (16 U.S.C. 590g–q).

(25) Jointly administer the Forestry Incentives Program with the Agricultural Stabilization and Conservation Service, in consultation with State Foresters (16 U.S.C. 2103).

(26) Provide assistance to the Farmers Home Administration in connection with grants and loans under authority of section 303 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1923; and consultation with the Department of Housing and Urban Development under the authority of 40 U.S.C. 461(e).

(27) Coordinate mapping work of USDA including:

(i) Clearing mapping projects to prevent duplication;

(ii) Keeping a record of mapping done by USDA agencies;

(iii) Preparing and submitting required USDA reports;

(iv) Serving as liaison on mapping with the Office of Management and Budget, Department of the Interior, and other departments and establishments;

(v) Promoting interchange of technical mapping information, including techniques which may reduce costs or improve quality; and

(vi) Maintaining the mapping records formerly maintained by the Office of Operations.

(28) Administer the radio frequency licensing work of USDA, including:

(i) Representing USDA on the Interdepartmental Radio Advisory Committee and its Frequency Assignment Subcommittee of the National Telecommunications and Information Administration, Department of Commerce;

(ii) Establishing policies, standards, and procedures for allotting and assigning frequencies within USDA and for obtaining effective utilization of them;

(iii) Providing licensing action necessary to assign radio frequencies for use by the agencies of USDA and maintenance of the records necessary in connection therewith; and

(iv) Providing inspection of USDA's radio operations to ensure compliance with national and international regulations and policies for radio frequency use.

(29) Represent USDA in all matters relating to responsibilities and authorities under the Federal Water Power Act, as amended (16 U.S.C. 791–823).

(30) Coordinate USDA input and assistance to the Department of Commerce and other Federal agencies consistent with section 307 of the Coastal Zone Management Act of 1972 and coordinate USDA review of qualifying state and local government coastal management plans or programs prepared under the Act and submitted to the Secretary of Commerce, consistent with section 306 (a) and (c).

(31) Administer the Youth Conservation Corps Act (42 U.S.C. precede 2711 Note) for USDA.

(32) Establish and operate the Job Corps Civilian Conservation Centers on National Forest System lands as authorized by title I, sections 106 and 107 of the Economic Opportunity Act of 1964 (42 U.S.C. 2716–2717), in accordance with the terms of an agreement dated May 11, 1967, between the Secretary of Agriculture and the Secretary of Labor; and administration of other cooperative manpower training and work experience programs where the Forest Service serves as host or prime sponsor with other Departments of Federal, State, or local governments.

(33) Administer the Volunteers in the National Forests Act of 1972 (16 U.S.C. 558a–558d, 558a note).

(34) Exercise the functions of the Secretary of Agriculture authorized in the Alaska National Interest Lands Conservation Act (16 U.S.C. 3101–3215).

(35) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), relating to forests and forest products, rural fire defense, and forestry research.

(36) Represent USDA on the National Response Team on hazardous spills pursuant to Public Law 92–500 (33 U.S.C. 1151 note) and section 4 of Executive Order 1735.

(37) Exercise the functions of the Secretary as authorized in the Wild and Scenic Rivers Act (16 U.S.C. 1271–1278), except for making recommendations to the President regarding additions to the President regarding additions to the National Wild and Scenic Rivers System.

(38) Issue proposed rules relating to the authorities delegated in this section, issue final rules and regulations as provided in 36 CFR 261.70, and issue technical amendments and corrections to final rules issued by the Assistant Secretary for Natural Resources and Environment pursuant to § 2.60(b)(1).

(39) Jointly administer gypsy moth eradication activities with the Animal and Plant Health Inspection Service, under the authority of section 102 of the Organic Act of 1944, as amended; and the Act of April 6, 1937, as amended (7 U.S.C. 147a, 148, 148a–148e); and the Talmadge Aiken Act (7 U.S.C. 450), by assuming primary responsibility for treating isolated gypsy moth infestations on Federal lands, and on State and private lands contiguous to infested Federal lands, and any other infestations over 640 acres on State and private lands.

(40) With respect to land and facilities under his authority, to exercise the functions delegated to the Secretary by Executive Order 12580 under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and other remedial action in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access; compliance orders; compliance with Federal health and safety standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) Section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Section 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to selecting cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to entering into settlement agreements.

(41) Exercise the functions of the Secretary authorized in the Federal Onshore Oil and Gas Leasing Reform Act of 1987 (30 U.S.C. 226 et seq.).

(b) *Reservations.* The following authorities are reserved to the Assistant Secretary for Natural Resources and Environment:

(1) The authority to issue final rules and regulations relating to the administration of Forest Service programs, except as provided in 36 CFR 261.70 and § 2.60(a)(38) of this part.

(2) As deemed necessary for administrative purposes, the authority to divide into and designate as national forests any lands of more than 3,000 acres acquired under or subject to the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521).

(3) The authority to make recommendations to the Administrator of General Services regarding transfer to other Federal, State, or Territorial agencies lands acquired under the Bankhead-Jones Farm Tenant Act, together with recommendations on the

conditions of use and administration of such lands, pursuant to the provisions of section 32(c) of title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1011(c), and Executive Order 11609).

(4) Making recommendations to the President for establishing new units or adding to existing units of the National Wild and Scenic Rivers System (16 U.S.C. 1271–1278); National Scenic Trails System (16 U.S.C. 1241–1249) and the National Wilderness Preservation System (16 U.S.C. 1131–1136).

(5) Signing of declarations of taking and requests for condemnation of property as authorized by law to carry out the mission of the Forest Service (40 U.S.C. 257).

(6) Approval of acquisition of land under the Weeks Act of March 1, 1911, as amended (16 U.S.C. 521), and special forest receipts acts, as follows: (Pub. L. No. 337, 74th Cong., 49 Stat. 866, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 505, 75th Cong., 52 Stat. 347, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 634, 75th Cong., 52 Stat. 699, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 748, 75th Cong., 52 Stat. 1205, as amended by Pub. L. No. 310, 78th Cong., 58 Stat. 227; Pub. L. No. 427, 76th Cong., 54 Stat. 46; Pub. L. No. 589, 76th Cong., 54 Stat. 297; Pub. L. No. 591, 76th Cong., 54 Stat. 299; Pub. L. No. 637, 76th Cong., 54 Stat. 402; Pub. L. No. 781, 84th Cong., 70 Stat. 632) of $250,000 or more in value for national forest purposes.

§ 2.61 [Reserved]

§ 2.62 Chief, Soil Conservation Service.

(a) *Delegations.* Pursuant to § 2.19 (a), (c), (e), (f) and (g)(2), the following delegations of authority are made by the Assistant Secretary for Natural Resources and Environment to the Chief of the Soil Conservation Service:

(1) Provide national leadership in the conservation, development and productive use of the Nation's soil, water, and related resources. Such leadership encompasses soil, water, plant, and wildlife conservation; small watershed protection and flood prevention; and resource conservation and development. Integrated in these programs are erosion control, sediment reduction, pollution abatement, land use planning, multiple use, improvement of water quality, and several surveying and monitoring activities related to environmental improvement. All are designed to assure:

(i) Quality in the natural resource base for sustained use;

(ii) Quality in the environment to provide attractive, convenient, and satisfying places to live, work, and play; and

(iii) Quality in the standard of living based on community improvement and adequate income.

(2) Participate in evaluation and coordination land use policy and in providing national leadership in implementing the Farmland Protection Policy Act (7 U.S.C. 4201 et seq.) except as otherwise delegated to the Administrator, Extension Service in § 2.108(a)(22) and the Director, National Agricultural Library in § 2.109(a)(15) of this part.

(3) Administer the basic program of soil and water conservation under Public Law No. 46, 74th Congress, as amended, and related laws (16 U.S.C. 590 a–f, 1–*1*, q, q–1; 42 U.S.C. 3271–3274; 7 U.S.C. 2201), including:

(i) Technical assistance to land users in carrying out locally adapted soil and water conservation programs primarily through the conservation districts in the 50 States, Puerto Rico, and Virgin Islands, but also to communities, watershed groups, Federal and State agencies, and other cooperators. This authority includes such assistance as:

(A) Comprehensive planning assistance in nonmetroplitan districts;

(B) Assistance in the field of income-producing recreation on rural non-Federal lands;

(C) Forestry assistance, as part of total technical assistance to private land owners and land users when such services are an integral part of land management and such services are not available from a State agency; and forestry services in connection with windbreaks and shelter belts to prevent wind and water erosion of lands;

(D) Assistance in developing programs relating to natural beauty; and

(E) Assistance to other USDA agencies in connection with the administration of their programs, as follows:

(*1*) To the Agricultural Stabilization and Conservation Service in the development and technical servicing of certain programs, such as the rural environmental assistance program, water bank program, Appalachian regional development program and other such similar conservation programs;

(*2*) To the Farmers Home Administration in connection with their loan and land disposition programs.

(ii) Soil Surveys, including:

(A) Providing leadership for the Federal part of the National Cooperative Soil Survey which includes conducting and publishing soil surveys;

(B) Conducting soil surveys for resource planning and development; and

(C) Performing the cartographic services essential to carrying out the functions of the Soil Conservation Service, including furnishing photographs, mosaics, and maps.

(iii) Conducting and coordinating snow surveys and making water supply forecasts pursuant to Reorganization Plan No. 4 of 1940 (5 U.S.C. App.);

(iv) Operating plant materials centers for the assembly and testing of plant species in conservation programs, including the use, administration, and disposition of lands under the administration of the Soil Conservation Service for such purposes under title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010–1011); and

(v) Providing leadership in the inventorying and monitoring of soil, water, land, and related resources of the Nation.

(4) Administer the watershed protection and flood prevention programs, including:

(i) The eleven authorized watershed projects authorized under 33 U.S.C. 702b–1, except for responsibilities assigned to the Forest Service;

(ii) The emergency flood control work under 33 U.S.C. 701b–1, except for responsibilities assigned to the Forest Service;

(iii) The cooperative river basin surveys and investigations programs under 16 U.S.C. 1006, except for responsibilities assigned to the Forest Service;

(iv) The pilot watershed projects under 16 U.S.C. 590 a–f, and Public Law No. 156, 83rd Congress, except for responsibilities assigned to the Forest Service;

(v) The watershed protection and flood prevention program under 16 U.S.C. 1001–1009, except for responsibilities assigned to the Farmers Home Administration and the Forest Service;

(vi) The joint investigations and surveys with the Department of the Army under 16 U.S.C. 1009; and

(vii) The Emergency Conservation Program under 16 U.S.C. 2201.

(5) Administer the Great Plains conservation program under 16 U.S.C. 590p(b).

(6) Administer the Resource Conservation and Development Program under 16 U.S.C. 590 a–f; 7 U.S.C. 1010–1011; and 16 U.S.C. 3451–3461, except for responsibilities assigned to the Farmers Home Administration.

(7) Responsibility for entering into long-term contracts for carrying out conservation and environmental measures in watershed areas.

(8) Provide national leadership for and administer the Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001 et seq.), except for responsibilities assigned to other USDA agencies.

(9) Administer rural water quality cost-sharing programs and other responsibilities assigned under section 35 of the Clean Water Act of 1977 (33 U.S.C. 1251 et seq.).

(10) Monitor actions and progress of USDA in complying with Executive Order Nos. 11988 and 11990 regarding management of floodplains and protection of wetlands; monitor USDA efforts on protection of important agricultural, forest and rangelands; and provide staff assistance to the USDA Natural Resources and Environment Committee.

(11) Administer the search and rescue operations authorized under 7 U.S.C. 2273.

(12) Perform the following functions in connection with the administration of the Colorado River Basin Salinity Control Act:

(i) Identify salt source areas and determine the salt load resulting from irrigation and watershed management practices;

(ii) Conduct salinity control studies of irrigated salt source areas;

(iii) Provide technical assistance in the implementation of salinity control projects including the development of salinity control plans, technical services for application, and certification of practice applications;

(iv) Develop plans for implementing measures that will reduce the salt load of the Colorado River;

(v) Develop and implement long-term monitoring and evaluation plans to measure and report progress and accomplishments in achieving program objectives; and

(vi) Coordinate salt source planning and monitoring and evaluation activities with USDA and with the Bureau of Reclamation, other Federal agencies and representatives of the seven basin states participating in the Colorado River Basin Salinity Control Program (43 U.S.C. 1592(c)).

(13) Provide technical assistance on soil and water conservation technology for the implementation and administration of the conservation reserve program authorized in sections 1231–1244 of the Food Security Act of 1985 (16 U.S.C. 3831–3844), and carry out responsibilities for conservation of highly erodible lands and wetlands pursuant to sections 1211–1233 of the Food Security Act of 1985 (16 U.S.C. 3821–3823).

(14) Approve and transmit to the Congress comprehensive river basin reports.

(15) Provide representation on the Water Resources Council and river basin commissions created by 42 U.S.C. 1962, and on river basin interagency committees.

(16) Administer responsibilities and functions assigned under the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), and the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), relating to agricultural lands and water.

(17) Administer the Abandoned Mine Reclamation Program for Rural Lands and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), except for responsibilities assigned to the Forest Service.

(18) With respect to land and facilities under his authority, to exercise the functions delegated to the Secretary by Executive Order No. 12580 under the following provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("the Act"), as amended:

(i) Sections 104 (a), (b), and (c)(4) of the Act (42 U.S.C. 9604 (a), (b), and (c)(4)), with respect to removal and other remedial action in the event of release or threatened release of a hazardous substance, pollutant, or contaminant into the environment;

(ii) Sections 104 (e)–(h) of the Act (42 U.S.C. 9604 (e)–(h)), with respect to information gathering and access; compliance orders; compliance with Federal health and safety standards applicable to covered work; and emergency procurement powers;

(iii) Section 104(i)(11) of the Act (42 U.S.C. 9604(i)(11)), with respect to the reduction of exposure to significant risk to human health;

(iv) Section 104(j) of the Act (42 U.S.C. 9604(j)), with respect to the acquisition of real property and interests in real property required to conduct a remedial action;

(v) Section 105(d) of the Act (42 U.S.C. 9605(d)), with respect to petitions for preliminary assessment of a release or threatened release;

(vi) Section 105(f) of the Act (42 U.S.C. 9605(f)), with respect to consideration of the availability of qualified minority firms in awarding contracts, but excluding that portion of section 105(f) of the Act pertaining to the annual report to Congress;

(vii) Section 109 of the Act (42 U.S.C. 9609), with respect to the assessment of civil penalties for violations and the granting of awards to individuals providing information;

(viii) Section 111(f) of the Act (42 U.S.C. 9611(f)), with respect to the designation of officials who may obligate money in the Hazardous Substances Superfund;

(ix) Section 113(k) of the Act (42 U.S.C. 9613(k)), with respect to establishing an administrative record upon which to base the selection of a response action;

(x) Section 116(a) of the Act (42 U.S.C. 9616(a)), with respect to preliminary assessment and site inspection of facilities;

(xi) Section 117 (a) and (c) of the Act (42 U.S.C. 9617 (a) and (c)), with respect to public participation in the preparation of any plan for remedial action and explanation of variances from the final remedial action plan for any remedial action or enforcement action, including any settlement or consent decree entered into;

(xii) Section 119 of the Act (42 U.S.C. 9619), with respect to indemnifying response action contractors;

(xiii) Section 121 of the Act (42 U.S.C. 9621), with respect to selecting cleanup standards; and

(xiv) Section 122 of the Act (42 U.S.C. 9622), with respect to entering into settlement agreements.

(b) *Reservations of authority.*

The following authorities are reserved to the Assistant Secretary for Natural Resources and Environment:

(1) Executing cooperative agreements and memoranda of understanding for multi-agency cooperation with conservation districts and other districts organized for soil and water conservation within States, territories, possessions, and American Indian Nations.

(2) Approving additions to authorized Resource Conservation and Development Projects that designate new project areas in which resource conservation and development program assistance will be provided, and withdrawing authorization for assistance, pursuant to 16 U.S.C. 590a–f; 7 U.S.C. 1010–1011; 16 U.S.C. 3451–3461.

(3) Giving final approval to and transmitting to the Congress watershed work plans that require congressional approval.

For subparts C and D.

Dated: June 6, 1991.

Richard T. Crowder,

Acting Secretary of Agriculture.

For Subpart G.

Dated: May 29, 1991.

James R. Moseley,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 91-14074 Filed 6-17-91; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR Part 52

[FV-91-330]

RIN 0581-AA19

Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products Regulations Governing Inspection and Certification

AGENCY: Agricultural Marketing, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products by increasing the fees charged for the inspection of processed fruits and vegetables and certain other products. The revision will adjust the fees to recover the costs of performing inspection services, as authorized by the Agricultural Marketing Act of 1946.

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Raymondo O'Neal, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 0709, South Building, Washington, DC 20090-6456, telephone (202) 447-5021.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Public Law 96-354 (5 U.S.C. 601).

The final rule reflects fee increases needed to recover the costs of services rendered in accordance with the Agricultural Marketing Act (AMA) of 1946. Furthermore, the inspection, grading and certification program for processed fruits and vegetables and related products is voluntary.

The AMA authorizes voluntary official inspection, grading, and certification on a user-fee basis, of processed food products including processed fruits, vegetables, and processed products made from them. The AMA provides that reasonable fees be collected from the user of the program services to cover as nearly as practicable the costs of services rendered. This final rule will amend the schedule for fees and charges for services rendered to the processed fruit and vegetable industry to reflect the costs currently associated with the program.

AMS regularly reviews these programs to determine if fees are adequate. Since the last fee change December 11, 1989 (54 FR 50731), program operating costs have increased. The major contributing factors have been two salary increases for Federal employees—a 3.5-percent pay increase effective January 1, 1990, and a 4.1-percent pay increase effective January 1, 1991.

Employee salary and fringe benefits are major program costs that account for approximately 85 percent of the total operating budget. In addition, the following increases occurred in program operating expenses: (1) A 13.3-percent increase in the cost of support services during FY-90; (2) a projected inflationary cost increase of 4.0 percent for fiscal year 1991. The Agency has determined that due to the aforementioned increases in program operating costs, these programs will incur over a $1,750,000 loss in fiscal year 1991. Therefore, it is found that good cause exists for making this final rule effective upon publication in the **Federal Register**.

A notice of proposed rulemaking was published in the **Federal Register** (56 FR 11113-11114) on March 15, 1991, with a thirty day comment period. The comment period closed on April 15, 1991. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Agricultural Marketing Service. No comments were received regarding this proposed rule. However, miscellaneous non-substantive changes are made herein for clarity.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The program will incur over a $1,750,000 loss in fiscal year 1991 alone; (2) this action should be made effective upon publication in the **Federal Register** so that fees will reflect the costs of services rendered as soon as possible and; (3) interested persons were afforded a thirty day comment period and no comments were received.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, reporting and recordkeeping requirements, Vegetables.

Accordingly, for the reasons set forth in the preamble, the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (7 CFR 52.42, 52.50, 52.51), are amended as follows:

PART 52—[AMENDED]

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

Authority: Agricultural Marketing Act of 1946, secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

2. Section 52.42 is revised to read as follows:

§ 52.42 Schedule of fees.

Unless otherwise provided in a written agreement between the applicant and the Administrator, the fee for any inspection service performed under the regulations in this part, shall be at the rate of $34.50 per hour plus an additional one-half the hourly rate per hour for all scheduled overtime hours. When work is performed on a holiday, an additional hour shall be charged at the regular hourly rate for each hour worked.

3. Section 52.50 is revised to read as follows:

§ 52.50 Travel and other expenses.

Charges may be made to cover the cost of travel time incurred in connection with the performance of any inspection service, including appeal inspections, at the rate of $34.50 per hour. This includes time spent waiting for transportation as well as time spent traveling, but not to exceed eight hours of travel time for any one person for any one day: And provided further, that if travel is by common carrier, no hourly charge may be made for travel time

outside the employee's official work hours.

4. Section 52.51 is amended by revising paragraphs (c) introductory text, (c)(1), (c)(2), (c)(5), (d) introductory text, (d)(1), and (d)(5) to read as follows:

§ 52.51 Charges for inspection services on a contract basis.

* * * * *

(c) Charges for year-round in-plant inspection services on a contract basis will be billed to the applicant monthly for all hours worked with a minimum of 40 hours per week for each inspector assigned to perform the inspection services in accordance with the following schedule:

(1) For personnel assigned on a year-round basis: Each inspector—$29.00 per hour.

(2) For personnel assigned on less than a year-round basis: Each inspector—$34.50 per hour. In-plant sampler—$14.00 per hour.

* * * * *

(5) *Overtime.* All overtime hours will be charged at the regular rates specified in paragraphs (c)(1) and (2) of this section, plus one-half the hourly rate, per hour.

(d) Charges for less than year-round in-plant inspection services (four or more consecutive 40 hour weeks) on a contract basis will be billed to the applicant monthly for all hours with a minimum of 40 hours for each inspector assigned to perform the inspection services in accordance with the following schedule: [1]

(1) Each inspector—$35.50 per hour.[1]

* * * * *

(5) *Overtime.* All overtime hours will be charged at the regular rates specified in paragraphs (d)(1) and (2) of this section, plus one-half the hourly rate, per hour.

* * * * *

Dated: June 12, 1991.

Daniel D. Haley,

Administrator.

[FR Doc. 91-14458 Filed 6-17-91; 8:45 am]

BILLING CODE 3410-02-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

Space Shuttle; Authority of Space Shuttle Commander

ACTION: Final rule.

SUMMARY: NASA is amending 14 CFR part 1214 by revising the part title and subpart 1214.7, "The Authority of the Space Shuttle Commander." This revision changes all references to "Space Transportation System (STS)" to read "Space Shuttle" and it also includes a minor word change in paragraph 1214.702(c). This rule sets forth the authority of the Space Shuttle Commander.

EFFECTIVE DATE: June 18, 1991.

ADDRESSES: Office of Space Flight, Code M, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Joseph M. Boze, Jr., 202-453-2582.

SUPPLEMENTARY INFORMATION: On August 22, 1979, NASA published its final rule, 14 CFR part 1214 subpart 7, in the **Federal Register** on March 7, 1980 (45 FR 14845). This rule sets forth the authority of the Space Shuttle Commander who is ultimately responsible for maintaining order and discipline and for the safety of all personnel aboard a Space Shuttle flight, as well as for the safety of the Space Shuttle itself, Space Shuttle elements and payloads. Under this rule, the Commander's authority applies to all persons aboard the Space Shuttle, including those persons engaged in extravehicular activity (EVA), and includes the right to use any reasonable and necessary means, including physical force, to ensure that such responsibility is fulfilled.

Since this action is administrative in nature and involves Agency policy management procedures, no public comment period is required.

The National Aeronautics and Space Administration has determined, that:

1. This rule is not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, since it will not exert a significant economic impact on a substantial number of small business entities.

2. This rule is not a major rule as defined in Executive Order 12291.

List of Subjects in 14 CFR Part 1214

Reimbursement, Payload specialist, Space flight participant, Memento, Personnel reliability, Authority of Commander, Space Shuttle, Astronaut candidate recruitment/selection, Duty-free entry of space articles, Small self-contained payload.

PART 1214—SPACE SHUTTLE

For reasons set forth in the Preamble, 14 CFR part 1214 subpart 7 is amended as follows:

1. The authority citation for subpart 1214.7 continues to read as follows:

Authority: Pub. L. 85-568, 72 Stat. 426 (42 U.S.C. 2473 and 2455; 18 U.S.C. 799); Art. VIII, TIAS 6347 (18 U.S.C. 2410).

2. The title heading for subpart 1214.7 is revised to read as follows:

Subpart 1214.7—The Authority of the Space Shuttle Commander

3. Section 1214.700 is revised to read as follows:

§ 1214.700 Scope.

This subpart establishes the authority of the Space Shuttle commander to enforce order and discipline during all flight phases of a Shuttle flight to take whatever action in his/her judgment is necessary for the protection, safety, and well-being of all personnel and on-board equipment, including the Space Shuttle elements and payloads. During the final launch countdown, following crew ingress, the Space Shuttle commander has the authority to enforce order and discipline among all on-board personnel. During emergency situations prior to liftoff the Space Shuttle commander has the authority to take whatever action in his/her judgment is necessary for the protection or security, safety, and well-being of all personnel on board.

4. Section 1214.701 is amended by revising paragraphs (a), (c), and (f) to read as follows:

§ 1214.701 Definitions.

(a) *Space Shuttle Elements* consists of the Orbiter, an External Tank, two Solid Rocket Boosters, Spacelab, Upper Stage Boosters (Solid Spinning Upper Stage and Interim Upper Stages) and others as specified in NASA Management Instruction 8040.9.

* * * * *

(c) A *flight* is the period from launch to landing of a Space Shuttle—a single round trip. (In the case of a forced landing the Space Shuttle commander's authority continues until a competent authority takes over the responsibility for the Orbiter and for the persons and property aboard.)

* * * * *

(f) *Personnel on board* refers to those astronauts or other persons actually in the Orbiter or Spacelab during any flight phase of a Space Shuttle flight (including any persons who may have transferred from another vehicle) and including any persons performing extravehicular activity associated with the mission.

5. Section 1214.702 is amended by revising the section title and paragraphs (a), (c), and (d) to read as follows:

---

[1] Except a minimum of 8 hours per day will be billed in lieu of a minimum of 40 hours a week.

§ 1214.702 Authority and responsibility of the Space Shuttle commander.

(a) During all flight phases of a Space Shuttle flight, the Space Shuttle commander shall have the absolute authority to take whatever action is in his/her discretion necessary to

(1) Enhance order and discipline,

(2) Provide for the safety and well being of all personnel on board, and

(3) Provide for the protection of the Space Shuttle elements and any payload carried or serviced by the Space Shuttle. The commander shall have authority throughout the flight to use any reasonable and necessary means, including the use of physical force, to achieve this end.

* * * * *

(c) The authority of the commander extends to all Space Shuttle elements, payloads, and activities originating with or defined to be a part of the Space Shuttle mission.

(d) The commander may, when he/she deems such action to be necessary for the safety of the Space Shuttle elements and personnel on board, subject any of the personnel on board to such restraint as the circumstances require until such time as delivery of such individual or individuals to the proper authorities is possible.

6. Section 1214.703 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 1214.703 Chain of command.

(a) The *Commander* is a career NASA astronaut who has been designated to serve as commander on a particular flight, and who shall have the authority described in § 1214.702 of this part. Under normal flight conditions (other than emergencies or when otherwise designated) the Space Shuttle commander is responsible to the Flight Director, Johnson Space Center, Houston, TX.

* * * * *

(c) Before each flight, the other flight crew members (Mission Specialists) will be designated by the Director of Flight Operations, Johnson Space Center, Houston, TX, in the order in which they will assume the authority of the commander under this Subpart in the event that the commander and pilot are both not able to carry out their duties.

(d) The determinations, if any, that a crew member in the chain of command is not able to carry out his or her command duties and is, therefore, to be relieved of command, and that another crew member in the chain of command is to succeed to the authority of the commander, will be made by the Director of the Johnson Space Center.

7. Section 1214.704 is amended by revising paragraph (a) to read as follows:

§ 1214.704 Violations.

(a) All personnel on board a Space Shuttle flight are subject to the authority of the commander and shall conform to his/her orders and direction as authorized by this subpart.

* * * * *

Dated: June 5, 1991.

Richard H. Truly,

Administrator.

[FR Doc. 91-14319 Filed 6-17-91; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-91-1515; FR-2936-C-02]

RIN 2502-AF17

Single Family FHA Mortgage Insurance Premiums; Interim Rule; Correction

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim rule; correction.

SUMMARY: On May 30, 1991 the Department published an interim rule in the **Federal Register** (56 FR 24622) establishing new premium requirements for FHA single family mortgage insurance. The effective date of this final rule was given as July 1, 1991. Through inadvertence, relevant portions of the actual text of the regulation referred to the new MIP premium requirements taking effect after July 1, 1991 rather than on or after July 1, 1991. The purpose of this document is to correct these errors in the regulatory text.

DATES: Effective date: July 1, 1991. Comment due date: July 29, 1991.

FOR FURTHER INFORMATION CONTACT: Stephen A. Martin, Director, Office of Insured Single Family Housing, room 9266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-6000, telephone (202) 708-3046, TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department published an interim rule in the **Federal Register** on May 30, 1991 entitled, "Single Family Mortgage Insurance Premiums" (56 FR 24622). Under the heading, "Effective Date," the rule sets forth a date of July 1, 1991. However, in various relevant portions of the actual text of the rule, the new MIP requirements are referred to as taking effect after July 1, 1991. The correct description of the effective date in the text should be on or after July 1, 1991.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians: Lands, Loan programs: Housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, in FR Doc. 91-12707, published in the **Federal Register** on May 30, 1991, at 56 FR 24622, 24 CFR part 203 is amended by correcting § 203.259a(b), the undesignated center heading preceding § 203.284, the heading to § 203.284 and § 203.234(b)(1) to read as follows:

PART 203—MUTUAL MORTGAGE INSURANCE AND REHABILITATION LOANS

1. The authority citation for 24 CFR part 203 continues to read as follows:

Authority: Secs. 203, 211, National Housing Act (12 U.S.C. 1709, 1715b); sec. 7(d), Development of Housing and Urban Development Act 42 U.S.C. 3535(d)). Subpart C is also issued under sec. 230, National Housing Act (12 U.S.C. 1715u).

§ 203.259a [Corrected]

2. On page 24624, in the third column, § 203.259a(b) is corrected to read as follows:

* * * * *

(b) The Commissioner shall charge an up-front MIP pursuant to § 203.284 for mortgages that are executed on or after July 1, 1991, that are obligations of the Mutual Mortgage Insurance Fund.

* * * * *

§ 203.284 [Corrected]

3. On page 24625, in the first column, the undesignated center heading preceding § 203.284 and the heading to § 203.284 are corrected to read as follows:

Calculation of Mortgage Insurance Premium on or After July 1, 1991

§ 203.284 Calculation of up-front MIP on or after July 1, 1991.

4. On page 24625, in the second column, § 203.284(b)(1) is corrected to read as follows:

* * * * *

(b) * * *

(1) *1991 and 1991*—For mortgages executed during fiscal years 1991 and 1992 but on or after July 1, 1991, the

Commissioner shall establish and collect the following premiums:

* * * * *

Dated: June 12, 1991.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 91–14408 filed 6–17–91; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Chapter I

Reserving of Subchapter

AGENCY: Office of the Secretary, DoD.

ACTION: Final Rule.

SUMMARY: On April 11, 1991 (56 FR 14643) the Department of Defense removed parts 1 through 39. This document removes the title of 32 CFR chapter I, subchapter A and reserves the subchapter for future use.

EFFECTIVE DATE: April 11, 1991.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION:

Accordingly, under the authority of 10 U.S.C. 133, 32 CFR chapter I is amended by removing and reserving the title of chapter I, subchapter A.

SUBCHAPTER A—[RESERVED]

Dated: June 12, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 91–14387 Filed 6–17–91; 8:45 am]

BILLING CODE 3810–01–M

32 CFR Part 169a

Commercial Activities Program Procedures

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense is amending this part to correct the codification and administrative errors previously contained in section 169a.17.

EFFECTIVE DATE: June 18, 1991.

ADDRESSES: L.M. Bynum, Correspondence and Directives Directorate, Washington Headquarters Services, Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 169a

Armed forces; Government procurement.

Accordingly, 32 CFR part 169a is amended as follows:

PART 169A—COMMERCIAL ACTIVITIES PROGRAM PROCEDURES

1. The authority citation for part 169a continues to read as follows:

Authority: 5 U.S.C. 301 and Pub. L. 93–400.

§ 169a.17 [Amended]

2. Section 169a.17 is amended by redesignating paragraph "(h)(i)" as "(h)(1)" and "(h)(1)" as "(h)(i)" and by redesignating the second designated paragraph "(h) through (j)" as "(i) through (k)" respectively.

Dated: June 12, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–14388 Filed 6–17–91; 8:45 am]

BILLING CODE 3810–01–M

INFORMATION SECURITY OVERSIGHT OFFICE

32 CFR Part 2003

National Security Information—Standard Forms; Correction

AGENCY: Information Security Oversight Office (ISOO).

ACTION: Final rule; correction.

SUMMARY: ISOO is correcting errors in the Supplementary Information and subpart B portions of 32 CFR part 2003.20 which appeared in the **Federal Register** on January 23, 1991 (56 FR 2644).

EFFECTIVE DATE: January 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. John B. Gemma at (202) 634–6145.

SUPPLEMENTARY INFORMATION: Correction. In rule document 91–1538 appearing on pages 2644 and 2645, in the issue of Wednesday, January 23, 1991, make the following corrections: Page 2644, in the third column, paragraph 3, line 7 change "has" to "have." Page 2645, in the first column, line 19, after 2003.20, insert: "Classified Information Nondisclosure Agreement: SF 312;".

Dated: June 13, 1991.

Steven Garfinkel,

Director.

[FR Doc. 91–14480 Filed 6–17–91; 8:45 am]

BILLING CODE 6820–AF–M

Proposed Rules

Federal Register
Vol. 56, No. 117
Tuesday, June 18, 1991

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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR 1427

Upland Cotton Marketing Certificate Provisions

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Food, Agriculture, Conservation and Trade Act of 1990 ("the 1990 Act") amended the Agricultural Act of 1949 ("the 1949 Act") to provide that, during the period beginning August 1, 1991, and ending July 31, 1996, the Commodity Credit Corporation ("CCC") shall, under certain specified price conditions, make payments in the form of marketing certificates ("certificates") to first handlers and to domestic users or exporters of upland cotton. This proposed rule would amend 7 CFR part 1427 to implement these provisions.

DATES: Comments must be received on or before July 1, 1991, in order to be assured of consideration.

ADDRESSES: Submit comments to: Bruce R. Weber, Director, Commodity Analysis Division, USDA–ASCS, room 3741–S. P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, room 3756–S, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been designated as "nonmajor". It has been determined that these program provisions will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, State or local governments or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the federal assistance programs, as found in the catalogue of Federal Domestic Assistance, to which this notice applies are:

Title	Numbers
Commodity Loans and Purchases	10.051
Cotton Production Stablization	10.052

It has been determined that the Regulatory Flexibility Act is not applicable since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

It has been determined by environmental evaluation that this action will have no significnt impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This provision is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 CFR 29115 (June 24, 1983).

Information collection requirements contained in this regulation (7 CFR part 1427) will be submitted to the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35.

Comments are requested with respect to this proposed rule, and such comments shall be considered in developing the final rule. These program provisions must be implemented by August 1, 1991. Accordingly, the public comment period ends on July 1, 1991. This will allow CCC time to consider the coments received before the final determinations are made.

Background

The 1990 Act amended the 1949 Act to provide that, if during the period beginning August 1, 1991, and ending July 31, 1996, CCC determines that the prevailing world market price for upland cotton, adjusted to United States quality and location ("adjusted world price") is less than the current loan repayment rate for a crop of upland cotton and that the cotton loan program and the loan deficiency payment program have failed to make domestically produced upland cotton competitive on the world market, then CCC shall make payments, in the form of comodity certificates to eligible first handlers of upland cotton who have entered into an Upland Cotton First Handler Agreement with CCC to participate in the first handler program. These provisions are similar to provisions which were authorized by the Food Security Act of 1985 (the 1985 Act) applicable for the period August 1, 1986 through July 31, 1991, except in the 1985 Act the authority to issue certificates was limited to certificates which were exchangeable only for extra long staple and upland cotton.

The 1990 Act also amended the 1949 Act by adding new provisions to provide that, if during the period beginning August 1, 1991, and ending July 31, 1996, CCC determined that, for any consecutive 4-week period, the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch ("M 1 3/32 inch") cotton, delivered C.I.F. (cost insurance and freight) northern Europe ("U.S. Northern Europe price") exceeds the Friday through Thursday average price quitation for the five lowest-priced growths of the growths quoted for M 1 1/32 inch cotton, delivered C.I.F. northern Europe ("Northern Europe price"), by more than 1.25 cents per pound each week, then CCC shall make payments, in the form of commodity certificates, to eligible domestic users and exporters of upland cotton on documented sales made in the week following such 4-week period.

This proposed rule would amend 7 CFR part 1427 to set forth the terms and conditions of the upland cotton first handler marketing certificate program and the the upland cotton user marketing certificate program. This proposed rule is published separate from other proposed amendments to 7 CFR part 1427 because these amendments focus upon the implementation of the marketing certificate programs whereas the other proposed amendments focus

on the cotton loan program. Accordingly, the following provisions are proposed:

A. Implementation of the Upland Cotton First Handler Marketing Certificate Program.

Under this proposed rule, the upland cotton first handler marketing certificate program would be implemented in a manner similar to the first handler certificate program that was implemented for the 1986 crop of upland cotton pursuant to the authority of the 1985 Act, except that certificates made available under this program would be exchangeable for any commodity made available by CCC, whereas, certificates under the 1986 program were exchangeable only for upland cotton and extra long staple cotton.

B. Implementation of the Upland Cotton User Marketing Certificate Program.

Proposed major provisions of the upland cotton user marketing certificate program are:

1. Eligible cotton would be domestically produced upland cotton baled lint, including Below Grade cotton, which is purchased by an eligible domestic user or sold for export by an eligible exporter under a written contract entered into on or after August 1, 1991 and before July 31, 1996, during a Friday through Thursday period in which a payment rate is in effect and which is delivered to the eligible domestic user or exported by the eligible exporter by not later than September 30, 1996, exclusive of new crop cotton for which a written contract was entered into prior to the week in which a Northern Europe forward price for that crop of cotton was available for four consecutive weeks.

2. An eligible domestic user would be anyone, including a producer or approved cooperative marketing association, regularly engaged in purchasing eligible cotton for processing such cotton in the United States, who has entered into an agreement with CCC to participate in the program.

3. An eligible exporter would be anyone, including a producer or an approved cooperative marketing association, regularly engaged in selling eligible cotton for exportation from the United States for processing such cotton outside the United States, who has entered into an agreement with CCC to participate in the program.

4. The payment rate would be based on the amount that the U.S. Northern Europe price exceeds the Northern Europe price by more than 1.25 cents per pound during the fourth week of a consecutive four week period in which the U.S. Northern Europe price exceeded the Northern Europe price each week by more than 1.25 cents per pound. During the period when both current shipment prices and forward shipment prices are available, two payment rates would be determined, one based on the Northern Europe current prices and one based on the Northern Europe forward prices.

5. The payment would be made on documented sales and exports made during the week following the consecutive four week period.

6. The date of the written contract for purchase of the cotton by the domestic user or for sale of the cotton for export by the exporter would be used as the date for determining the payment rate.

7. The weight for payment would be based, for domestic users, on the net weight on which settlement for payment was based and, for exporters, on the original warehouse weight, the ginned weight if the cotton was not placed in a warehouse, or on reweights if the exporter pays the cost of having the bales reweighed.

8. Payment would be made after the cotton is received by the domestic user or after a bill of lading is issued for cotton that is being exported.

9. Payments would be made in the form of commodity certificates which would be exchangeable for any commodity made by CCC.

10. Eligible domestic users and exporters would have to enter into an Upland Cotton Domestic User/Exporter Agreement with CCC in order to participate in the program.

List of Subjects in 7 CFR Part 1427

Cotton, Loan programs (agriculture), Price support programs, Warehouses, Marketing certificate programs.

Accordingly, 7 CFR part 1427 is proposed to be amended as follows:

PART 1427—COTTON

1. The authority citation for 7 CFR part 1427 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1444, and 1444–2; 15 U.S.C. 714b and 714c.

2. The subpart heading and text for §§ 1427.50 through 1427.55 are revised and §§ 1427.56 through 1427.58 are added to the subpart as set forth below.

3. Subpart—Upland Cotton Marketing Certificate Program Regulations §§ 1427.100 through 1427.108) is added as follows:

1427.56 Commodity certificates.
1427.57 Payment rate.
1427.58 Payment.

Subpart—Upland Cotton User Marketing Certificate Program Regulations

1427.100 Applicability.
1427.101 Administration.
1427.102 Definitions.
1427.103 Eligible and ineligible upland cotton.
1427.104 Eligible domestic users and exporters.
1427.105 Upland Cotton Domestic User/Exporter Agreement.
1427.106 Commodity certificates.
1427.107 Payment rate.
1427.108 Payment.

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Subpart—Upland Cotton First User Marketing Certificate Program Regulations

§ 1427.50 Applicability.

(a) The regulations of this subpart are applicable during the period beginning August 1, 1991, and ending July 31, 1996. These regulations set forth the terms and conditions under which the Commodity Credit Corporation ("CCC") shall make payments, in the form of commodity certificates, to eligible first handlers of upland cotton who have entered into an Upland Cotton First Handler Agreemernt with CCC to participate in the first handler marketing certificate program, in accordance with section 103B(a)(5)(B) of the Agricultural Act of 1949, as amended.

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Subpart—Upland Cotton First Handler Marketing Certificate Program Regulations

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1427.54 Eligible first handlers.
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(b) If, during the period beginning August 1, 1991, and ending July 31, 1996, CCC determines that the adjusted world price for upland cotton determined in accordance with § 1427.25 is less than the loan repayment rate for a crop of upland cotton determined in accordance with § 1427.19(c) and that the cotton loan program implemented in accordance with § 1427.8 and that the loan deficiency payment program implemented in accordance with § 1427.23, have failed to make domestically produced upland cotton competitive on the world market, then CCC shall make payments in accordance with the provisions of this subpart to eligible first handlers of upland cotton.

(c) Additional terms and conditions are set forth in the Upland Cotton First Handler Agreement which must be executed by the first handler in order to receive such payments.

(d) Forms which are used in administering the first handler

marketing certificate program shall be prescribed by CCC.

§ 1427.51 Administration.

(a) The first handler marketing certificate program shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, or Administrator, ASCS, or a designee, and shall be carried out in the field by ASCS's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

(b) The KCCO and KCMO, and representatives and employees thereof, do not have the authority to modify or waiver any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCCO or KCMO shall preclude the Executive Vice President, CCC, or a designee, or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by KCCO or KCMO.

(d) The Executive Vice President, CCC, or a designee, or the Administrator, ASCS, or a designee, may authorize KCCO or KCMO to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the first handler marketing certificate program.

(e) A representative of CCC may execute first handler marketing certificate payment applications, Upland Cotton First Handler Agreements and related documented only under the terms and conditions determined and announced by CCC.

(f) Certificate payment applications, Upland Cotton First Handler Agreements and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1427.52 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in § 1427.3 of this part and part 1413 of this chapter shall also be applicable.

Baled lint means cotton which has passed through the ginning process and has been baled.

Loose means samples removed from bales of upland cotton for classification purposes which have been rebaled.

Reprocessed gin motes means cotton wste material primarily resulting from the lint cleaning operation during the ginning process that have had a substantial volume of the non-lint content removed and which have been baled.

§ 1427.53 Eligible upland cotton.

(a) For the purposes of this subpart, eligible upland cotton is domestically produced 1991 or subsequent crop upland cotton which meets the requirements of paragraphs (b) and (c) of this section.

(b) Eligible upland cotton must be either—

(1) Baled lint which is not pledged as collateral for a price support loan;

(2) Baled lint which has been pledged as collateral for a price support loan but which has been redeemed with cash;

(3) Baled lint which has been classified by USDA's Agricultural Marketing Service as Below Grade;

(4) Loose; or

(5) Reprocessed gin motes.

(c) Eligible upland cotton must not be:

(1) Cotton with respect to which a payment, in accordance with the provisions of this subpart, has been made available;

(2) Cotton which was obtained with a commodity certificate in accordance with the provisions of Part 1470 of this chapter; or

(3) Domestically produced cotton which has been exported or which has been exported and reimported.

§ 1427.54 Eligible first handlers.

(a) For the purposes of this subpart, the following persons shall be considered to be eligible first handlers:

(1) A person regularly engaged in buying or selling eligible upland cotton who has entered into an agreement with CCC to participate in the first handler marketing certificate program;

(2) A producer of upland cotton who sells directly to domestic textile mills or for export or who tenders upland cotton on a New York Futures Exchange number 2 contract and who has entered into an agreement with CCC to participate in the first handler marketing certificate program; and

(3) A cooperative marketing association, approved in accordance with part 1425 of this chapter, that acquires the upland cotton production of its members and that has entered into an agreement with CCC to participate in the first handler marketing certificate program.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the Upland Cotton First Handler Agreement and instructions issued by CCC.

§ 1427.55 Upland cotton first handler agreement.

(a) Payments in accordance with this subpart shall be made available to eligible first handlers who have entered into an Upland Cotton First Handler Agreement with CCC and who have complied with the terms and conditions set forth in this subpart, the Upland Cotton First Handler Agreement and instructions issued by CCC.

(b) Upland Cotton First Handler Agreements may be obtained from Cotton Branch, CRD, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205. In order to participate in the program authorized by this subpart, first handlers must execute the Upland Cotton First Handler Agreement and forward an original and two copies to KCCO.

§ 1427.56 Commodity certificates.

Payments in accordance with this subpart shall be made available in the form of commodity certificates issued in accordance with part 1470 of this chapter.

§ 1427.57 Payment rate.

The payment rate for the purposes of calculating payments made available in accordance with this subpart shall be based upon the difference between the adjusted world price for upland cotton determined in accordance with § 1427.25 and the loan repayment rate determined in accordance with § 1427.19 and the Upland Cotton First Handler Agreement. A coarse count adjustment shall be applied in accordance with § 1427.25(f) and the Upland Cotton First Handler Agreement. Payment rates for eligible cotton other than upland cotton baled lint shall be based on a percentage of the basic rate for baled lint, exclusive of coarse count adjustment, as specified in the Upland Cotton First Handler Agreement.

§ 1427.58 Payment.

(a) Payments in accordance with this subpart shall be determined by multiplying:

(1) The payment rate, determined in accordance with § 1427.57, by

(2) The net weight (gross weight minus the weight of bagging and ties), determined as specified in the Upland Cotton First Handler Agreement, of eligible upland cotton that is purchased by an eligible first handler for either domestic consumption or export during a period in which a payment rate is established.

(b) Eligible upland cotton will be considered to be purchased by the first handler on the date title to the cotton passes to the first handler, as determined by CCC.

(c) Payments in accordance with this subpart shall be made available upon application for payment and submission of supporting documentation, as required by the provisions of the Upland Cotton First Handler Agreement and instructions issued by CCC.

Subpart—Upland Cotton User Marketing Certificate Program Regulations

§ 1427.100 Applicability.

(a) The regulations of this subpart are applicable during the period beginning August 1, 1991 and ending July 31, 1996. These regulations set forth the terms and conditions under which the Commodity Credit Corporation ("CCC") shall make payments, in the form of commodity certificates ("certificates") to eligible domestic users and exporters of upland cotton who have entered into an Upland Cotton Domestic User/Exporter Agreement with CCC to participate in the upland cotton user marketing certificate program in accordance with section 103B(a)(5)(E) of the Agricultural Act of 1949, as amended.

(b) If, during the period beginning August 1, 1991, and ending July 31, 1996, CCC determines that, for any consecutive 4-week period, the Friday through Thursday average price quotation for the lowest-priced United States growth, as quoted for Middling one and three thirty-seconds inch ("M 1-3/32 inch") cotton, delivered C.I.F. (cost, insurance and freight) northern Europe ("U.S. Northern Europe price") exceeds the Friday through Thursday average price quotation for the five lowest-priced growths, as quoted for M 1-3/32 inch cotton, delivered C.I.F. northern Europe ("Northern Europe price") by more than 1.25 cents per pound, then CCC shall make payments in accordance with the provisions of this subpart to eligible domestic users and exporters of upland cotton.

(c) Additional terms and conditions are set forth in the Upland Cotton Domestic User/Exporter Agreement which must be executed by the domestic user or exporter in order to receive such payments.

(d) Forms which are used in administering the upland cotton user marketing certificate program shall be prescribed by CCC.

§ 1427.101 Administration.

(a) The upland cotton user marketing certificate program shall be administered under the general supervision of the Executive Vice President, CCC, or a designee, or Administrator, ASCS or a designee, and shall be carried out in the field by ASCS's Kansas City Commodity Office (KCCO) and Kansas City Management Office (KCMO).

(b) The KCCO and KCMO, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations of this subpart.

(c) No provision or delegation herein to KCCO or KCMO shall preclude the Executive Vice President, CCC, or a designee, or the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by KCCO or KCMO.

(d) The Executive Vice President, CCC, or a designee, or the Administrator, ASCS, or a designee, may authorize KCCO or KCMO to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements do not affect adversely the operation of the upland cotton user marketing certificate program.

(e) A representative of CCC may execute upland cotton user marketing certificate payment applications, Upland Cotton Domestic User/Exporter Agreements and related documents only under the terms and conditions determined and announced by CCC.

(f) Certificate payment applications, Upland Cotton Domestic User/Exporter Agreements and related documents not executed in accordance with the terms and conditions determined and announced by CCC, including any purported execution prior to the date authorized by CCC, shall be null and void.

§ 1427.102 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in sections 1427.3 and 1427.52 of this part and part 1413 of this chapter shall also be applicable.

Current shipment price means, during the period in which two daily price quotations are available for the growths quoted for Middling one and three thirty-seconds inch cotton ("M 1-3/32"), C.I.F. (cost, insurance and freight) northern Europe, the price quotation for cotton for shipment no later than August/September of the current calendar year.

Forward shipment price means, during the period in which two daily price quotations are available for the growths quoted for M 1-3/32 inch cotton, C.I.F. northern Europe, the price quotation for cotton for shipment no earlier than October/November of the current calendar year.

New crop cotton means upland cotton planted during the calendar year that includes the August 1 that begins the next marketing year.

Northern Europe current price means the average of the current shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1-3/32 inch cotton, C.I.F. northern Europe.

Northern Europe forward price means the average of the forward shipment prices for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

Northern Europe price means, during the period when only one daily price quotation is available for the growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe, the average of the quotations for the preceding Friday through Thursday for the five lowest-priced growths of the growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

Old crop cotton means upland cotton planted during or prior to the calendar year that includes the August 1 that begins the current marketing year, but planted no earlier than January 1, 1991.

U.S. Northern Europe current price means the average for the preceding Friday through Thursday of the current shipment prices for the lowest-priced United States growth as quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

U.S. Northern Europe forward price means the average for the preceding Friday through Thursday of the forward shipment prices for the lowest-priced United States growth as quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

U.S. Northern Europe price means, during the period when only one daily price quotation is available for the United States growths quoted for M 1 3/32 inch cotton, C.I.F. northern Europe, the average for the preceding Friday through Thursday of the lowest-priced United States growth as quoted for M 1 3/32 inch cotton, C.I.F. northern Europe.

§ 1427.103 Eligible and ineligible upland cotton.

(a) For the purposes of this subpart, eligible upland cotton is domestically produced upland cotton baled lint, including baled lint classified by USDA's Agricultural Marketing Service as Below Grade, which is purchased by an eligible domestic user or sold for

export by an eligible exporter under a written contract entered into on or after August 1 1991 and on or before July 31, 1996, during a Friday through Thursday period in which a payment rate, determined in accordance with § 1427.107, is in effect and which is delivered to the eligible domestic user or exported by the eligible exporter by not later than September 30, 1996.

(b) For the purposes of this subpart, ineligible upland cotton is:

(1) Cotton for which a written contract for purchase or sale was entered into prior to the week in which a Northern Europe forward price for new crop cotton was available for four consecutive weeks;

(2) Cotton with respect to which a payment, in accordance with the provisions of this subpart, has been made available;

(3) Loose;

(4) Reprocessed gin motes; and

(5) Imported cotton.

§ 1427.104 Eligible domestic users and exporters.

(a) For the purposes of this subpart, the following persons, including producers or cooperative marketing associations approved in accordance with part 1425 of this chapter, shall be considered to be eligible domestic users and exporters of upland cotton:

(1) A person regularly engaged in purchasing eligible upland cotton for processing such cotton in the United States ("domestic user"), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program; or

(2) A person regularly engaged in selling eligible upland cotton for exportation from the United States for processing such cotton outside the United States ("exporter"), who has entered into an agreement with CCC to participate in the upland cotton user marketing certificate program.

(b) Applications for payment in accordance with this subpart must contain documentation required by the provisions of the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

§ 1427.105 Upland Cotton Domestic User/Exporter Agreement.

(a) Payments in accordance with this subpart shall be made available to eligible domestic users and exporters who have entered into an Upland Cotton Domestic User/Exporter Agreement with CCC and who have complied with the terms and conditions set forth in this subpart, the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

(b) Upland Cotton Domestic User/Exporter Agreements may be obtained from Cotton Branch, CRD, Kansas City Commodity Office, P.O. Box 419205, Kansas City, Missouri 64141–6205. In order to participate in the program authorized in this subpart, domestic users and exporters must execute the Upland Cotton Domestic User/Exporter Agreement and forward an original and two copies to KCCO.

§ 1427.106 Commodity certificates.

Payments in accordance with this subpart shall be made available in the form of commodity certificates issued in accordance with part 1470 of this chapter.

§ 1427.107 Payment rate.

(a) For contracts for upland cotton purchased by domestic mills or sold for export by exporters entered into on or after August 1, 1991, and on or before July 31, 1996, the payment rate for the purposes of calculating payments made available in accordance with this subpart shall be determined by CCC as follows:

(1) During the period when only the Northern Europe price is available:

(i) For contracts for purchase or sale of upland cotton entered into between August 1 of the calendar year in which the crop was planted and the day prior to the day on which the Northern Europe current price and the Northern Europe forward price first become available which specify delivery of old crop cotton by not later than September 30 of the year following the year in which the crop was planted, the payment rate shall be the difference in the fourth week between the U.S. Northern Europe price minus 1.25 cents per pound, and the Northern Europe price. If the upland cotton contracted for purchase or sale which was actually delivered was new crop cotton, the payment rate shall be zero.

(ii) For contracts for purchase or sale of upland cotton that specify delivery of new crop cotton, the payment rate shall be zero.

(2) During a period when both the Northern Europe current price and the Northern Europe forward price are available and the Northern Europe current price and the Northern Europe forward price have been available for four consecutive weeks:

(i) For contracts for purchase or sale of upland cotton which specify delivery of old crop cotton by not later than September 30 of the year following the year in which the crop was planted, the payment rate shall be the difference in the fourth week between the U.S. Northern Europe current price minus 1.25 cents per pound, and the Northern Europe current price.

(ii) For contracts for purchase or sale of upland cotton which specify delivery of old crop cotton after September 30 of the year following the year in which the crop was planted, the payment rate shall be the difference in the fourth week between the U.S. Northern Europe forward price minus 1.25 cents per pound, and the Northern Europe forward price.

(iii) For contracts for purchase or sale of upland cotton which specify delivery of new crop cotton, the payment rate shall be the difference in the fourth week between the U.S. Northern Europe forward price minus 1.25 cents per pound, and the Northern Europe forward price.

(iv) If the upland cotton contracted for purchase or sale in accordance with paragraphs (a)(2)(i) through (a)(2)(iii) which was actually delivered was not produced in the same crop year as specified in the contract, the payment rate for such cotton shall be:

(A) For contracts entered into in accordance with paragraph (a)(2)(i), the lesser of the payment rate established in paragraph (a)(2)(i), or the difference in the fourth week of the comparable period between the U.S. Northern Europe forward price minus 1.25 cents per pound, and the Northern Europe forward price.

(B) For contracts entered into in accordance with paragraph (a)(2)(ii), the lesser of the payment rate established in paragraph (a)(2)(ii), or the difference in the fourth week of the comparable period between the U.S. Northern Europe current price minus 1.25 cents per pound, and the Northern Europe current price.

(C) For contracts entered into in accordance with paragraph (a)(2)(iii), the lesser of the payment rate established in paragraph (a)(2)(iii), or the difference in the fourth week of the comparable period between the U.S. Northern Europe current price minus 1.25 cents per pound, and the Northern Europe current price.

(b) Notwithstanding the provisions in paragraph (a), whenever a 4-week period contains a combination of Northern Europe prices only for one to three weeks and Northern Europe current prices and Northern Europe forward prices only for one to three weeks such as occurs in the spring when the Northern Europe price is succeeded by the Northern Europe current price and the Northern Europe forward price ("spring transition period"), and at the start of a new marketing year when the Northern Europe current price and the

Northern Europe forward price are succeeded by the Northern Europe price ("marketing year transition"):

(1) In the case of the spring transition period, the Northern Europe current price and the U.S. Northern Europe current price in combination with the Northern Europe price and the U.S. Northern Europe price shall be taken into consideration during such 4-week periods to determine whether a payment is triggered. The Northern Europe current price and the U.S. Northern Europe current price in the fourth week shall be used to establish the payment rate.

(2) In the case of the marketing year transition period, the Northern Europe forward price and the U.S. Northern Europe forward price in combination with the Northern Europe price and the U.S. Northern Europe price shall be taken into consideration during such 4-week periods to determine whether a payment is triggered. The Northern Europe price and the U.S. Northern Europe price in the fourth week shall be used to establish the payment rate.

(c) Notwithstanding the requirements of this section, with respect to contracts for purchase or sale that specify delivery of the cotton by not later than September 30 of the applicable year, the domestic user or exporter has until October 31 of such year to complete the delivery to the domestic user or to export the cotton. If the delivery or exportation is not completed by October 31, the cotton will be ineligible for payment.

(d) For the purposes of this subpart—

(1) With respect to the determination of the U.S. Northern Europe price, the U.S. Northern Europe current price, the U.S. Northern Europe forward price, the Northern Europe price, the Northern Europe current price and the Northern Europe forward price—

(i) If daily quotes are not available for one or more days of the 5-day period, the available quotes during the period will be used.

(ii) If no daily quotes are available for the entire 5-day period for either or both the U.S. Northern Europe price and the Northern Europe price during the period when only one daily price quotation is available for each growth quoted for M 1$^{3}/_{32}$ inch cotton, delivered C.I.F. northern Europe; or the U.S. Northern Europe current price and the Northern Europe current price; or the U.S. Northern Europe forward price and the Northern Europe forward price, that week will not be taken into consideration, in which case no payment rate shall be established.

(2) With respect to the determination of the U.S. Northern Europe price, U.S. Northern Europe current price, and the U.S. Northern Europe forward price, if a quote for either the U.S. Memphis territory or the California/Arizona territory as quoted for M 1$^{3}/_{32}$ inch cotton, delivered C.I.F. northern Europe, is not available for each or any day of the 5-day period, the available quote will be used.

§ 1427.108 Payment.

(a) Payments in accordance with this subpart shall be determined by multiplying:

(1) The payment rate, determined in accordance with § 1427.107, by

(2) The net weight (gross weight minus the weight of bagging and ties) determined in accordance with paragraph (b) of this section, of eligible upland cotton that is purchased by an eligible domestic user or sold by an eligible exporter for exportation from the United States during the Friday through Thursday period following a week in which a payment rate is established.

(b) For the purposes of this subpart, the net weight shall be determined based upon:

(1) For domestic users, the weight on which settlement for payment was based ("landed mill weight");

(2) For exporters, the original warehouse weight or the ginned weight if the cotton was no placed in a warehouse, of the eligible cotton unless the exporter obtains and pays the cost of having all the bales in the shipment reweighed by a licensed weigher and furnishes a copy of the certified reweights.

(c) For the purposes of this subpart, eligible upland cotton will be considered purchased by the domestic user or sold by the exporter on the date the contract for purchase or sale is confirmed in writing.

(d) Payments in accordance with this subpart shall be available upon application for payment and submission of supporting documentation, including proof of receipt of the eligible cotton by the domestic user or proof of export by the exporter, as required by the provisions of the Upland Cotton Domestic User/Exporter Agreement and instructions issued by CCC.

Signed at Washington, DC on June 13, 1991.

Keith D. Bjerke,

Executive Vice President Commodity Credit Corporation.

[FR Doc. 91-14485 Filed 6-13-91; 2:56 pm]

BILLING CODE 3410-05-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-0870-89]

RIN 1545-AO24

Earnings Stripping (Section 163(j))

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to section 163(j) of the Internal Revenue Code, regarding "earnings stripping." This action is necessary because of changes to the applicable tax law made by the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, 103 Stat. 2106.

DATES: Written comments must be received by August 19, 1991. Requests to speak at a public hearing (with outlines of oral comments) scheduled for September 25, 1991, must be received by September 4, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines of comments to be presented, to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attention: CC:CORP:T:R (INTL-0870-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the regulation generally, phone Jack Feldman, at (202) 566-6645, or Jeffrey Vinnik, at (202) 566-6442; concerning § 1.163(j)-8, phone Elizabeth Karzon, at (202) 566-6442 (not toll-free calls), or write to the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attention: CC:CORP:T:R (INTL-0870-89), Washington, DC 20044. Concerning the hearing, phone Felicia Daniels, Regulations Unit, at (202) 566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, attn: 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 in these regulations is in § 1.163(j)–5(d). This information is required by the Internal Revenue Service to verify elections made by the taxpayer. The likely respondents are businesses or for profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on information is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Estimated total annual reporting burden: 1,196 hours.

The estimated annual burden per respondent varies from 20 minutes to 40 minutes, depending on individual circumstances, with an estimated average of .52 hours.

Estimated number of respondents: 2,300.

Estimated annual frequency of responses: 1.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 163(j) of the Internal Revenue Code.

Explanation of Provisions

Section 163(j) was added to the Internal Revenue Code of 1986 by the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, 103 Stat. 2106, to prevent erosion of the U.S. base by means of excessive deductions for interest paid by a taxable corporation to a tax exempt (or partially tax exempt) related person. The payment of excessive deductible interest that is tax exempt (or partially tax exempt) in the hands of a related person is referred to as "earnings stripping." These proposed regulations implement section 163(j) as follows.

Section 1.163(j)–1

Section 1.163(j)–1(a) provides the primary operative rule that no deduction shall be allowed for interest expense paid or accrued directly or indirectly by a corporation to a related person if no tax is imposed with respect to such interest. The disallowance rules do not apply if the payor corporation is either an S corporation or a foreign corporation (except as provided under § 1.163(j)–8, relating to foreign corporations with effectively connected income). Paragraph (a)(2) provides that the amount of disallowed interest expense (the year's disallowed interest expense) is limited to the lesser of exempt related person interest expense (defined in paragraph (a) of § 1.163(j)–2) or excess interest expense (defined in paragraph (b) of § 1.163(j)–2). Paragraph (a)(3) provides that interest expense disallowed in a taxable year is carried forward to succeeding taxable years as disallowed interest expense carryforwards.

Paragraph (b) provides that, in addition to the limitation on disallowance provided under paragraph (a)(2), a deduction for exempt related person interest expense shall not be disallowed for any taxable year in which the debt-equity ratio of the payor corporation is less than or equal to 1.5 to 1 determined on the last day of that year. Although section 163(j)(2)(A)(ii) grants the Service the authority to determine the debt-equity ratio more frequently than annually, a more frequent determination was not adopted because many taxpayers might have difficulty in obtaining the required information prior to the close of their taxable years. However, to prevent possible manipulation of a strictly annual determination of the debt equity ratio, paragraphs (b)(4) and (c)(5) of § 1.163(j)–3 provide anti-avoidance rules.

Paragraph (c) provides that disallowed interest expense carryforward is allowable in the carryforward year only to the extent of any excess limitation for that year as defined in § 1.163(j)–2(c). In determining whether a deduction is allowed in a carryforward year for disallowed interest expense carryforward, the payor corporation's debt-equity ratio in such year is not relevant.

Paragraph (d) provides rules for the carryforward of excess limitation. Excess limitation is carried forward to each of the three succeeding taxable years and reduces (and is also reduced by) excess interest expense in a carryforward year without regard to whether the payor corporation has exempt related person interest expense or whether the payor corporation satisfies the debt-equity ratio safe harbor test in a carryforward year. Pre-effective date notional excess limitation may be carried forward to post-effective date taxable years in certain cases, as provided under § 1.163(j)–10(c).

Paragraph (e) provides that the disallowance of interest under section 163(j) does not affect the payor corporation's determination of earnings and profits.

Paragraph (f) provides a general anti abuse rule to prevent the avoidance of section 163(j) and these regulations.

Section 1.163(j)–2

Section 1.163(j)–2 provides definitions. Paragraph (a) defines "exempt related person interest expense" as interest paid or accrued by a corporation described in § 1.163(j)–1 to a related person (as defined in paragraph (g)) if no tax is imposed on such interest under the rules of § 1.163(j)–4. Paragraph (b) defines "excess interest expense" as the excess of the payor corporation's net interest expense over 50 percent of its adjusted taxable income plus the amount of any excess limitation carryforward. Paragraph (c) defines "excess limitation" as the excess of 50 percent of a corporation's adjusted taxable income over its net interest expense. Paragraph (d) defines "net interest expense" as the excess of a corporation's interest expense over its interest income for the taxable year. Net interest expense is computed without regard to any disallowed interest expense carryforward.

Paragraph (e) provides rules for the determination of interest income and expense, including rules dealing with the treatment of bond premium and market discount and rules for determining the interest income and expense of a corporate partner in a partnership. Under these rules, a corporate partner is treated as the payor of its share of the partnership's interest expense. The Internal Revenue Service plans to publish rules which treat interest equivalents as interest for purposes of section 163(j) and solicits comments regarding the scope and operation of such rules. These rules will generally be prospective with respect to transactions entered into in the ordinary course of business. However, in the case of transactions entered into with a purpose of avoiding section 163(j), the rules regarding interest equivalents may be retroactive.

Paragraph (e) also contains an anti-avoidance rule providing that certain substitute payments under section 1058 will be treated as interest expense.

Paragraph (f) defines adjusted taxable income as taxable income computed without regard to carryforwards and disallowances under section 163(j) and with certain adjustments. Some of these adjustments are stipulated in section 163(j); others have been added pursuant to regulatory authority granted by section 163(j)(6)(A)(ii). In general, the purpose of these adjustments is to

modify taxable income to more closely reflect the cash flow of the corporation. Thus, for example, paragraph (f) provides for an addback of interest excluded from gross income under section 103, since such amounts increase cash available to the payor corporation. Similarly, cash expended with respect to amounts which are permanently disallowed as deductions under sections 265 and 279 are subtracted under paragraph (f) in computing adjusted taxable income, since such expenditures have reduced the amount of available cash to service loans. Paragraph (f)(4) provides special rules dealing with the effect of an adjusted taxable loss on other computations required by these regulations.

Except as provided in § 1.163(j)–8, only the adjustments prescribed in paragraph (f) shall be made in determining adjusted taxable income. The Service, however, solicits comments on whether particular adjustments should either be added to, or deleted from, paragraph (f). Such comments should address, among other issues, the administrative burden of the proposed rules and any suggested revisions.

Under paragraph (g)(1), a related person is defined as a person related to the taxpayer within the meaning of section 267(b) or 707(b)(1). For this purpose, the attribution rules of section 267(c) apply. In determining whether persons are related, the substance of ownership, rather than its form, controls. Under paragraph (g)(3), the date for testing relatedness is the date upon which an item of interest expense accrues. Thus, changes in the relationship between the payor corporation and the payee after the accrual date are irrelevant. The daily accrual rule of section 1272(a) applies, regardless of the taxpayer's method of accounting. Paragraph (g)(4) provides special rules for certain partnerships regarding relatedness.

Section 1.163(j)–3

Section 1.163(j)–3 provides rules for the computation of the debt-equity ratio. Debt is determined under paragraph (b)(1) in accordance with generally applicable tax principles. Thus, in general, a contingent liability for financial accounting purposes that has not accrued for tax purposes will not be treated as a liability for purposes of section 163(j). Paragraph (b)(1) also has special rules for discount obligations consistent with section 163(j)(2)(C)(ii). Paragraph (b)(2)(i) provides a limited exclusion from debt for certain short term liabilities, and paragraph (b)(2)(ii) provides a similar exclusion for commercial financing liabilities.

Paragraph (b)(3) provides that liabilities incurred by a partnership are treated as incurred by each partner in accordance with the rules of section 752. Paragraph (b)(4) provides an anti-rollover rule to prevent abuse by a corporation of the year-end determination of the debt-equity ratio.

Equity is defined under paragraph (c)(1) as the sum of money and the adjusted basis of assets (determined according to generally applicable tax principles) reduced, but not below zero, by the corporation's debt. Paragraph (c)(2) provides for adjustments to be made to the basis of stock in certain nonincludible corporations based on the principles of section 864(e)(4). Under paragraph (c)(3), assets are reduced by the amount of short term liabilities excluded from debt under paragraph (b)(2). Paragraph (c)(4) provides that in determining the assets of a corporation that owns an interest in a partnership, the partner shall treat the adjusted basis of its partnership interest as an asset. Paragraph (c)(5) provides a general anti-avoidance rule, plus an anti-stuffing rule to prevent possible abuse by a corporation of the year-end determination of debt-equity ratio.

Paragraph (d) provides that the spot rate on the last day of the taxable year is used to translate the debt and equity of a qualified business unit with a non-dollar functional currency.

Comments are solicited with respect to determining the debt and assets of financial institutions and insurance companies, including the effect of reserves on such determinations.

Section 1.163(j)–4

Section 1.163(j)–4 provides rules addressing whether interest paid or accrued is subject to U.S. tax. Paragraph (a) states the general rule that interest paid or accrued by a corporation is not subject to tax for purposes of section 163(j) if no U.S. tax is imposed under subtitle A of the Internal Revenue Code or if U.S. tax is reduced under a treaty. Paragraph (b) provides that income subject to U.S. tax at a reduced rate under a treaty will be treated in part as interest subject to tax and in part as tax-exempt interest.

Paragraph (c) provides that the determination as to whether interest is subject to U.S. tax is made on the date the interest is received or accrued by the payee, whichever is relevant for purposes of taxing the payee.

Paragraph (d) provides rules under which certain interest paid to special entities, including controlled foreign corporations ("CFCs"), passive foreign investment companies ("PFICs"), foreign personal holding companies, and DISCs, is treated as subject to U.S. tax. See H.R. Rep. No. 247, 101st Cong., 1st Sess. 1240, 1244 (1989) (hereafter, "House Report"). Paragraph (d)(1) generally provides that interest paid or accrued to a CFC is treated as subject to U.S. tax to the extent that such interest is included in the CFC's net foreign personal holding company income under § 1.954–1T(c) and results in an inclusion in the gross income of a U.S. shareholder under section 951(a)(1)(A)(i). A similar rule is provided for foreign personal holding companies in paragraph (d)(3). Interest paid or accrued to a PFIC that is not a CFC, with respect to which a QEF election has been made by a U.S. shareholder, is treated as subject to U.S. tax to the extent that such interest is included in the QEF's ordinary earnings and results in an inclusion in such shareholder's income under section 1293(a)(1)(A). Producer's loan interest that is treated as a deemed distribution to a DISC's shareholder under section 995(b)(1)(A) also is treated as subject to U.S. tax.

Section 1.163(j)–5

Section 1.163(j)–5 implements the directive of section 163(j)(6)(C) that all members of the same affiliated group be treated as one taxpayer. In order to implement this directive, the basic rules of these regulations have been modified as necessary to carry out the purposes of section 163(j). See section 163(j)(7) (A) and (B).

Section 1.163(j)–5(b) applies the rules of section 163(j) (other than the debt-equity ratio computations discussed below) to consolidated groups. For this purpose, all of the members of the consolidated group make the computations required by section 163(j) and these regulations on a consolidated basis. If a corporation ceases to be a member of the consolidated group, any disallowed interest expense carryforward of the group is apportioned to the member based on the ratio of the member's exempt related person interest expense to the group's exempt related person interest expense. However, corporations ceasing to be members of the group generally may not carry forward any portion of the group's excess limitation carryforward to separate return years.

Section 1.163(j)–5(c) provides comparable rules applicable to other affiliated groups. For this purpose, section 1.163(j)-5(a)(3) expands the definition of affiliated groups under section 1504(a) by applying the attribution rules of section 318 to determine stock ownership. Thus, an affiliated group under these rules may

include a consolidated group, and the consolidated group is treated as a single member of the affiliated group for purposes of making computations for the affiliated group. Section 1.163(j)–5(c) requires each group member to take into account the relevant items of income, expense, and carryover of all group members. If members of an affiliated group have different taxable years, then the computations required by section 163(j) are separately determined for each member on an affiliated group basis by aggregating the relevant items for all group members whose taxable years end with or within the taxable year of the member making the computations.

Section 1.163(j)–5(c)(2) provides a four step process for making the affiliated group computations and for allocating amounts among group members. The four step process is necessary because the group members do not all join in filing the same return.

Section 1.163(j)–5(d) generally provides that for purposes of applying the debt-equity ratio safe harbor test described in § 1.163(j)–1(b), the debt-equity ratio of a corporation that is a member of an affiliated group (whether or not a consolidated group) is determined by aggregating the separately determined debt and assets of the members (adjusted as described in paragraphs (d)(2) and (d)(3)). Debt and assets arising from certain interaffiliate transactions are disregarded.

Section 163(j)–5(e) provides special rules that address distortions in the debt-equity ratio that may arise in a qualified stock purchase, as defined in section 338(d)(3), if no election is made to step up the basis of the assets of the target corporation and its affiliates. (This distortion may arise because the affiliated group rules of section 163(j) look through to the underlying assets of an acquired corporation rather than its stock basis.) If the purchasing corporation so elects, the special rules of § 1.163(j)–5(e) look to the adjusted basis of the target's stock (adjusted for liabilities) and amortize these amounts (the "special basis") over a fixed period. At the end of any taxable year, a taxpayer may elect out of the fixed stock write-off method and use the adjusted basis of the assets of the target corporation in determining the group's debt-equity ratio.

The Service recognizes the complexity of the affiliated group rules in § 1.163(j)–5 and solicits comments on how these rules might be improved, simplified or clarified, whether in the context of consolidated groups or otherwise. Comments are also solicited as to whether, under what circumstances, and to what extent it might be appropriate to extend the fixed stock write-off method to nontaxable acquisitions of stock or assets. Finally, the Service is considering whether and how to impose a conformity requirement under paragraph (e) of this section that would prevent a group from selectively applying the fixed stock write-off method only when the purchase price of a target company exceeds the target's basis in its assets. The Service solicits comments on the appropriateness of such a rule, and on how such a rule might be implemented.

Section 1.163(j)–6

This section limits the carryover of certain tax attributes by corporations which join consolidated groups or affiliated groups (as defined in § 1.163(j)–5(a)), as well as with respect to transactions described in section 381(a).

Paragraph (a) limits the use of disallowed interest expense carried forward from non-affiliation years by corporations joining a group or that transfer or distribute their assets in a transaction described in section 381(a). The only restriction under these regulations on the use of such disallowed interest expense is with respect to the use of non-affiliation year excess limitation carryforward to absorb the disallowed interest expense. The same limitation applies with respect to corporations joining groups, whether the groups are consolidated groups or affiliated groups. See §§ 1.163(j)–5(b) (relating to consolidated groups) and (c) (relating to other affiliated groups). Where there is a section 382 ownership change, the disallowed interest expense carryforward may be limited by the section 382 limitation. In addition, the deductibility of a corporation's disallowed interest expense carried forward to a taxable year after it joins a consolidated group may be limited by the separate return limitation year rules under § 1.1502–15.

Paragraph (b)(1) limits the use of excess limitation carried forward from non-affiliation years by corporations joining a group. The limitation is similar to the limitation on the carryover of net operating losses under the "SRLY" rules of § 1.1502–21(c) (i.e., generally such carryforward may be used by the corporation to the extent that it would have been available for use had no affiliation occurred). If a consolidated group acquires another group, whether or not consolidated, the amount of the acquired group's excess limitation carryforward (if any) from non-affiliation years that may be used by the consolidated group is determined by treating the former members of the acquired group as a single member of the acquiring group. Computations with respect to the acquired group are made under § 1.163(j)–5(c), and the results of these computations are taken into account by the group under § 1.163(j)–5(b).

Paragraph (b)(2) provides that a corporation's excess limitation carryforward from a non-affiliation year is reduced to zero immediately after a transfer or distribution of its assets in a transaction described in section 381(a) (other than a transaction described in section 368(a)(1)(F)). Paragraph (b)(3) provides an anti-abuse rule. Paragraphs (c) and (d) provide definitions and anti-duplication rules.

The Service recognizes the complexity of the affiliated group rules and solicits comments on how these rules might be improved, simplified or clarified, whether in the context of consolidated groups or otherwise.

Section 1.163(j)–7

This section addresses the interaction of section 163(j) and certain other Code provisions. Paragraph (a) provides that interest expense is not considered paid or accrued for purposes of section 163(j) until such interest would be deductible but for such section.

Paragraph (b) addresses other Code provisions which permanently disallow interest, which defer the deductibility of interest, or which limit the deductibility of certain deductions including interest, specifically the "at risk" rules under section 465 and the passive activity loss rules under section 469. In each of these cases, section 163(j) is applied after the application of such provisions. Thus, section 163(j) will not apply to interest expense which is permanently disallowed as a deduction under provisions such as sections 265 and 279. Where the deductibility of interest expense is deferred as under sections 163(e)(3) and 267(a)(3), section 163(j) will not apply until a deduction for such interest expense is otherwise allowable. Similarly, sections 465 and 469 are applied before section 163(j) to disallow interest expense. Once section 163(j) is applied, section 469 is not reapplied.

Paragraph (b)(4) addresses the interaction of section 163(j) and Code provisions relating to the capitalization of certain interest expense. Under this paragraph, the capitalization rules are applied before section 163(j). For all purposes under section 163(j), capitalized interest is not treated as interest expense. It is anticipated that regulations to be issued under section

263A(f) will provide: (1) That exempt related person interest expense which is attributable to traced debt will be capitalized; and (2) with respect to interest expense that is not attributable to traced debt, interest expense that is not exempt related person interest expense will be capitalized before interest expense that is exempt related person interest expense.

The Service proposes to adopt these rules for capitalized interest, notwithstanding the legislative history of section 163(j) (see House Report at 1244), because it believes that other approaches would require substantial additional complexity. The Service will revisit this decision if it believes that the proposed rule gives rise to significant tax avoidance.

Paragraph (b)(5) provides that section 246A is applied before section 163(j). Any reduction in the dividends received deduction under section 246A reduces interest expense taken into account under section 163(j).

Section 1.163(j)–8

This section concerns the application of section 163(j) to foreign corporations that have incomes gain, or loss that is effectively connected, or deemed effectively connected, with the conduct of a U.S. trade or business. A foreign corporation is permitted to allocate a portion of its worldwide interest expense to the effectively connected income of its U.S. trade or business. This section disallows the exempt related person interest expense of a foreign corporation based on the same principles that apply to disallow a domestic corporation's exempt related person interest expense. To determine if interest allocated to the effectively connected income of the U.S. trade or business is paid to an exempt related person, the rules of section 884(f) apply. Thus, interest paid by the U.S. trade or business (within the meaning of section 884(f)(1)(A)) is treated as paid directly to the recipient of the interest, and will be treated as paid to a related person if the recipient is related to the foreign corporation. Excess interest (within the meaning of section 884(f)(1)(B)) is treated as paid by a wholly owned domestic subsidiary of the foreign corporation to the foreign corporation, and hence is treated as paid to a related person. Additional rules provide that this section does not affect the computation of a foreign corporation's effectively connected earnings and profits or U.S. net equity for purposes of section 884.

Section 1.163(j)–9

The Service expects to publish regulations addressing guarantees in the near future. The rules with respect to guarantees will be prospective. Nonetheless, in cases presenting fact patterns similar to that described in *Plantation Patterns, Inc.* v. *Commissioner,* 462 F.2d 712 (5th Cir.), *cert. denied,* 409 U.S. 1076 (1972), the Service will continue to seek to characterize purported guaranteed debt as equity. The Service's position on back-to-back loans is set forth in revenue rulings including Rev. Rul. 84–152, 1984–2 C.B. 381, Rev. Rul. 84–153, 1984–2 C.B. 383, and Rev. Rul. 87–89, 1989–2 C.B. 195.

Comments are solicited on rules regarding guarantees and back-to-back loans.

Section 1.163(j)–10

In general, section 163(j) provides for disallowance of interest paid or accrued in taxable years beginning after July 10, 1989. However, interest that would otherwise be disallowed under the general rule will not be disallowed if paid with respect to a fixed-term obligation outstanding on July 10, 1989 (a grandfathered obligation). An obligation will cease to be treated as grandfathered if its term is extended, or if it is revised in a transaction that results in the obligee being deemed to have made an exchange of debt instruments under section 1001 of the Code. Under an anti-avoidance rule, a grandfathered obligation also will cease to be so treated if it is acquired by a person related to the obligor as part of a transaction that otherwise would circumvent the purposes of the effective date rules.

A limited grandfathering also exists under section 163(j) for interest paid with respect to obligations issued pursuant to a written contract binding on July 10, 1989. A contract will be treated as binding for this purpose only if it was enforceable by an unrelated third party on July 10, 1989, and at all times thereafter until the obligation is issued.

A very limited transition rule exists with respect to demand obligations outstanding on July 10, 1989. Interest paid or accrued prior to September 1, 1989, with respect to such demand loans shall not be disallowed by section 163(j) even though it was paid or accrued in a taxable year beginning after July 10, 1989.

A final effective date rule concerns the computation of excess limitation carryforward with respect to the first three taxable years to which section 163(j) applies. In computing a taxpayer's disallowed interest expense under section 163(j), the taxpayer may take into account amounts that would have been excess limitation carryforward had the statute been in effect with respect to interest paid or accrued in taxable years beginning after July 10, 1986.

General Comments

The Service solicits comments on whether, and to what extent, the rules of section 163(j) and these regulations comport with the arm's length standards for "thin capitalization." In particular, the Service invites comments on the proper application of the arm's length standard to related party debt; on the use of a cash-flow versus a debt-equity standard; and on the problems of tax administration in this area. See H.R. Conf. Rep. No. 386, 101st Cong., 1st Sess. 568–570 (1989).

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure 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, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held on September 25, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register.**

Drafting Information

The principal authors of these regulations are Jack Feldman and Jeffrey Vinnik. However, the principal author of § 1.163(j)–8 is Elizabeth Karzon. Messrs. Feldman and Vinnik and Ms. Karzon are of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury

Department participated in developing the regulations.

List of Subjects in 26 CFR 1.161–1 through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

Proposed amendments to the regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

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

PARAGRAPH 1. The authority for part 1 continues to read in part:

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

PAR. 2. Sections 1.163(j)–0 through 1.163(j)–10 are added as follows:

§ 1.163(j)–0 Table of contents.

This section contains a listing of the major headings of §§ 1.163(j)–1 through 1.163(j)–10.

§ 1.163(j)–1 Limitation on deduction for certain interest paid or accrued by a corporation to related persons.

(a) In general.
(1) Deduction for exempt related person interest expense disallowed.
(2) Limitation on disallowance of deduction.
(3) Disallowed interest expense carryforward.
(b) Debt-equity ratio safe harbor test.
(c) Treatment of disallowed interest expense carryforward.
(1) In general.
(2) Effect of debt-equity safe harbor.
(d) Carryforward of excess limitation.
(e) Effect on earnings and profits.
(f) Anti-avoidance rule.
(g) Examples.
(h) Cross-references.

§ 1.163(j)–2 Definitions.

(a) Exempt related person interest expense.
(b) Excess interest expense.
(c) Excess limitation.
(d) Net interest expense.
(e) Interest income and expense.
(1) In general.
(2) Treatment of bond premium and market discount.
(3) Interest equivalents. [Reserved]
(4) Interest income of partnerships.
(5) Interest expense of partnerships.
(6) Certain substitute payments.
(f) Adjusted taxable income.
(1) In general.
(2) Additions.
(3) Subtractions.
(4) Effect of adjusted taxable loss.
(g) Related persons.
(1) In general.
(2) Anti-abuse rule.
(3) When related person status is tested.
(4) Special rule for certain partnerships.
(5) Examples.

§ 1.163(j)–3 Computation of debt-equity ratio.

(a) In general.
(b) Debt.
(1) In general.
(2) Exclusions.
(3) Liabilities of a partnership.
(4) Anti-rollover rule.
(c) Equity.
(1) In general.
(2) Treatment of stock of certain nonincludible corporations.
(3) Reduction in assets for excluded liabilities.
(4) Partnership interests owned by a corporation.
(5) Anti-avoidance rule.
(d) Determining the debt and equity of a non-dollar functional currency QBU.

§ 1.163(j)–4 Interest not subject to tax.

(a) In general.
(b) Partially exempt interest.
(c) Date for determining whether interest is subject to U.S. tax.
(d) Certain interest paid to special entities.
(1) Controlled foreign corporations.
(2) Passive foreign investment companies.
(3) Foreign personal holding companies.
(4) Producer's loan interest paid to a DISC.

§ 1.163(j)–5 Affiliated group rules.

(a) Certain related corporations treated as one taxpayer.
(1) Scope.
(2) Affiliated corporations.
(3) Certain unaffiliated corporations.
(4) Tie-breaker rules.
(b) Operative rules for consolidated groups.
(1) In general.
(2) Items determined on a consolidated basis.
(3) Exempt related person interest expense.
(4) Deferred intercompany gain.
(5) Carryforwards to current taxable year.
(6) Members leaving the group.
(7) Examples.
(c) Operative rules for other groups.
(1) In general.
(2) Determination and allocation of group items.
(3) Examples.
(d) Debt-equity ratio of related corporations treated as one taxpayer.
(1) In general.
(2) Adjustments to group members' debt.
(3) Adjustments to group members' assets.
(e) Election to use fixed stock write-off method for certain stock acquisitions.
(1) In general.
(2) Post-acquisition adjustments to special basis.
(3) Election out of fixed stock write-off method.
(4) Method for making elections.
(5) Definitions.
(6) Inclusion of target debt notwithstanding use of fixed stock write-off method.

§ 1.163(j)–6 Limitation on carryforward of tax attributes.

(a) Disallowed interest expense carryforward.
(1) Affiliated groups.
(2) Section 381(a) trancactions.
(3) Section 382 and SRLY.
(4) Example.
(b) Excess limitation carryforward.
(1) Affiliated groups.
(2) Section 381(a) transactions.
(3) Anti-avoidance rules.
(c) Affiliation and non-affiliation years.
(1) In general.
(2) Predecessors and successors.
(3) Formation of affiliated groups.
(d) Anti-duplication rule.

§ 1.163(j)–7 Relationship to other provisions affecting the deductibility of interest.

(a) Paid or accrued.
(b) Coordination of section 163(j) and certain other provisions.
(1) Disallowed interest provisions.
(2) Deferred interest provisions.
(3) At risk rules and passive activity loss provisions.
(4) Capitalized interest expense.
(5) Reductions under section 246A.
(c) Examples.

§ 1.163(j)–8 Application of section 163(j) to certain foreign corporations.

(a) Scope.
(b) Disallowed interest expense.
(c) Definitions.
(1) In general.
(2) Net interest expense.
(3) Adjusted taxable income.
(4) Excess interest expense.
(5) Excess limitation.
(d) Determination of interest paid to a related person.
(e) Debt-equity ratio.
(f) Example.
(g) Coordination with branch profits tax.
(1) Effect on effectively connected earnings and profits.
(2) Effect on U.S net equity.
(3) Example.

§ 1.163(j)–9 Guarantees and back-to-back loans. [Reserved]

§ 1.163(j)–10 Effective dates.

(a) In general.
(b) Exceptions.
(1) Interest paid on certain fixed-term obligations outstanding on July 10, 1989.
(2) Demand loans.
(c) Carryforward of excess limitation from pre-effective date taxable years to post-effective date taxable years.
(d) Examples.

§ 1.163(j)–1 Limitation on deduction for certain interest paid or accrued by a corporation to related persons.

(a) *In general*—(1) *Deduction for exempt related person interest expense disallowed.* Except as provided in this section, no deduction shall be allowed for exempt related person interest expense (as defined in § 1.163(j)–2(a)) paid or accrued during the taxable year directly or indirectly by—

(i) A domestic corporation (other than an S corporation as defined in section 1361), or

(ii) Under the special rules described in § 1.163(j)–8, a foreign corporation with income, gain, or loss that is

effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(2) *Limitation on disallowance of deduction.* The amount of exempt related person interest expense disallowed as a deduction in any taxable year (described hereafter as the year's "disallowed interest expense") shall not exceed the payor corporation's excess interest expense (as defined in § 1.163(j)–2(b)) for that year.

(3) *Disallowed interest expense carryforward.* Disallowed interest expense shall be carried forward to the succeeding taxable year (hereafter, a "disallowed interest expense carryforward"). A deduction for disallowed interest expense carryforward may be allowed as provided in paragraph (c) of this section.

(b) *Debt-equity ratio safe harbor test.* No deduction shall be disallowed under paragraph (a) of this section for exempt related person interest expense paid or accrued in any taxable year in which the payor corporation's debt-equity ratio (determined as provided in § 1.163(j)–3) is less than or equal to 1.5 to 1 on the last day of the taxable year.

(c) *Treatment of disallowed interest expense carryforward*— (1) *In general.* A deduction for disallowed interest expense carryforward is allowed in a carryforward year if and to the extent that there is excess limitation (as defined in § 1.163(j)–2(c)) for such year. Any disallowed interest expense carryforward not so deductible shall be carried forward to the succeeding taxable year.

(2) *Effect of debt-equity safe harbor.* The debt-equity ratio in a carryforward year is not relevant in determining whether disallowed interest expense carryforward is deductible in such year. Rather, disallowed interest expense carryforward is deductible only to the extent of the excess limitation for such year.

(d) *Carryforward of excess limitation.* If a corporation has excess limitation (as defined in § 1.163(j)–2(c)) for any taxable year, the amount of such excess limitation, reduced by disallowed interest expense carryforward to that year, shall be carried forward to each of the three succeeding taxable years. In each of those years, such carryforward shall reduce, and be reduced by, the amount, if any, of the corporation's excess interest expense for such year computed without regard to the carryforward. The excess limitation carryforward shall reduce, and be reduced by, excess interest expense in a carryforward year without regard to whether the corporation pays or accrues any exempt related person interest expense in that year, or whether the corporation satisfies the debt-equity ratio safe harbor test described in paragraph (b) of this section for that year. If a corporation has carryforwards from more than one taxable year, such carryforwards shall reduce, and be reduced by, excess interest expense in the order in which they arose. For purposes of all the reductions described in this paragraph, excess limitation, excess limitation carryforward, and excess interest expense shall not be reduced below zero. For rules regarding the effect of an adjusted taxable loss with respect to excess limitation carryforward, see § 1.163(j)–2(f)(4)(ii).

(e) *Effect on earnings and profits.* The disallowance and carryforward of a deduction for interest expense under this section shall not affect whether or when such interest expense reduces earnings and profits of the payor corporation.

(f) *Anti-avoidance rule.* Arrangements, including the use of partnerships or trusts, entered into with a principal purpose of avoiding the rules of section 163(j) and these regulations shall be disregarded or recharacterized to the extent necessary to carry out the purposes of section 163(j).

(g) *Examples.* The following examples illustrate the rules of this section.

Example 1 (i) A, a domestic corporation, is a wholly owned subsidiary of F, a foreign corporation. During its taxable year ending December 31, 1990, A has adjusted taxable income of $100, which includes $20 of interest income, and $90 of interest expense, of which $60 is paid or accrued to F. The balance of the interest expense is paid to unrelated persons. Interest paid to F by A is not subject to U.S. tax due to a tax treaty. A does not satisfy the debt-equity ratio safe harbor test in 1990, and has no excess limitation carried forward to that year.

(ii) A's excess interest expense for 1990 is $20, which is the difference between its net interest expense and 50 percent of its adjusted taxable income ($70 − $50 = $20). Since for 1990, the amount of A's exempt related person interest expense ($60) is greater than its excess interest expense ($20), a deduction for $20 of A's exempt related person interest expense is disallowed under paragraph (a) of this section. A's 1990 disallowed interest expense is carried forward to A's succeeding taxable year.

Example 2 (i) The facts are the same as in paragraph (i) of Example 1. In 1991, A has $120 of adjusted taxable income, net interest expense of $50, and $20 of disallowed interest expense carried forward from 1990. All of A's interest expense for 1991 is paid to unrelated persons. A does not satisfy the debt-equity ratio safe harbor test in 1991.

(ii) A has excess limitation (as defined in § 1.163(j)–2 (c)) of $10 ($60 (50% of adjusted taxable income) − $50 (net interest expense)) in 1991. In 1991, A may deduct the interest expense paid or accrued in that year to unrelated persons, plus $10 of disallowed interest expense carryforward from 1990. The balance of A's disallowed interest expense carryforward from 1990 ($10) is carried forward to A's 1992 taxable year.

Example 3 (i) The facts are the same as in paragraph (i) of Example 2. In 1992, A satisfies the debt-equity ratio safe harbor test, has adjusted taxable income of $210, and net interest expense of $100. All A's interest expense for 1992 is paid or accrued to F.

(ii) In 1992, A has excess limitation of $5 ($105 (50% of adjusted taxable income) − $100 (net interest expense)). Applying the principles of paragraph (c) of this section, A's $10 of disallowed interest expense carryforward from 1991 (see Example 2, paragraph (ii)) is allowed in 1992 only to the extent of the $5 of excess limitation for that year. The remaining $5 of disallowed interest expense carried forward from 1991 is carried forward to A's 1993 taxable year.

Example 4(i) The facts are the same as in paragraph (i) of Example 3. In 1993, A satisfies the debt-equity ratio safe harbor test, has adjusted taxable income of $100, and has net interest expense of $75, all of which is paid or accrued to F.

(ii) A's excess interest expense for 1993 is $25 ($75 (A's net interest expense)—$50 (50% of its adjusted taxable income)). Applying the principles of paragraphs (a) and (b) of this section, section 163(j) does not disallow a deduction in 1993 for any of A's excess interest expense that is exempt related person interest expense. Under paragraph (c) of this section, A's $5 of disallowed interest expense carryforward from 1992 (see Example 3, paragraph (ii)) is not deductible in 1993, and is carried forward to A's 1994 taxable year.

(h) *Cross-references.* For rules regarding affiliated groups for purposes of section 163(j), see § 1.163(j)–5. For rules limiting the deductibility of disallowed interest expense carryforward and restricting the use of excess limitation carried forward to taxable years after the occurrence of certain corporate transactions, see § 1.163(j)–6.

§ 1.163(j)–2 Definitions.

(a) *Exempt related person interest expense.* The term "exempt related person interest expense" means interest expense that is (or is treated as) paid or accrued by a corporation described in § 1.163(j)–1 (a) to a related person (within the meaning of paragraph (g) of this section) if no tax is imposed with respect to such interest under rules provided in § 1.163(j)–4.

(b) *Excess interest expense.* The term "excess interest expense" means the excess, if any, of a corporation's net interest expense (as defined in paragraph (d) of this section) over the sum of 50 percent of its adjusted taxable income (as defined in paragraph (f) of

this section) plus any excess limitation carried forward to the taxable year (under the rules of § 1.163(j)–1(d)). See paragraph (f)(4)(ii) of this section for rules regarding the effect of an adjusted taxable loss on the computation of excess interest expense.

(c) *Excess limitation.* The term "excess limitation" means the excess, if any, of 50 percent of a corporation's adjusted taxable income (as defined in paragraph (f) of this section) over its net interest expense (as defined in paragraph (d) of this section). (d) *Net interest expense.* The term "net interest expense" means the excess, if any, of the amount of interest expense paid or accrued (directly or indirectly) by a corporation during the taxable year over the amount of interest includible (directly or indirectly) in its gross income for such year.

(d) *Net interest expense.* The term "net interest expense means the excess, if any, of the amount of interest expense paid or accrued (directly or indirectly) by a corporation during the taxable year over the amount of interest includible (directly or indirectly) in its gross income for such year.

(e) *Interest income and expense*—(1) *In general.* Interest income shall generally be determined under section 61 and shall include original issue discount as provided in sections 1272 through 1275 (adjusted, under section 1272(a)(7), for any acquisition premium paid by a subsequent holder), acquisition discount as provided in sections 1281 through 1283, and amounts that are treated as original issue discount under section 1286 (pertaining to stripped bonds). Interest expense shall generally be determined under section 163(a) and shall include original issue discount as provided in section 163(e). Interest expense for a taxable year does not take into account any disallowed interest expense carried forward to that year under the rules of § 1.163(j)–1. Interest income or expense with respect to a debt instrument denominated in a nonfunctional currency (or the payments of which are determined with reference to a nonfunctional currency) shall be determined in accordance with section 988 and the regulations thereunder. For rules regarding the relationship of section 163(j) to other Code provisions under which a deduction for interest expense may be disallowed or deferred, see § 1.163(j)–7.

(2) *Treatment of bond premium and market discount*—(i) *Bond Premium.* In the case of any bond with respect to which an election made under section 171(c) is in effect, amortizable bond premium (as defined in section 171(b)) shall reduce interest income. Bond premium included in income by the issuer under the principles of § 1.61–12 (or the successor provision thereof) shall reduce interest expense.

(ii) *Market discount.* Gain treated as ordinary income on the disposition of a market discount bond under section 1276(a) shall be treated as interest income.

(3) *Interest equivalents.* [Reserved]

(4) *Interest income of partnerships.* Interest paid or accrued to a partnership shall be treated under section 163(j) and these regulations (other than paragraph (g) of this section) as paid or accrued to the partners of the partnership in proportion to each partner's distributive share (as defined in section 704) of the partnership's interest income for the taxable year.

(5) *Interest expense of partnerships.* Interest expense paid or accrued by a partnership and the tax exempt interest expense of a partnership (within the meaning of § 1.163(j)–4) shall be treated for all purposes under section 163(j) and these regulations as paid or accrued by the partners of the partnership in proportion to each partner's distributive share (as defined in section 704) of the partnership's interest expense and tax exempt interest expense, respectively, for the taxable year. Thus, a corporation which is a partner in a partnership shall be treated as paying or accruing its share of the partnership's interest expense, and is treated as the payor of such interest expense.

(6) *Certain substitute payments*—(i) *In general.* If pursuant to an agreement meeting the requirements of section 1058 (b), there is a transfer of securities (as defined in section 1236(c)) between related persons (within the meaning of paragraph (g) of this section), payments described in section 1058(b)(2) with respect to such transferred securities ("substitute payments") shall be treated as interest expense for purposes of section 163(j) and these regulations.

(ii) *Effective date.* This paragraph (e)(6) shall be effective with respect to substitute payments paid or accrued after July 18, 1991.

(f) *Adjusted taxable income*—(1) *In general.* The term "adjusted taxable income" means a corporation's taxable income for the taxable year, computed without regard to any carryforwards or disallowances under section 163(j), and determined with the modifications described in paragraphs (f)(2) and (f)(3) of this section. A corporation's adjusted taxable income may be a negative amount (*i.e.* an adjusted taxable loss). See paragraph (f)(4) of this section for rules regarding the effect of an adjusted taxable loss.

(2) *Additions.* The following amounts shall be added to a corporation's taxable income to determine its adjusted taxable income:

(i) The net interest expense (as defined in paragraph (d) of this section) for the taxable year;

(ii) The net operating loss deduction under section 172;

(iii) Deductions for depreciation under sections 167 and 168;

(iv) Deductions for the amortization of intangibles and other amortized expenditures (*e.g.,* start-up expenditures under section 195 and organizational expenditures under section 248);

(v) Deductions for depletion under section 611;

(vi) Carryovers of excess charitable contributions (within the meaning of section 170 (d)(2)), to the extent allowable as a deduction in the taxable year;

(vii) The increase, if any, between the end of the preceding year and the end of the current year in accounts payable (other than interest payable) that are included in the computation of taxable income;

(viii) The decrease, if any, between the end of the preceding taxable year and the end of the current taxable year in accounts receivable (other than interest receivable) that are included in the computation of taxable income;

(ix) Interest which is excluded from gross income under section 103;

(x) The dividends received deduction as provided under section 243 (other than deductions under section 243 (a)(3));

(xi) The increase, if any, in the LIFO recapture amount (as defined in section 312(n)(4)(B)) between the end of the preceding taxable year and the end of the current taxable year; and

(xii) Any deduction in the taxable year for capital loss carrybacks or carryovers.

(3) *Subtractions.* The following amounts shall be subtracted from taxable income to determine adjusted taxable income:

(i) With respect to the sale or disposition of property (including a sale or disposition of property by a partnership), any depreciation, amortization, or depletion deductions which were allowed or allowable for the taxpayer's taxable years beginning after July 10, 1986, with respect to such property;

(ii) With respect to the sale or disposition of stock of a member of a consolidated group that includes the selling corporation, an amount equal to the investment adjustments (as defined under §§ 1.1502–32 and 1.1502–32T) with respect to such stock that are attributable to deductions described in paragraph (f)(3)(i) of this section;

(iii) With respect to the sale or other disposition of an interest in a partnership, an amount equal to the taxpayer's distributive share of

deductions described in paragraph (f)(3)(i) of this section with respect to property held by the partnership at the time of such sale or other disposition;

(iv) The decrease, if any, between the end of the preceding taxable year and the end of the current taxable year in accounts payable (other than interest payable) which are included in the computation of the corporation's taxable income;

(v) The increase, if any, between the end of the preceding taxable year and the end of the current taxable year in accounts receivable (other than interest receivable) which are included in the computation of the corporation's taxable income;

(vi) Amounts that would be deductible but for section 265 (regarding expenses and interest relating to tax-exempt income) or 279 (regarding interest on indebtedness incurred by a corporation to acquire stock or assets of another corporation);

(vii) The amount of any charitable contribution (as defined in section 170(c)) made during the taxable year that exceeds the amount deductible in that year by reason of section 170(b)(2);

(viii) The decrease, if any, in the LIFO recapture amount (as defined in section 312 (n)(4)(B)) between the end of the preceding taxable year and the end of the current taxable year; and

(ix) The amount of any net capital loss (as defined in section 1222(10)) for the taxable year.

(4) *Effect of adjusted taxable loss*—(i) *In general.* If a payor corporation has an adjusted taxable loss for the taxable year, then its adjusted taxable income shall be treated as zero.

(ii) *Effect on excess limitation carryforward.* The amount of an adjusted taxable loss reduces excess limitation carryforward for the purpose of determining whether there is excess interest expense for a taxable year.

(iii) *Adjusted taxable loss not carried forward.* An adjusted taxable loss in one taxable year shall not affect the determination of a corporation's adjusted taxable income for any other taxable year.

(g) *Related persons*—(1) *In general.* The term "related person" means any person who is related to the taxpayer within the meaning of sections 267(b) or 707(b)(1). For this purpose, the constructive ownership and attribution rules of section 267(c) shall apply.

(2) *Anti-abuse rule.* In determining whether persons are related, the substance, rather than the form, of ownership is controlling. Thus, for example, the principles of § 1.957–1 (b)(2) shall apply to determine whether an arrangement to shift formal voting power or formal ownership of shares away from any person for the purpose of avoiding the application of section 163 (j) shall be given effect.

(3) *When related person status is tested.* Whether a person is related to a payor corporation under section 163(j) is determined with respect to an item of interest expense when such interest expense accrues. For this purpose (notwithstanding the rules in § 1.163(j)–7), interest expense (including amounts treated as interest under this section) shall be treated as accruing daily under principles similar to section 1272(a). Also for this purpose, interest described in paragraph (e)(5) of this section shall be treated as accrued by a partner as it is accrued, under the principles of the preceding sentence, by the partnership. Changes in the relationship between the payor corporation and the payee after an item of interest expense accrues shall not be taken into account.

(4) *Special rule for certain partnerships*—(i) *Less than 10 percent of partnership held by tax exempt persons.* Any interest expense paid or accrued to a partnership directly or indirectly by a payor corporation that (without regard to this paragraph (g)(4)) is related to the partnership within the meaning of this paragraph (g) shall not be treated as paid or accrued to a related person if less than 10 percent of the capital and profits interests in such partnership are held by persons with respect to whom no tax is imposed on such interest by subtitle A of the Internal Revenue Code under rules provided in § 1.163(j)–4. However, the preceding sentence shall not apply to treat as interest paid to an unrelated person any interest that (under rules described in this section) is includible in the gross income of a partner in such a partnership who is itself a related person with respect to the payor of such interest.

(ii) *Reduction of tax by treaty.* If a treaty between the United States and a foreign country reduces the rate of tax imposed by subtitle A of the Code on a partner's distributive share of any interest paid or accrued to a partnership, such partner's interest in the partnership shall, for purposes of § 1.163(j)–2(g)(4)(i), be treated as held in part by a taxable person and in part by a tax exempt person in accordance with the rules described in § 1.163(j)–4(b).

(5) *Examples.* The principles of this paragraph (g) are illustrated by the following examples.

Example 1. (i) Fifty-one percent of the total combined voting power and value of domestic corporation A is owned by a domestic tax-exempt corporation, D1; the remainder is owned by foreign corporation F1. F1 is organized under the laws of country Z. Under a U.S. tax treaty with country Z, interest paid by A to F1 is exempt from U.S. tax under the rules of § 1.163 (j)–4.

(ii) Under these facts, D1 is related to A under section 267(b)(3) (because D1 and A are members of the same controlled group of corporations, as defined in section 267(f)), and interest payments made by A to D1 are exempt related person interest expense, a deduction for which may be disallowed under section 163(j). F1 is not related to A within the meaning of sections 267(b) or 707(b)(1). Deductions for interest paid by A to F1 are not subject to disallowance under section 163(j).

Example 2. (i) The facts are the same as in paragraph (i) of Example 1, except that D1 and F1 each own 50 percent of the vote and value of X's stock.

(ii) Unless the substance of D1's and F1's ownership differs from its form, so that paragraph (g)(2) of this section (regarding abusive ownership structures) applies, none of the interest paid by A to D1 or F1 is subject to disallowance under section 163(j).

Example 3. (i) A, a domestic corporation whose taxable year is the calendar year, is a wholly owned subsidiary of F, a foreign corporation. A is a partner, with a one-third share in the capital and profits interests, of P, a domestic partnership whose taxable year is the calendar year. During its taxable year ending December 31, 1990, and taking into account its interest in P, A has adjusted taxable income of $126.67. A's directly incurred interest income and expense for the taxable year are $20 and $90. Of the $90 of interest expense, $60 is paid or accrued to F.

(ii) P's interest income and interest expense for the taxable year of the partnership ending December 31, 1990, are $20 and $50, respectively. A's share of these amounts (determined under rules described in § 1.163(j)–2) are $6.67 and $16.67, respectively. Of P's $50 interest expense for the taxable year, $20 is paid or accrued to F, and the balance is paid or accrued to persons unrelated to A or to any of the other partners of P.

(iii) Interest paid or treated as paid to F by A is not subject to U.S. tax due to a tax treaty. Taking into account A's investment in the partnership (under rules described in § 1.163 (j)–3), A does not satisfy the debt-equity ratio safe harbor test in 1990.

(iv) Under § 1.163(j)–1(a) and paragraphs (e) (4) and (5) of this section, in its taxable year ending December 31, 1990, A is required to take into account the interest income and interest expense it directly incurs, plus its share of P's interest income and interest expense. Thus, A's interest income for 1990 is $26.67, and its interest expense is $106.67. A's excess interest expense for 1990 is $16.67, which is the difference between its net interest expense ($106.67 (interest expense) −$26.67 (interest income) = $80) and 50 percent of its adjusted taxable income (($126.67 x 50% = $63.33).

(v) For 1990, under the rule described in paragraph (e)(5) of this section, the amount of A's exempt related person interest expense is $66.67 ($60 + $6.67 = $66.67). Since that amount is greater than its excess interest expense ($16.67), section 163 (j) disallows a

deduction for $16.67 of A's interest expense for the taxable year. That disallowed interest expense is carried forward to A's 1991 taxable year.

Example 4. (i) X, a domestic corporation, is wholly owned by Y, a partnership. A treaty between the United States and foreign country U reduces the rate of tax on interest paid to residents of country U from 30 percent (the applicable rate for related person interest under sections 871 and 881 in the absence of a treaty) to 15 percent. Nineteen percent of the capital and profits interests of partnership Y are held by Z, a country U corporation entitled to claim the reduced (treaty) rate of tax on interest income; the balance is held by unrelated persons not exempt from U.S. tax on their distributive shares of interest paid by the corporation to the partnership.

(ii) Under paragraph (g)(4) of this section, less than ten percent (19 percent divided by two (30/15)) of Y's capital and profits interests are treated as held by persons who are tax exempt. Accordingly, all interest paid to partnership Y by corporation X is treated as paid to an unrelated person.

§ 1.163(j)–3 Computation of debt-equity ratio.

(a) *In general.* For purposes of section 163(j), the term "debt-equity ratio" means the ratio that the debt of the corporation bears to the equity of the corporation. For rules defining debt and equity, see paragraphs (b) and (c) of this section. For rules regarding the computation of the debt and equity of an affiliated group or a foreign corporation, see §§ 1.163(j)–5 or 1.163(j)–8, respectively.

(b) *Debt*—(1) *In general.* The debt of a corporation means its liabilities determined according to generally applicable tax principles. Thus, the amount taken into account on the issue date with respect to a debt instrument which is not issued at a discount or a premium shall be the issue price. The amount taken into account with respect to any debt with original issue discount shall be its issue price plus the portion of the original issue discount previously accrued as determined under the rules of section 1272 (determined without regard to section 1272(a)(7) or (b)(4)). In addition, with respect to the issuer, unamortized bond premium shall be treated as debt.

(2) *Exclusions.* Short-term liabilities as defined in paragraph (b)(2)(i) of this section and commercial financing liabilities as defined in paragraph (b)(2)(ii) of this section shall be excluded from characterization as debt.

(i) *Short-term liabilities.* The term "short-term liabilities" means accrued operating expenses, accrued taxes payable, and any account payable for the first 90 days of its existence provided that no interest is accrued with respect to any portion of such 90 day period.

(ii) *Commercial financing liabilities.* The term "commercial financing liabilities" means any liability if it—

(A) Is incurred by the obligor under a commercial financing agreement (such as an automobile "floorplan" agreement) to buy an item of inventory;

(B) Is secured by the item;

(C) Is due on or before sale of the item; and

(D) If entered into between related parties, has terms that are comparable to the terms of such financing agreements between unrelated parties in the same (or a similar) industry.

(3) *Liabilities of a partnership.* In determining the debt of a corporation that owns an interest in a partnership (directly or indirectly through one or more pass-through entities), liabilities of the partnership shall be treated as liabilities incurred directly by each partner in the same manner and proportions that the liabilities of the partnership are treated as shared by its partners under section 752.

(4) *Anti-rollover rule.* Decreases in a corporation's aggregate debt during the last 90 days of its taxable year shall be disregarded to the extent that the corporation's aggregate debt is increased during the first 90 days of the succeeding taxable year.

(c) *Equity*—(1) *In general.* Equity means the sum of money and the adjusted basis of all other assets of the corporation reduced (but not below zero) by the taxpayer's debt (as defined in paragraph (b) of this section). Whether an item constitutes an asset shall be determined according to generally applicable tax principles.

(2) *Treatment of stock of certain nonincludible corporations.* Under the general rule of paragraph (c)(1) of this section, assets include the adjusted basis of stock of any corporation which is not an includible corporation (as defined under section 1504(b)). The adjusted basis of stock held in a corporation which is not an includible corporation shall be further adjusted under principles similar to those in section 864(e)(4) if the taxpayer (or the members of an affiliated group of which the taxpayer is a member) owns stock in the corporation satisfying the requirements of section 864(e)(4)(B)(ii). *Cf.* § 1.861–12T(c)(2).

(3) *Reduction in assets for excluded liabilities.* The amount of a taxpayer's equity under paragraph (c) (1) and (2) of this section shall be reduced (but not below zero) by an amount equal to the amount of liabilities excluded under paragraph (b)(2) of this section.

(4) *Partnership interests owned by a corporation.* In determining the assets of a corporation that owns an interest in a partnership, the corporation shall treat as an asset the adjusted basis of its partnership interest.

(5) *Anti-avoidance rules*—(i) *In general.* An asset of the taxpayer shall be disregarded in computing the taxpayer's debt-equity ratio if the principal purpose for acquiring the asset was to reduce the taxpayer's debt-equity ratio.

(ii) *Anti-stuffing rule.* In determining a corporation's equity, any transfer of assets made by a related person to the corporation during the last 90 days of its taxable year shall be disregarded to the extent that there is a transfer of the same or similar assets by the corporation to a related person during the first 90 days of the corporation's succeeding taxable year. However, this rule shall not apply to the extent that there is full consideration for a transfer in money or property (as that term is defined in section 317(a)).

(d) *Determining the debt and equity of a non-dollar functional currency QBU.* In determining the dollar value of liabilities and assets on the books of a qualified business unit that has a functional currency other than the dollar, such liabilities and assets shall be translated at the spot rate on the last day of the taxable year.

§ 1.163(j)–4 Interest not subject to tax.

(a) *In general.* Interest paid or accrued by a corporation under the rules of § 1.163(j)–1 is not subject to tax for purposes of section 163(j) if no U.S. tax is imposed with respect to such interest under subtitle A of the Internal Revenue Code (determined without regard to net operating losses or net operating loss carryovers), taking into account any applicable treaty obligation of the United States. For this purpose, whether interest paid or accrued to a partnership is subject to tax is determined at the partner level.

(b) *Partially exempt interest.* Interest that is subject to a reduced rate of tax under any treaty obligation of the United States applicable to the recipient shall be treated as in part subject to the statutory tax rate under sections 871 or 881 and in part not subject to tax, based on the proportion that the rate of tax under the treaty bears to the statutory tax rate. Thus, for purposes of section 163(j), if the statutory tax rate is 30 percent, and pursuant to a treaty U.S. tax is instead limited to a rate of 10 percent, two-thirds of such interest shall be considered interest not subject to tax.

(c) *Date for determining whether interest is subject to U.S. tax.* The determination of whether interest is subject to U.S. tax is made on the date the interest is received or accrued by the payee, whichever is relevant under normally applicable U.S. tax principles for purposes of determining the tax, if any, on the payee.

(d) *Certain interest paid to special entities*—(1) *Controlled foreign corporations*—(i) *In general.* Interest that is paid or accrued to a foreign corporation described in section 957(a) (a "controlled foreign corporation") and that is not otherwise subject to tax under paragraph (a) of this section shall be deemed subject to tax to the extent that such interest is included in the foreign corporation's net foreign personal holding company income under § 1.954–1T(c) and results in an inclusion in the gross income of a United States shareholder under section 951(a)(1)(A)(i) (or would have been included in a United States shareholder's gross income but for an election under § 1.954–1T(d)).

(ii) *Effect of section 952(c)(1)(A) (earnings and profits) limitation.* For purposes of paragraph (d)(1) of this section, if a controlled foreign corporation's subpart F income for the taxable year is limited under section 952(c)(1)(A), each category of subpart F income described in section 952(a), and, within each such category, each component thereof, shall be treated as reduced ratably.

(iii) *Net foreign personal holding company income.* To determine whether an item of interest income is included in a controlled foreign corporation's net foreign personal holding company income for the taxable year, the expenses allocable to such interest shall be deemed to bear the same ratio to the total expenses allocable to the controlled foreign corporation's net foreign personal holding company income (determined pursuant to § 1.954–1T(c)) as the amount of such interest bears to the controlled foreign corporation's gross foreign personal holding company income (determined under § 1.954–1T(a)(2)(i)).

(iv) *Related person interest.* If related person interest is allocated to the item of interest under the provisions of § 1.904–5(c)(2) and paragraph (d)(1)(iii) of this section, and if the United States shareholder receiving such related person interest is subject to United States tax, then, for purposes of paragraph (d)(1)(i) of this section, such allocable related person interest shall be deemed to be net foreign personal holding company income that results in an inclusion under section 951(a)(1)(A)(i).

(v) *Section 78 amount.* Any foreign taxes that are allocable to an item of interest income satisfying the requirements of paragraph (d)(1)(i) of this section and that are included in a United States shareholder's income under section 78 (or would have been included, but for an election under § 1.954–1T(d)) shall, for purposes of paragraph (d)(1)(i) of this section, be deemed to be net foreign personal holding company income that results in an inclusion under section 951(a)(1)(A)(i).

(2) *Passive foreign investment companies*—(i) *In general.* Interest that is not otherwise subject to tax under paragraph (a) of this section, and that is paid or accrued to a passive foreign investment company (as defined in section 1296) that is not a controlled foreign corporation, and which a U.S. person has elected under section 1295 to treat as a qualified electing fund ("QEF"), shall be treated as subject to tax to the extent that such interest is included in the QEF's ordinary earnings (as defined in section 1293(e)(1)) and results in an inclusion in income of such U.S. person under section 1293(a)(1)(A).

(ii) *Ordinary earnings.* In determining whether an item of interest income is included in the ordinary earnings of a passive foreign investment company, the item shall be reduced by deductions allocable and apportionable to that item under §§ 1.861–8 through 1.861–14T.

(iii) *Section 78 amount.* Any foreign taxes that are allocable to an item of interest income satisfying the requirements of paragraph (d)(2)(i) of this section and that are included in a U.S. person's income under section 78 pursuant to section 1293(f) shall, for purposes of paragraph (d)(2)(i) of this section, be deemed to be ordinary earnings that are included in the income of a U.S. person under section 1293(a)(1)(A).

(3) *Foreign personal holding companies*—(i) *In general.* Interest that is not otherwise subject to tax under paragraph (a) of this section, and that is paid or accrued to a foreign personal holding company (as defined in section 552) that is neither a passive foreign investment company nor a controlled foreign corporation, shall be treated as subject to tax to the extent that such interest is included in the company's undistributed foreign personal holding company income (as defined in section 556) and results in an inclusion in income of a U.S. person under section 551(a).

(ii) *Undistributed foreign personal company income.* In determining whether an item of interest income is included in the undistributed foreign personal holding company income of a foreign personal holding company, the item shall be reduced by deductions allocable and apportionable to that item under §§ 1.861–8 through 1.861–14T.

(iii) *Effect of distributions.* Any amount that would be treated as subject to tax by virtue of this paragraph (d)(3) but for a dividends paid deduction under section 561 shall be treated subject to tax.

(4) *Producer's loan interest paid to a DISC.* Interest paid or accrued with respect to a DISC (as defined in section 992) that is treated as interest with respect to a producer's loan (as defined in section 993(d)) is treated as subject to U.S. tax if such interest is taxed to the shareholders of the DISC under section 995(b)(1)(A).

§ 1.163(j)–5 Affiliated group rules.

(a) *Certain related corporations treated as one taxpayer*—(1) *Scope.* This section applies section 163(j) to certain related corporations which are (or are treated as) members of an affiliated group and which under section 163(j)(6)(C) and (7) are treated as a single taxpayer. Paragraphs (a)(2) and (a)(3) of this section describe the corporations that are subject to such treatment. (For purposes of section 163(j) and these regulations, the rules in regulations under section 1502 apply, but unless the context otherwise requires, the term "member" means a corporation that is, or is treated as, a member of an affiliated group under this paragraph (a), and the term "group" refers collectively to the member and the other corporations that are so treated.) Paragraph (a)(4) of this section provides rules that treat a corporation as a member of a single affiliated group if the rules of this paragraph (a) would otherwise cause it to be treated as a member of more than one affiliated group. Paragraph (b) of this section provides rules regarding the computation of items of income, expense, and carryovers under section 163(j) for an affiliated group of corporations if all of the members of such group join in the filing of a single consolidated return for the taxable year under section 1501. Paragraph (c) of this section provides rules for corporations that are not members of consolidated groups which are subject to the rules of § 1.163(j)–5(b). Paragraph (d) of this section provides rules regarding the computation of the debt-equity ratio for purposes of applying the debt-equity

ratio safe harbor test described in § 1.163(j)–1(b). Paragraph (e) of this section provides rules regarding the treatment of, and an election pertaining to, assets of certain acquired corporations.

(2) *Affiliated corporations.* To the extent provided in this section, all the members of an affiliated group (as defined in section 1504(a)) of which a corporation is a member on the last day of its taxable year shall be treated as one taxpayer for purposes of section 163(j) and this section, without regard to whether such affiliated group files a consolidated return pursuant to section 1501.

(3) *Certain unaffiliated corporations*—(i) *In general.* If at least 80 percent of the total voting power and total value of the stock of an includible corporation (as defined in section 1504(b)) is owned, directly or indirectly, by another includible corporation, the first corporation shall be treated as a member of an affiliated group that includes the other corporation and its affiliates. The attribution rules of section 318 shall apply for purposes of determining indirect stock ownership under this paragraph (a)(3).

(ii) *Example.* The principles of this paragraph (a)(3) are illustrated by the following example.

Example. X and Y are wholly owned domestic subsidiaries of F, a foreign corporation. X and Y are not members of an affiliated group under section 1504(a) because F is not itself an includible corporation under section 1504(b)(3). However, under paragraph (a)(3) of this section, X and Y are treated as members of an affiliated group, since, under section 318(a)(3)(C), X is treated as owning indirectly 100 percent of Y, and Y is treated as owning indirectly 100 percent of X.

(4) *Tie-breaker rules.* If the rules of this paragraph (a) would treat a corporation as a member of more than one affiliated group, then the principles of section 1563(b)(4) and the regulations thereunder shall determine the group of which such corporation shall be treated as a member.

(b) *Operative rules for consolidated groups*—(1) *In general.* If all of the members of the affiliated group are members of a single consolidated group for the taxable year, the computations required by section 163(j) and these regulations (other than the computation of the group's debt-equity ratio under paragraph (d) of this section) shall be made in accordance with the rules of this paragraph (b). See paragraph (c) of this section for rules applicable to affiliated groups not described in the preceding sentence.

(2) *Items determined on a consolidated basis.* The computations required by section 163(j) and these regulations shall be determined for the group on a consolidated basis. For example, the group's taxable income shall be the consolidated taxable income determined under § 1.1502–11 (without regard to any carryforwards or disallowances under section 163(j)), and the group's net interest expense shall be the excess, if any, of the group's aggregate interest expense over the group's aggregate interest income (as provided in §§ 1.163(j)–2 (d) and (e)). Similarly, the group's excess interest expense shall be determined by reference to the group's net interest expense, adjusted taxable income, and excess limitation carryforward (as determined under paragraph (b)(5) of this section). Except as provided in paragraphs (b) (5) and (6) of this section, disallowed interest expense carryforwards and excess limitation carryforwards shall also be determined on a consolidated basis.

(3) *Exempt related person interest expense.* In determining the group's exempt related person interest expense, interest expense shall be treated as paid or accrued to a related person (within the meaning of § 1.163(j)–2(g)) if it would be so treated if paid or accrued to the same payee by any member of the group.

(4) *Deferred intercompany gain.* For purposes of determining the adjusted taxable income of the group, the following special rules shall apply—

(i) Any gain on a deferred intercompany transaction (including any gain described in § 1.1502–14T(a)) that is restored in accordance with the rules under §§ 1.1502–13(d) or 1.1502–13T(1) shall be subtracted from the group's consolidated taxable income.

(ii) If property is disposed of under § 1.1502–13 (e)(2) or (f) or § 1.1502–13T(m), any amount subtracted from the group's consolidated taxable income in a previous taxable year with respect to such property under paragraph (b)(4)(i) of this section shall be added to the group's consolidated taxable income.

(iii) *Example.* The principles of this paragraph (b)(4) are illustrated by the following example.

Example (i) On January 1, 1991, X, a member of an affiliated group which files a consolidated return for the calendar year, purchases property for $200 from an unrelated person. X depreciates the property over a 5-year period. On January 1, 1996, when X's basis in the property is $0, X sells the property to Y, another member of the group, for $200, which is the property's fair market value at such time. The sale is a deferred intercompany transaction under § 1.1502–13, and X's gain of $200 is deferred under § 1.1502–13(c). In the hands of Y the property is once again depreciable over a 5-year period. The group claims a depreciation deduction with respect to the property of $40 in 1996, which results in the restoration of $40 of X's deferred gain under § 1.1502–13T(1) for such year.

(ii) As provided in paragraph (b)(3)(i) of this section, the group's taxable income for 1996 is reduced by $40, the amount of restored gain under § 1.1502–13T(1) with respect to the transferred property. In addition, as provided in § 1.163(j)–2(f)(2)(iii) and paragraph (b)(2) of this section, the group's taxable income for 1996 is increased by $40, the amount of the group's depreciation deduction with respect to the transferred property for such year.

(iii) On January 1, 1997, Y sells the property for $200 to an unrelated person and recognizes gain of $40. The sale results in restoration of $160 of gain under § 1.1502–13T(m) with respect to the earlier transfer of property from X to Y. Thus, Y's sale results in the group's 1997 consolidated taxable income increasing by $200 prior to any adjustment under section 163(j). Under § 1.163(j)–2(f)(3)(i), the consolidated taxable income is reduced by $240 to reflect previous depreciation deductions with respect to such property. In addition, as provided in paragraph (b)(4)(ii) of this section, the consolidated taxable income is increased by $40, the amount subtracted from the group's 1996 consolidated taxable income by virtue of the restoration of $40 of deferred gain in that year.

(5) *Carryforwards to current taxable year.* The group's disallowed interest expense carryforward or excess limitation carryforwards to the current taxable year shall be the relevant carryforwards from the group's prior taxable years, plus any disallowed interest expense carryforward or excess limitation carryforwards from separate return years permitted to be used by the group under the rules of § 1.163(j)–6.

(6) *Members leaving the group*—(i) *Disallowed interest expense carryforward.* A member leaving the group shall carry forward to its separate return years a portion of the group disallowed interest expense carryforward determined as of the end of the last consolidated return year during which the corporation was a member of the group. Such portion shall equal the amount of the group's disallowed interest expense carryforward multiplied by a fraction, the numerator of which is the aggregate amount of exempt related person interest expense paid or accrued by such member during the period when it was a member of the group, and the denominator of which is the aggregate amount of exempt related person interest expense paid or accrued by all members of the group. If a member has pre-affiliation disallowed interest expense carryforward upon entering the group, the amount of such member's

disallowed interest expense carryforward shall be treated as exempt related person interest expense of both the member and the group. Further, the group's disallowed interest expense carryforward shall be reduced by the amount allocated to the member. If the member leaves the group during the consolidated return year, rules similar to the rules of § 1.1502–21(b)(2) shall apply.

(ii) *Excess limitation carryforward.* A member leaving the group shall not carry forward to its separate return years any portion of the group's excess limitation carryforward, and the group's excess limitation carryforward shall not be reduced by virtue of such member's departure from the group. However, if all the members of a consolidated group become members of another consolidated group, the acquired group's excess limitation carryforward shall become excess limitation carryforward of the corporation that was the common parent of the acquired group. For purposes of determining the extent to which this excess limitation carryforward becomes excess limitation carryforward of the acquiring group under paragraph (b)(5) of this section, see § 1.163(j)–6 (b).

(7) *Examples.* The following examples illustrate the principles of this paragraph (b).

Example 1 (i) X, Y, and Z are domestic corporations that are members of a newly formed consolidated group described in paragraph (b) of this section. X owns 100 percent of the stock of Y, and Y owns 80 percent of the stock of Z. F1, a foreign corporation, owns 60 percent of the stock of X. Any interest paid or accrued by X, Y, or Z to F1 is exempt under section 163(j) because it is exempt from U.S. withholding tax under a treaty with F1's country of residence. Such interest (including interest paid by Z) is also paid or accrued to a related person within the meaning of § 1.163(j)–2 (g) and paragraph (b)(3) of this section.

(ii) For 1991, the group's first taxable year, X, Y, and Z have the following relevant items of income and expense—

Company	Interest income	Interest expense	Exempt related person interest expense
X	$600	$500	
Y	200	900	$600
Z		200	150
Total	800	1,600	750

(iii) Under § 1.1502–11, the group's consolidated taxable income for the 1991 year is $150. Adjustments to consolidated taxable income total $50, resulting in consolidated adjusted taxable income of $200. The group's net interest expense for 1991 is $800 ($1,600–$800), and its excess interest expense is $300 ($800–($1,000/2)). The group's exempt related person interest expense for 1991 is $750. The group's disallowed interest expense for 1991 is the lesser of its excess interest expense or its exempt related person interest, or $300. This $300 is a group disallowed interest expense carryforward to the group's 1992 taxable year.

Example 2—(i) The facts are the same as in Example 1. In the group's 1992 taxable year, the members have the following relevant items of income and expense—

Company	Interest income	Interest expense	Exempt related person interest expense
X	$600	$500	$50
Y	200	900	600
Z		200	150
Total	800	1,600	800

(ii) Under § 1.1502–11, the group's consolidated taxable income for 1992 is $1,100. Adjustments to consolidated taxable income total $200, resulting in consolidated adjusted taxable income of $1,300. The group's net interest expense for 1992 is $800 ($1,600–$800), its excess interest expense is $0 ($800–($2,100/2)), and it has excess limitation for the year of $250 ($2,100/2–$800). The group is permitted to deduct all of its current exempt related person interest expense ($800), plus an amount of its disallowed interest expense carryforward from 1991 equal to its 1992 excess limitation, or $250. This leaves a disallowed interest expense carryforward to the group's 1993 taxable year of $50.

Example 3. The facts are the same as in Example 2, except that Z leaves the group on December 31, 1992. Under the rules of paragraph (b)(6)(i) of this section, Z's disallowed interest expense carryforward to its 1993 separate return year is equal to the group's remaining carryforward at the end of 1992 ($50), multiplied by a fraction, the numerator of which is $300 (the total amount of exempt related person interest expense paid or accrued by Z while it was a member of the group) and the denominator of which is $1,550 (the total amount of exempt related person interest expense paid or accrued by all members of the group). Thus, Z's carryforward to its 1993 separate return year is $9.68. The XY group's carryforward to its consolidated 1993 taxable year is reduced by that amount, and is therefore $40.32.

(c) *Operative rules for other groups*—(1) *In general*—(i) *Group members' computation years.* This paragraph (c) provides rules for the application of section 163(j) and these regulations to corporations that are members of a group not governed by paragraph (b) of this section. Under this paragraph (c), a corporation that is a group member is required to take into account the items of income, expense, and carryovers that are pertinent under section 163(j) for all group members whose taxable years end with or within the taxable year of the member with respect to which computations are required (hereafter, a "computation year").

(ii) *Treatment of consolidated subgroup.* If some of the members of a group subject to this paragraph (c) join in filing a consolidated return under section 1501 for a taxable year ("consolidated subgroup"), such consolidated subgroup shall be treated as a single member of the group for purposes of applying this paragraph (c). The consolidated subgroup's items of income, expense and carryover that are pertinent under section 163(j) and these regulations shall be determined on a consolidated group basis, as if the consolidated subgroup were described in paragraph (b) of this section.

(2) *Determination and allocation of group items.* The computations required to be made under this paragraph (c) shall be made as follows—

(i) *Step 1—Certain items determined separately.* The exempt related person interest expense, interest income, interest expense, taxable income, and adjustments to taxable income required by § 1.163(j)–2 (f), other than the adjustment for net interest expense described in § 1.163(j)–2(f)(2)(i), shall be determined separately for each member of the group.

(ii) *Step 2—Computation of certain group items*—(A) *Net interest expense.* The separately determined amounts of interest income and interest expense for each member shall be aggregated and then netted to determine the group's net interest expense.

(B) *Adjusted taxable income.* To determine the group's adjusted taxable income, the separately determined taxable income of each member and adjustments thereto (other than net interest expense) shall be aggregated, and the amount of the group's net interest expense (as determined under paragraph (c)(2)(ii)(A) of this section) shall be added to such amount.

(C) *Exempt related person interest expense.* To determine the amount of the group's exempt related person interest expense, the separately determined amounts of exempt related person interest expense for each member shall be aggregated. In making this determination, interest expense shall be treated as paid or accrued to a related person (within the meaning of § 1.163 (j)–2(g)) if it would be so treated if paid or accrued to the same payee by any member of the group.

(D) *Excess limitation carryforward.* To determine the amount of the group's excess limitation carryforward from each of the three prior computation years, the amount of each member's

excess limitation carryforward from each of such prior years shall be aggregated.

(E) *Disallowed interest expense carryforward.* To determine the amount of the group's disallowed interest expense carryforward, the amounts of disallowed interest expense carryforward of each member shall be aggregated.

(iii) *Step 3—Determination of the group's interest deduction*—(A) *Excess interest expense of the group.* The group's excess interest expense for the computation year shall be determined by reference to its net interest expense, adjusted taxable income, and excess limitation carryforward (as determined in Step 2). The ordering rule of § 1.163(j)–1(d) shall apply in determining which, if any, of the group's excess limitation carryforwards from prior years are absorbed in this computation.

(B) *Disallowed interest expense of the group.* The group's disallowed interest expense for the computation year shall be determined by reference to its exempt related person interest expense and excess interest expense as determined in Step 2 and Step 3, respectively. Disallowed interest expense of the group arising in the computation year shall be allocated to each member based on the following ratio:

$$\frac{\text{Exempt related person interest expense of the member for the computation year}}{\text{Exempt related person interest expense of the group for the computation year.}}$$

(C) *Excess limitation and deduction of disallowed interest expense carryforward*—(*1*) *Excess limitation.* The group's excess limitation for the computation year shall be determined by reference to its net interest expense and adjusted taxable income (as determined in *Step 2*).

(*2*) *Deduction of disallowed interest expense carryforward.* The amount of the group's disallowed interest expense carried forward to the current computation year (as determined in *Step 2*) that is deductible therein under § 1.163(j)–1(c) shall be determined by reference to the excess limitation of the group. The deduction for such carryforward shall be allocated to each member of the group based on the following ratio:

$$\frac{\text{Disallowed interest expense carryforward of the member from the preceding computation year}}{\text{Disallowed interest expense carryforward of the group from the preceding computation year.}}$$

(iv) *Step 4—Carryforwards to next computation year*—(A) *Amounts not deductible in the current computation year.* Each member's disallowed interest expense carryforward to the next computation year shall consist of such member's allocable share of the group's disallowed interest expense for the current year (as determined in Step 3), plus such member's allocable share of the group's disallowed interest expense carryforward to the current year that is not deductible in the current year (because such amount exceeds any excess limitation of the group for that year). The group's unused disallowed interest expense carryforward to the current year shall be allocated to each member of the group based on the following ratio:

$$\frac{\text{Disallowed interest expense carryforward of the member from the preceding computation year}}{\text{Disallowed interest expense carryforward of the group from the preceding computation year}}$$

(B) *Excess limitation carryforward.* The excess limitation carryforward of the group, if any, from each of the two prior computation years that is not absorbed in the current computation year (as provided in Step 3) shall be allocated, by year, to each member of the group (succeeding computation years) based on the following ratio:

$$\frac{\text{Excess limitation carryforward of the member from the specific prior computation year}}{\text{Excess limitation carryforward of the group from the same prior computation year}}$$

(The group's excess limitation carryforward from the third prior computation year expires after the current computation year and therefore cannot be carried forward to the next year. See § 1.163 (j)-1 (d).)

(C) *Allocation of remaining excess limitation of the group for the computation year—(1) In general.* Excess limitation of the group for the computation year remaining after the deduction of disallowed interest expense carryforward to such year is allocated to each member of the group based on the following ratio:

$$\frac{\text{Separate excess limitation for each member of the group for the computation year}}{\text{Total of the separate excess limitations of each member of the group for the computation year}}$$

(2) Separate excess limitation. The separate excess limitation of each member shall be computed as if the member was not a member of an affiliated group for the computation year. The separate excess limitation of each member shall be determined under the rules of § 1.163 (j)-2 (c) and before reduction for the amount of any disallowed interest expense carried forward to that year by such member. For purposes of these computations, a member that has net interest income for the computation year has net interest expense of zero, and a member that has excess interest expense for the computation year has separate excess limitation of zero.

(D) *Members leaving a group.* A member leaving a group shall carry forward to succeeding taxable years any excess limitation or disallowed interest expense allocated to it under this paragraph (c). For rules limiting the use of such carryforwards when such member becomes a member of another affiliated group, or has transferred its assets in a transaction to which section 381 (a) applies, see § 1.163 (j)-6.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c).

Example 1. A, B, and C are calendar-year domestic corporations that are members of an affiliated group. Table 1 depicts amounts determined in Step 1 for these corporations for their taxable years ending December 31, 1991. Under rules described in paragraph (d) of this section, this group does not satisfy the

debt-equity ratio safe harbor test for 1991. Assume, for purposes of this example, that there are no excess limitation carryforwards and no disallowed interest expense carryforwards to the 1991 taxable year for any member of the group.

TABLE 1

	Interest income	Interest expense	Taxable income before applying § 163 (j)	Adjustments to taxable income (not including net interest expense)	Exempt related person interest expense
A	$600.00	$500.00	$50.00	$25.00	
B	200.00	900.00	200.00	75.00	$600.00
C	—	200.00	50.00	—	150.00
Total	800.00	1,600.00	300.00	100.00	750.00

(a) *Step 2 determinations.* The group's Step 2 determinations are as follows:

(1) *Net interest expense.* The separately determined interest income and interest expense of A, B, and C are aggregated. Thus, the net interest expense of the group is $800 ($1,600−$800).

(2) *Adjusted taxable income.* The separately determined taxable income and the separately determined adjustments (other than net interest expense) of A, B, and C are aggregated and added to the group's net interest expense to determine the group's adjusted taxable income of $1,200 ($300+$100+$800=$1,200).

(3) *Exempt related person interest expense.* The separately determined amounts of exempt related person interest expense of A, B, and C are aggregated to determine the group's exempt related person interest expense of $750 ($600+$150).

(b) *Step 3 determinations.* The group's Step 3 determinations are as follows:

(1) *Excess interest expense.* The group's excess interest expense is equal to its net interest expense less one-half of its adjusted taxable income (each as determined in Step 2) ($800−(½×$1,200)=$200).

(2) *(Disallowed interest expense.* The group's disallowed interest is $200, which is the lesser of its exempt related person interest expense (as determined in Step 2 ($750)) or its excess interest expense (as determined in this Step 3 ($200)).

(3) *Disallowed interest expense allocations.* Disallowed interest expense for the computation year shall be allocated among A, B, and C under Step 3 based on the ratio of each member's exempt related person interest expense to the group's exempt related person interest expense. Since A has no exempt related person interest expense, no disallowed interest expense is allocated to it. Disallowed interest expense of $160 is allocated to B (($600/$750)×$200). Disallowed interest expense of $40 is allocated to C (($150/$750)×$200). Thus, B and C have $160 and $40, respectively, of disallowed interest expense which shall be carried forward to their next succeeding taxable years under Step 4.

Example 2. The facts are the same as in Example 1, and thus B and C have $160 and $40, respectively, of disallowed interest expense carried forward to the computation year ending December 31, 1992. Table 2 depicts the separately determined items as determined in Step 1 for the taxable years of A, B, and C ending December 31, 1992. Under rules described in paragraph (d) of this section, this group does not satisfy the debt-equity ratio safe harbor test for 1992.

TABLE 2

	Interest income	Interest expense	Taxable income before applying § 163 (j)	Adjustments to taxable income (not including net interest expense)	Exempt related person interest expense
A	$200.00	$800.00	$400.00	$50.00	$300.00
B	100.00	500.00	600.00	100.00	300.00
C	300.00	200.00	500.00	50.00	100.00
Total	600.00	1,500.00	1,500.00	200.00	700.00

(a) *Step 2 determinations.* For the 1992 computation year, the Step 2 determinations of A, B, and C are as follows:

(1) *Net interest expense.* The separately determined interest income and interest expense of A, B, and C are aggregated to determine the group's net interest expense of $900 ($1,500−$600).

(2) *Adjusted taxable income.* The separately determined taxable income and adjustments to taxable income (other than net interest expense) of A, B, and C are aggregated and added to the group's net interest expense to yield the group's adjusted taxable income of $2,600 ($1,500+$200+$900=$2,600).

(3) *Exempt related person interest expense.* Each member's separately determined amounts of exempt related person interest expense are aggregated to determine the group's exempt related person interest expense of $700 ($300+$300+$100).

(b) *Step 3 determinations.* The group has excess limitation of $400 in 1992 ((½×$2,600) (adjusted taxable income)−$900 (net interest expense)). All $200 of the group's disallowed interest expense carried forward to 1992 is deductible by B and C (in accordance with the allocation described in Step 3) and reduces the group's excess limitation arising in 1992 to $200 ($400−$200).

(c) Under Step 4, A, B, and C must allocate the $200 of remaining excess limitation among themselves based on the ratio that each member's separate excess limitation bears to the sum of the members' separate excess limitations.

(1) *Computation of each member's separate excess limitation.* The separate excess limitation for each member shall be determined separately, as if each member was not a member of an affiliated group. Accordingly, the separate excess limitations of A, B, and C are determined as follows. A has separate excess interest expense of $75 ($600−(½×$1,050)). B has a separate excess limitation of $150 (½×$1,100)−$400). C has separate excess limitation of $275 (½×$500).

(2) *Allocation of group excess limitation.* Since A has separate excess interest expense rather than separate excess limitation, no excess limitation is allocated to A. The group's excess limitation of $200 is allocated between B and C as follows. B is allocated $70.59 ($200×($150/$425)) and C is allocated $129.41 ($200×($275/$425)). Thus, B and C will carry forward $70.59 and $129.41 of excess limitation, respectively, to their succeeding taxable years.

Example 3. A, B, and C are domestic corporations that are members of the same affiliated group under the rules of paragraph (a) of this section. Table 3 depicts their Step 1 determinations for A's taxable year ending September 30, 1990, B's taxable year ending December 31, 1990, and C's taxable year ending January 31, 1991. Assume, for the taxable years illustrated in Table 3, that there is no pre-effective date excess limitation carryforward, that (under the rules described in paragraph (d) of this section) the group does not satisfy the debt-equity ratio safe harbor test the group does not satisfy the debt-equity ratio safe harbor test described in § 1.163 (j)-1 (b), and that all interest expense paid by A, B, and C is exempt related person interest expense.

TABLE 3

	Interest income	Interest expense	Taxable income before applying § 163 (j)	Adjustments to taxable income (not including net interest expense)	Exempt related person interest expense
A	$100.00	$500.00	$150.00	$50.00	$500.00
B	200.00	600.00	350.00	50.00	600.00
C		600.00	300.00	100.00	600.00
Total	300.00	1,700.00	800.00	200.00	1,700.00

(a) *A's determinations.* With respect to A's computation year ending September 30, 1990, only A is treated as a member of the affiliated group (since for B and C these are pre-effective date years). Therefore, A's disallowed interest expense is $100, which is the lesser of its excess interest expense of $100 ($400−(½×$600)) or its exempt related person interest expense ($500). A's disallowed interest expense of $100, is carried forward to A's next computation year.

(b) *B's Step 2 determinations.* For purposes of computing B's disallowed interest expense for its taxable year ending December 31, 1990, only A and B are treated as affiliated group members (since for C this is a pre-effective date year). B's Step 2 determinations are as follows:

(1) *Net interest expense.* The separately determined interest income and interest expense of A and B are aggregated to determine their net interest expense of $800 ($500+$600)−($100+$200)).

(2) *Adjusted taxable income.* The separately determined taxable income of A and B ($150+$350) and the separately determined adjustments to their taxable income (other than net interest expense) ($50+$50) are aggregated and added to their net interest expense (as provided in Step 2) ($800) to yield the adjusted taxable income of A and B of $1,400 ($500+$100+$800).

(3) *Exempt related person interest expense.* The separately determined amounts of exempt related person interest expense of A and B are aggregated to determine their exempt related person interest expense of $1,000 ($500+$600).

(c) *B's Step 3 determinations.* B's Step 3 determinations are as follows:

(1) *Excess interest expense.* The excess interest expense of A and B is $100, which is equal to their net interest expense less one-half of their adjusted taxable income, each as determined in Step 2 ($800−(½×$1,400)).

(2) *Disallowed interest expense.* The disallowed interest expense of A and B is $100, which is the lesser of the exempt related person interest expense of A and B (as determined in Step 2 ($1,100)) or their excess interest expense (as determined in Step 3 ($100)).

(3) *Disallowed interest expense allocations.* Disallowed interest expense for the computation year is allocated to B under Step 3 based on the ratio of B's separate exempt related person interest expense ($600) to the sum of A and B's exempt related person interest expense ($1,100). Thus, the amount of disallowed interest expense allocated to B with respect to its computation year ending December 31, 1990, is $54.55 (($600/$1,100)×$100), which is carried forward to B's next computation year under Step 4. Because this is B's computation year, no allocation of disallowed interest expense for the computation year is made to A.

(d) *C's Step 2 determinations.* To compute its disallowed interest for its computation year ending January 31, 1991, C's Step 2 determinations are as follows:

(1) *Net interest expense.* The separately determined interest income and interest expense of A, B, and C are aggregated. Thus, the net interest expense of A, B, and C is $1,400 ($1,700−$300).

(2) *Adjusted taxable income.* The separately determined taxable incomes of A, B, and C ($150+$350+300) and the separately determined adjustments (other than net interest expense) of A, B, and C ($50+$50+$100) are aggregated and combined with the net interest expense of A, B, and C ($1,400, as determined in Step 2) to yield the adjusted taxable income of A, B, and C of $2,400 ($800+$200+$1,400).

(3) *Exempt related person interest expense.* The separately determined amounts of exempt related person interest expense of A, B, and C are aggregated to determine their exempt related person interest expense of $1,700 ($500+$600+$600).

(e) *C's Step 3 determination.* C's Step 3 determinations for its computation year ending January 31, 1991 are as follows:

(1) *Excess interest expense.* The excess interest expense of A, B, and C is equal to $200, which is the net interest expense of A, B, and C less one-half of their adjusted taxable incomes, each as determined in Step 2 ($1,400−(½×$2,400)).

(2) *Disallowed interest expense.* The disallowed interest expense of A, B, and C is $200, which is the lesser of the sum of the exempt related person interest expense of A, B, and C as determined in Step 2 ($1,700) or their excess interest expense as determined in this Step 3 ($200).

(3) *Disallowed interest expense allocations.* For C's computation year ending January 31, 1991, C is allocated disallowed interest expense under Step 3 based on the ratio that its exempt related person interest expense ($600) bears to the sum of the exempt related person interest expense of A, B, and C ($500+$600+$600=$1,700). The amount of disallowed interest expense allocated to C with respect to that computation year is $70.59 (($600/$1,700)×$200), which is carried forward to C's next computation year under Step 4. Because this is C's computation year, no allocation of disallowed interest expense for the computation year is made to A or B.

(d) *Debt-equity ratio of related corporations treated as one taxpayer*—(1) *In general.* In the case of an affiliated group subject to the rules of paragraphs (b) or (c) of this section, the debt-equity ratio safe harbor test described in § 1.163(j)–1(b) shall be applied on a group basis. In the case of a consolidated group subject to paragraph (b) of this section, the debt-equity ratio of the group shall be determined by aggregating the separately determined debt and assets (adjusted as described in paragraphs (d)(2) and (3) of this section) of each member of the group as of the last day of the consolidated return year. In the case of an affiliated group subject to the rules of paragraph (c) of this section, the debt-equity ratio of the group shall be determined, with respect to any member's computation year, by aggregating the separately determined debt and assets (adjusted as described in paragraphs (d)(2) and (3) of this section) of each member of the group as of the last day of its taxable year that is included in the computing member's computation year. For rules regarding the special treatment of, and an election pertaining to, assets of certain acquired corporations, see paragraph (e) of this section.

(2) *Adjustments to group members' debt.* A member's debt shall be reduced by the amount of its liabilities to another member, and by the amount of any other liability which, if included, would result in duplication of amounts in the group's aggregate debt.

(3) *Adjustments to group members' assets.* The assets of a member of a group shall be adjusted as follows—

(i) Any amount which represents direct or indirect stock ownership if any member of the affiliated group shall be eliminated from total assets of the affiliated group;

(ii) A note or other evidence of indebtedness between members of an affiliated group shall be eliminated as an asset;

(iii) With respect to transactions between members of an affiliated group in which gain or loss is deferred under §§ 1.1502–13, 1.1502–13T, 1.1502–14, or 1.1502–14T, the adjusted basis of any asset involved in such transaction shall be decreased to the extent of deferred intercompany gain, if any, that has not been taken into account; and

(iv) There shall be eliminated from the assets of the affiliated group any other amount which, if included, would result in duplication of the assets of the affiliated group.

(e) *Election to use fixed stock write-off method for certain stock acquisitions*—(1) *In general.* Notwithstanding paragraph (d)(3) of this section, in the case of a qualified stock purchase, an election may be made, in the manner described in paragraph (e)(4) of this section, to determine the group's assets in accordance with the following rules—

(i) The stock of the target corporation and target affiliates (other than stock that is described in paragraph (d)(1)(ii) of this section) shall be treated as an asset of the purchasing corporation. The basis of such stock shall be determined under section 1012, and shall be increased by the amount of the liabilities of the target corporation and target affiliates as of the close of the acquisition date. Solely for purposes of this section, these amounts (together, the "special basis") shall be amortized ratably, on a monthly basis, over the applicable fixed stock write-off period (as described in paragraph (e)(5)(vi) of this section), beginning with the first day of the month in which the acquisition date occurs.

(ii) All assets of the target corporation, target affiliates, and any other members of the affiliated group, the stock of which is owned directly or indirectly by the target or a target affiliate, shall be disregarded.

(iii) Adjustments shall be made to the special basis of the stock of the target corporation and target affiliates solely as provided in paragraphs (e)(1)(i) and (e)(2) of this section. Thus, for example, the special basis shall not be adjusted under the rules of § 1.1502–32.

(2) *Post-acquisition adjustments to special basis.* The following adjustments shall be made to the special basis of the target corporation and target affiliates—

(i) The special basis of the stock of the target corporation and target affiliates shall be increased under the rules of section 358 for any property contributed to such corporations following the acquisition date;

(ii) The special basis of the stock of the target corporation and target affiliates shall be reduced by the fair market value of any property distributed by such corporations. Solely for purposes of the preceding sentence. any transfer of assets by the target corporation, by any target affiliate, or by any corporation that would be a target affiliate but for the fact that it is not an includible corporation, to any member of the affiliated group other than such corporations, shall be deemed to be a distribution that reduces special basis, but only if such transfer qualifies for nonrecognition under any provision of the Code or is an interaffiliate loan; and

(iii) Where an adjustment is made pursuant to paragraphs (e)(2) (i) or (ii) of this section, the special basis shall be adjusted as of the last day of the month which includes the date of the transaction (or the last day of the shareholder's taxable year, whichever comes first), and the adjusted amount shall be amortized over the remaining amortization period.

(3) *Election out of fixed stock write-off method.* a taxpayer may elect out of the fixed stock write-off method for any year during the amortization period and use the adjusted tax basis of the assets of the target corporation and its target affiliates to determine its debt-equity ratio for that year and all future years.

(4) *Method for making elections*—(i) *Election to use method.* An election to use the fixed stock write-off method is made by attaching a statement to the return of the purchasing corporation (including a consolidated return, where appropriate) for the taxable year in which the election is to become effective. The election must be signed by an authorized official of, and is effective for, each member of the purchasing corporation's affiliated group.

(ii) *Election to cease to use method.* An election to cease to use the fixed stock write-off method is made by attaching a statement to the return of the purchasing corporation (including a consolidated return, where appropriate) for the taxable year in which the election is to become effective. The election must be signed by an authorized official of, and is effective for, each member of the purchasing corporation's affiliated group.

(5) *Definitions*—(i) *Qualified stock purchase.* For purposes of this paragraph (e), the term "qualified stock purchase" means a qualified stock purchase (as defined under section 338(d)(3)) with respect to which no election has been made under section 338(g), but only if the purchase is made by a corporation which is an includible corporation (as defined in section 1504(b)).

(ii) *Target corporation.* For purposes of this paragraph (e), the term "target corporation" shall mean a target corporation as defined under section 338(d)(2), but only if such corporation is includible within the purchasing corporation's affiliated group for purposes of this section.

(iii) *Target affiliate.* For purposes of this paragraph (e), the term "target affiliate" shall mean a target affiliate as defined under section 338(h)(6), but only if such corporation is includible within the purchasing corporation's affiliated group for purposes of this section.

(iv) *Purchasing corporation.* For purposes of this paragraph (e), the term "purchasing corporation" shall mean a purchasing corporation as defined under section 338(d)(1).

(v) *Acquisition date.* For purposes of this paragraph (e), the term "acquisition date" shall mean the acquisition date as defined under section 338(h)(2).

(vi) *Fixed stock write-off period*—(A) *In general.* Except as provided in paragraph (e)(5)(vi)(B) of this section, the applicable "fixed stock write-off period" means 96 months.

(B) *Acquired corporations owning long-lived assets.* If more than fifty percent, by value, of the assets of the target corporation and any target affiliates on the acquisition date are described in this paragraph (e)(5)(vi)(B), then the applicable "fixed stock write-off period means 180 months. An asset is described in this paragraph (e)(5)(vi)(B) if—

(*1*) It is inventory or a non-wasting tangible or intangible asset (*e.g.*, land or goodwill);

(*2*) In the case of a depreciable asset, it has a recovery period in excess of 25 years;

(*3*) In the case of a depletable asset, it has a recovery period for purposes of cost depletion in excess of 25 years;

(4) In the case of an amortizable asset, it has an amortization period in excess of 25 years.

Determinations for purposes of this paragraph (e)(5)(vi)(B) shall be made as if the asset were sold on the acquisition date, and cash, cash items, and marketable securities shall be disregarded for all purposes. A purchasing corporation is only entitled to the benefit of the paragraph (e)(5)(vi)(B) if it demonstrates that it satisfies the requirements of this paragraph in a statement attached to its return accompanying its election to use the fixed stock write-off method. Such statement must provide all necessary information, including all appropriate computations.

(6) *Inclusion of target debt notwithstanding use of fixed stock write-off method.* Debt of the affiliated group includes the liabilities of a target corporation and any target affiliates notwithstanding that the assets of such corporations are determined using the fixed stock write-off method.

§ 1.163(j)–6 Limitation on carryforward of tax attributes.

(a) *Disallowed interest expense carryforward*—(1) *Affiliated groups.* If a corporation becomes a member of an affiliated group, the amount of any disallowed interest expense carryforward from a non-affiliation year that may be deducted by the members of an affiliated group under § 1.163(j)–5 (b) or (c) may not exceed the amount, if any, of the current year's excess limitation of the affiliated group (determined under §§ 1.163(j)–2(c) and 1.163(j)–5 (b) or (c).

(2) *Section 381(a) transactions.* The amount of any disallowed interest expense carryforward from a non-affiliation year of a transferor or distributor corporation that may be deducted by the transferee or distributee corporation (or the consolidated group of which it is a member) following a transaction described in section 381 (a) may not exceed the amount, if any, of the current year's excess limitation (determined under § 1.163(j)–2(c)).

(3) *Section 382 and SRLY.* For the application of additional limitations governing disallowed interest expense carryovers, see section 382(h) (relating to built-in deductions of loss corporations) and the regulations thereunder (including § 1.1502–91, relating to section 382(h) rule for built-in deductions of consolidated groups) and § 1.1502–15 (relating to separate return limitation year rules for built-in deductions of consolidated groups)).

(4) *Example.* The provisions of this paragraph (a) are illustrated by the following example.

Example. In 1992, Z, a non-affiliated corporation, becomes a member of a consolidated group. There is no section 382 ownership change. Under § 1.163(j)–1, Z has $3,000 of disallowed interest expense carryforward from separate return limitation years. Under § 1.163(j)–5(b), the consolidated group (including Z) has excess limitation of $2,000 for 1992 (computed without regard to any disallowed interest expense carryforward). In addition, the consolidated group has excess limitation carryforward of $1,000 from 1991. Under paragraph (a)(1) of this section, only $2,000 (the amount of the consolidated group's excess limitation for 1992) of Z's separate return limitation year disallowed interest expense carryforward is deductible in 1992. The remaining $1,000 of Z's disallowed interest expense carryforward is carried forward to subsequent years and remains subject to the limitations described in paragraph (a) of this section.

(b) *Excess limitation carryforward*—(1) *Affiliated groups*—(i) *General rule.* If a corporation becomes a member of an affiliated group, the amount of any excess limitation carryforward from a non-affiliation year that may be used by members of the group under § 1.163(j)–5 (b) or (c) may not exceed the excess, if any, of the corporation's separately computed net interest expense over 50 percent of the corporation's separately computed adjusted taxable income.

(ii) *Special rule for acquired groups.* If all the members of a group, whether or not consolidated, become members of a consolidated group, the amount of the acquired group's excess limitation carryforward (if any) from non-affiliation years that may be used by the consolidated group may not exceed the acquired group's excess interest expense (if any) for the taxable year. For this purpose, the acquired group's excess interest expense for any taxable year equals the excess interest expense of the former members of the acquired group for the taxable year computed as if they were members of a separate affiliated group making computations under § 1.163(j)–5(c).

(2) *Section 381(a) transactions.* If a corporation transfers or distributes its assets to another corporation in a transaction described in section 381(a) (other than a transaction described in section 368(a)(1)(F)), the excess limitation carryforward, if any, of the transferor or distributor from a non-affiliation year is reduced to zero immediately after the transaction.

(3) *Anti-avoidance rules.* Solely for purposes of paragraph (b)(1) of this section, in determining the net interest expense of a member or a group, interest expense paid or accrued with respect to loans incurred or assumed by such member in connection with or after becoming a member of the group are disregarded unless the loan proceeds are actually utilized by the member in its pre-affiliation business. For example, if a loan is incurred by one member of the affiliated group with excess limitation carryforward from non-affiliation years, but the proceeds of the loan are actually utilized by another member of the group, the interest expense with respect to the loan is disregarded for purposes of applying paragraph (b)(1) of this section. In addition, interest on a loan used for the acquisition of the stock of a corporation which is incurred by the acquired corporation may be disregarded for purposes of paragraph (b)(1) of this section if the facts indicate that one of the purposes for the acquired corporation's incurring the loan was to avoid the limitation of such paragraph.

(c) *Affiliation and non-affiliation years*—(1) *In general.* For purposes of this section, the taxable year of a member of an affiliated group (as defined in § 1.163(j)–5(a)) is an "affiliation year" with respect to another member if the members were members of an affiliated group (whether or not the same affiliated group as the current affiliated group) with each other on the last day of the taxable year. A "non-affiliated year" is any taxable year that is not an affiliation year.

(2) *Predecessors and successors.* For purposes of this section, any reference to a corporation or member or the years of a corporation or member includes, as the context may require, a reference to a successor or predecessor (as defined in § 1.1502–1(f)(4)) or to the years of a successor or predecessor.

(3) *Formation of affiliated groups.* For purposes of determining whether a corporation has become a member of another corporation's affiliated group solely by reason of § 1.163(j)–5(a), corporations (or affiliated groups) with greater value are deemed to acquire corporations (or affiliated groups) with lesser value and the principles of § 1.1502–75(d)(3) (governing "reverse acquisitions") shall apply.

(d) *Anti-duplication rule.* The same item of income, expense, or carryforward may not be taken into account more than once if inconsistent with the principles of section 163(j) or these regulations.

§ 1.163(j)–7 Relationship to other provisions affecting the deductibility of interest.

(a) *Paid or accrued.* For purposes of section 163(j), interest expense is not

considered "paid or accrued" until such interest would be deductible but for such section.

(b) *Coordination of section 163(j) and certain other provisions*—(1) *Disallowed interest provisions.* Except as provided under § 1.163(j)–2(f)(3)(vi), interest expense which is permanently disallowed as a deduction (*e.g.* under sections 265 or 279) is not taken into account under section 163(j).

(2) *Deferred interest provisions.* Provisions which defer the deductibility of interest (such as sections 163(e)(3) and 267(a)(3)) apply before the application of section 163(j).

(3) *At risk rules and passive activity loss provisions.* Sections 465 and 469 shall be applied before applying section 163(j). There shall be no recomputation of deductions under section 469.

(4) *Capitalized interest expenses.* Provisions that require the capitalization of interest shall be applied before section 163(j). Capitalized interest is not treated as interest for any purpose under section 163(j). See regulations under section 263A(f) for ordering rules that determine whether exempt related person interest expense is capitalized under section 263A(f).

(5) *Reductions under section 246A.* Section 246A shall be applied before section 163(j). Any reduction in the dividends received deduction under section 246A shall reduce interest expense taken into account under section 163(j).

(c) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1 (i) In 1990, Z, a domestic corporation that does not satisfy the debt-equity ratio safe harbor test, has $30,000 of interest expense, all of which is paid to related persons, and no interest income. Of Z's interest expense, $10,000 is permanently disallowed under section 265. The remaining $20,000 of interest expense is exempt from tax under the rules of § 1.163(j)–4. Z's adjusted taxable income for the year is $42,000.

(ii) Under paragraph (b)(1) of this section, the $10,000 interest expense that is permanently disallowed is not taken into consideration for purposes of section 163(j). Therefore, in 1990, none of Z's $20,000 interest expense is disallowed under section 163(j) since that amount is less than 50 percent of Z's 1990 adjusted taxable income ($21,000).

Example 2 (i) In 1990, Q, a domestic corporation that does not satisfy the debt-equity ratio safe harbor test, has $80,000 of adjusted taxable income and $60,000 of interest expense, of which $50,000 is exempt related person interest expense. Q has no interest income. Of Q's exempt related person interest expense, $20,000 is not currently deductible under section 267(a)(2). Assume that the $20,000 expense will be allowed as a deduction under section 267(a)(2) in 1991.

(ii) Under paragraph (b)(2) of this section, section 267(a)(2) is applied before section 163(j). Thus, in computing Q's excess interest expense for 1990, the $20,000 is not taken into account. Accordingly, in 1990, Q has no excess interest expense, since its net interest expense of $40,000 ($60,000−$20,000) is equal to 50 percent of its adjusted taxable income for the taxable year. The $20,000 of interest expense not allowed as a deduction in 1990 under section 267(a)(2) is taken into account under section 163(j) in 1991, the year in which it is allowed as a deduction under section 267(a)(2).

Example 3 (i) for 1990, H, a closely held domestic corporation that does not satisfy the debt-equity ratio safe harbor test, has $2,000 of rental income and $3,000 of deductions consisting of $1,500 of interest expense, all of which is exempt related person interest expense, $600 of rental expense, and $900 of depreciation expense. Under the passive activity loss provisions of section 469, only $2,000 of H's total expenses are allowable as deductions. These consist of $1,000 ($2,000/$3,000×$1,500) of interest expense, $400 ($2,000/$3,000×$600) of rental expense, and $600 of depreciation expense ($2,000/$3,000×$900). No deduction is allowed in 1990 for H's passive activity loss of $1,000, which consists of $500 of interest expense, $200 of rental expense, and $300 of depreciation expense.'

(ii) Under paragraph (b)(3) of this section, section 469 is first applied to determine the amount of interest expense allowable as a deduction ($1,000), after which the rules of section 163(j) are applied. Under section 163(j), H's $1,000 of interest expense is allowable to the extent of 50 percent of its adjusted taxable income ($1,600, determined by adding to H's taxable income (zero) its allowable deductions for interest expense ($1,000) and depreciation deductions ($600). Since H's interest expense of $1,000 (determined after applying section 469) exceeds 50 percent of its adjusted taxable income for 1990 ($800), H's excess interest expense of $200 is disallowed under section 163(j). There is no recomputation of deductions under section 469.

§ 1.163 (j)–8 Application of section 163 (j) to certain foreign corporations.

(a) *Scope.* A foreign corporation that has income, gain or loss that is effectively connected (or is treated as effectively connected) with the conduct of a trade or business in the United States for the taxable year will be subject to the rules of this section for the taxable year, provided that it has a debt-equity ratio that exceeds 1.5 to 1 on the last day of the taxable year, computed using the definitions of debt and equity under paragraph (e) of this section.

(b) *Disallowed interest expense.* In computing its effectively connected taxable income for a taxable year, a foreign corporation described in paragraph (a) of this section will not be allowed to deduct interest expense allocated to its effectively connected income that it has paid, or is deemed to have paid, to a related person (as determined under paragraph (d) of this section) if no tax is imposed with respect to such interest as determined under § 1.163(j)–4. The amount of interest expense disallowed under this paragraph (b), however, shall not exceed the corporation's excess interest expense (as defined in paragraph (c)(2) of this section). Any interest expense that is disallowed under this section may be carried forward to a subsequent taxable year of the foreign corporation and allowed in such year to the extent provided in §§ 1.163 (j)–1(c) and 1.163(j)–6 (a)(2) and (3). See § 1.163(j)–7 for rules relating to the coordination of this section with other provisions of the Code affecting the deductibility of interest.

(c) *Definitions*—(1) *In general.* The terms "net interest expense", "adjusted taxable income", "excess interest expense", and "excess limitation" shall have the same meanings as provided elsewhere in these regulations under section 163(j), with the following additions and modifications. All other terms used in this section shall have the same meanings as provided elsewhere in these regulations under section 163(j).

(2) *Net interest expense.* The net interest expense of a foreign corporation means the excess, if any, of interest expense that is allocated to the effectively connected income of the foreign corporation for the taxable year and that is taken into account under section 163(j) as provided in § 1.163(j)–7, over the amount of interest includible in its effectively connected gross income for the taxable year.

(3) *Adjust taxable income.* The adjusted taxable income of a foreign corporation is its effectively connected taxable income that is not exempt from tax by reason of a U.S. income tax treaty, modified by the additions, and subtractions provided in § 1.163(j)–2(f) that are attributable to such effectively connected income.

(4) *Excess interest expense.* The excess interest expense of a foreign corporation is the excess of its net interest expense determined under paragraph (c)(2) of this section over the sum of 50 percent of its adjusted taxable income determined under paragraph (c)(3) of this section plus any excess limitation carryforward determined under §§ 1.163 (j)–1 (d) and 1.163 (j)–6 (b) (2).

(5) *Excess limitation.* The excess limitation of a foreign corporation means the excess, if any, of 50 percent

of the adjusted taxable income of the foreign corporation (determined under paragraph (c)(3) of this section), over its net interest expense (determined under paragraph (c)(2) of this section). For rules regarding the carryforward of any excess limitation of a foreign corporation, see §§ 1.163(j)–1(d) and 1.63(j)–6(b)(2).

(d) *Determination of interest paid to a related person.* For purposes of this section, the amount of interest that is paid, or deemed paid, by a foreign corporation to a related person, as defined in § 1.163(j)–2(g), shall equal the sum of the amount of interest paid by a U.S. trade or business of the foreign corporation under section 884(f)(1)(A) to a person that is related to the foreign corporation and the amount of interest described in section 884(f)(1)(B) ("excess interest" within the meaning of § 1.884–4T(a)).

(e) *Debt-equity ratio.* For purposes of computing the debt-equity ratio of a foreign corporation subject to the rules of this section, the debt of the foreign corporation shall equal the amount of its worldwide liabilities for purposes of Step 2 of § 1.882–5, adjusted in accordance with the rules in § 1.163(j)–3(b) without regard to § 1.163(j)–(b)(3). The equity of the foreign corporation shall equal the amount of its worldwide assets for purposes of Step 2 of § 1.882–5, adjusted in accordance with the rules in § 1.163(j)–3(c) without regard to § 1.163(j)–3(c)(4), less its worldwide liabilities as determined in the preceding sentence.

(f) *Example.* The rules of paragraphs (b) through (e) of this section may be illustrated with the following example.

Example. FC, a country X corporation, is engaged in the active conduct of a trade or business in the United States. FP, a country X corporation, owns all the stock of FC. The debt-equity ratio of FC under paragraph (e) of this section is 3:1. FC has $700 of adjusted taxable income under paragraph (c)(3) of this section, and net interest expense of $600 ($600 of interest expense allocated under § 1.882–5 over $0 of effectively connected interest income) under paragraph (c)(2) of this section. Under § 1.884–4T, $500 of FC's allocated interest expense is treated as interest paid by the U.S. trade or business of FC to FP, and $100 of FC's allocated interest expense is treated as if it were paid by a wholly owned domestic corporation to FC. FC and FP are both qualified residents of country X. Under the treaty, the rate of tax on the $500 of interest paid to FP and on FC's $100 of excess interest is reduced from 30 percent to 10 percent. Thus, of the $600 of interest paid or deemed paid by FC to related persons, two-thirds of the interest is treated as tax-exempt, or $400. The excess interest expense of FC is the excess of FC's net interest exense ($600) over 50 percent of FC's adjusted taxable income ($350) or $250. Thus, $250 of the $400 of interest paid by FC to tax-exempt related persons will be disallowed in computing FC's effectively connected taxable income for the taxable year but may be carried over by FC to a subsequent taxable year.

(g) *Coordination with branch profits tax.*—(1) *Effect on effectively connected earnings and profits.* The disallowance and carryforward of interest expense under this section shall not affect when such interest expense reduces the effectively connected earnings and profits of a foreign corporation, as defined in § 1.884–1T(f).

(2) *Effect on U.S. net equity.* The disallowance and carryforward of interest expense under this section shall not affect the computation of the U.S. net equity of a foreign corporation, as defined in § 1.884–1T (c).

(3) *Example.* The principles of this § 1.163(j)-8(g) are illustrated by the following example.

Example. Assume foreign corporation FC uses money that is treated as a U.S. asset under § 1.884–1T(d)(6) in order to pay interest described in paragraph (d) of this section, and that under this section a deduction for such interest expense is disallowed. Assuming that FC's U.S. assets otherwise remain constant during the year, the U.S. assets of FC will have decreased by the amount of money used to pay the interest expense, and the U.S. net equity of FC will be computed accordingly.

§ 1.163 (j)–9 Guarantees and back-to-back loans. [Reserved]

§ 1.163 (j)–10 Effective dates.

(a) *In general.* Section 163 (j) generally applies to interest paid or accrued directly or indirectly by the payor corporation in its taxable years beginning after July 10, 1989.

(b) *Exceptions.*—(1) *Interest paid on certain fixed-term obligations outstanding on July 10, 1989*—(i) *In general.* Interest paid or accrued with respect to a fixed-term debt obligation outstanding on July 10, 1989, shall not be treated as disallowed interest expense, even though such interest is paid or accrued in a taxable year of the payor corporation beginning after July 10, 1989. Such interest expense is, however, taken into account under section 163(j) for all other purposes (*e.g.* determining whether other interest expense paid or accrued during the taxable year is treated as excess interest expense).

(ii) *Certain obligations issued pursuant to written contracts binding on July 10, 1989*—(A) *In general.* Interest paid or accrued with respect to a fixed-term obligation that is issued after July 10, 1989, pursuant to a written contract binding on that date and at all times thereafter until the issuance of the obligation, shall be treated in the same manner as interest paid or accrued with respect to a fixed-term debt obligation outstanding on July 10, 1989.

(B) *Whether a contract is binding.* In determining whether a contract is a binding contract, the following rules apply:

(*1*) A written contract between related persons (as defined in § 1.163(j)–2(g)) shall only be treated as binding on a particular date if it was enforceable on that date (whether on the basis of reliance or otherwise) by an unrelated third party.

(*2*) A written contract duly executed by authorized individuals on or before July 10, 1989, will not be considered non-binding solely because it is subject to a condition outside the control of the parties; insubstantial contract terms remain to be negotiated by the parties; or it is subject to approval by the board of directors of a corporate party where, prior to July 11, 1989, the board had authorized or been apprised of the status of negotiations and formal board approval occurred reasonably promptly following extension of the written contract without further change to the agreement (except for insubstantial contract terms).

(iii) *Modification of certain fixed-term obligations outstanding on July 10, 1989*—(A) *In general.* If an obligation described in paragraphs (b)(1)(i) or (b)(1)(ii) of this section is modified after July 10, 1989, it shall be treated thereafter as a new obligation for purposes of section 163 (j).

(B) *Modification defined*—(*1*) *In general.* Except as provided in this paragraph (b)(1)(iii)(B), an obligation described in paragraphs (b)(1)(i) or (b)(1)(ii) of this section shall be treated as modified for purposes of paragraph (b)(1)(iii)(A) of this section if it is revised (whether by renegotiation, assumption, reissuance, or otherwise) in a manner that would give rise to a deemed exchange of debt instruments by the obligee under section 1001. In any case, an obligation shall not be treated as modified under this paragraph (b)(1)(iii)(A) solely because a new obligor is substituted for the original obligor to reflect the terms of a reorganization described in section 368(a) or incident to a liquidation described in section 332(a).

(*2*) *Extension of maturity date.* An obligation shall be treated as modified if its maturity date is extended even if such extension would not give rise to a deemed exchange of debt instruments under section 1001.

(*3*) *Anti-abuse rule.* If a fixed-term debt obligation outstanding on July 10, 1989, or an obligation described in

paragraph (b)(1)(ii)(A) of this section, is acquired by a person related to the obligor (within the meaning of § 1.163(j)-2(g)) from an obligee that is not so related, and the obligor (or any member of its affiliated group) issues new debt that has the effect of replacing the acquired debt (whether or not such issuance is to the original obligee), the acquired obligation shall be treated as modified for purposes of paragraph (b)(1)(iii) of this section.

(2) *Demand loans.* Interest paid or accrued prior to September 1, 1989, on a demand loan (or other obligation with no fixed term) outstanding on July 10, 1989, shall not be treated as disallowed by section 163(j) even though it is paid or accrued in a taxable year beginning after the latter date. Such interest expense is, however, taken into account under section 163(j) for all other purposes.

(c) *Carryforward of excess limitation from pre-effective date taxable years to post-effective date taxable years.* In computing a corporation's excess limitation carryforwards for its first, second, and third taxable years beginning after July 10, 1989, a corporation shall take into account amounts that would have been treated as excess limitation carryforwards to those years as if section 163(j) had been in effect throughout the corporation's taxable years beginning after July 10, 1986. For this purpose, such corporation shall be treated as having had zero excess limitation or disallowed interest expense carried forward to its first taxable year beginning after July 10, 1986.

(d) *Examples.* The following examples illustrate the operation of this section.

Example 1 (i) S is a calendar year domestic corporation. In each of 1987, 1988, 1989, and 1990, S's adjusted taxable income is $100. In 1987, 1988, 1989, and 1990, S's net interest expense is $40, $54, $55, and $50, respectively. All of S's interest expense for these years is exempt related person interest expense incurred with respect to demand loans. S does not satisfy the debt-equity ratio safe harbor test in 1990.

(ii) Pursuant to § 1.163 (j)–2 (c) and this section, S has excess limitation of $10 in 1987 which (subject to the limitations described in § 1.163 (j)–1 (d)) can be carried forward to its next three succeeding taxable years. In 1988, S's excess limitation carryforward from 1987 is reduced by $4 (its excess interest expense ($54) over 50 percent of its adjusted taxable income ($50)).

(iii) In 1989, $5 of S's $6 excess limitation carryforward from 1988 is applied against, and reduced by, S's $5 excess interest expense.

(iv) In 1990, the $1 balance of S's excess limitation carryforward from 1987 expires without tax benefit to S.

Example 2 (i) The facts are the same as in Example 1, except as follows: In 1988, S's net interest expense is $49. S's net interest expense is $55 in 1989, $50 in 1990, and $55 in 1991. S does not satisfy the debt-equity ratio safe harbor test in 1991.

(ii) In 1988, S has excess limitation carried forward from 1987 of $10, none of which is used or expires in 1988, and has excess limitation of $1 for 1988. In 1989, $5 of S's excess limitation carryforward from 1987 reduces to zero the amount of S's excess interest expense in that year. Thus, in 1990, S has total available excess limitation carryforward of $6, of which $5 is from 1987 and $1 from 1988. All $5 of S's remaining excess limitation carryforward from 1987 expires without tax benefit to S in 1990. In 1991, the $1 of excess limitation carryforward from 1988 reduces S's disallowed interest expense to $4.

Example 3 (i) D is a calendar-year domestic corporation. In 1987 and 1988, D's adjusted taxable income is $120 and its net interest expense is $60. In 1989, D's adjusted taxable income is $100 and its net interest expense is $30. In 1990, D has negative adjusted taxable income (i.e. an adjusted taxable loss) of $100 and $50 of net interest expense. In each year, all of D's net interest expense is exempt related person interest expense incurred with respect to demand loans.

(ii) D has neither excess limitation nor excess interest expense from 1987 and 1988. In 1989, D has $20 ($50–$30) of excess limitation which (subject to the limitations described in § 1.163 (j)–1 (d)) can be carried forward to its next three succeeding taxable years. In 1990, D's first taxable year in which its interest expense may be disallowed as a deduction under section 163 (j), the $20 of excess limitation D carried forward from 1989 is reduced (but not below zero) by its $100 adjusted taxable loss for that year under § 1.163 (j)–2 (f) (4). Therefore, none of D's excess limitation carryforward from 1989 can be applied to reduce D's $50 excess interest expense in 1990.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–14243 Filed 6–12–91; 11:25 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[INTL–0870–89]

RIN 1545–AO24

Earnings Stripping (Section 163(j)); Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations relating to section 163(j) of the Internal Revenue Code, regarding "earnings strippings."

DATES: The public hearing will be held on Wednesday, September 25, 1991, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, September 4, 1991.

ADDRESSES: The public hearing will be held in the Cash Room, Department of the Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, attn: CC:CORP:T:R, (INTL–0870–89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9226 or 202–566–3935 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 163(j) of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, September 4, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Department of the Treasury Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–14244 Filed 6–12–91; 11:25 am]

BILLING CODE 4830–01–M

26 CFR Part 301

[GL-721-88]

RIN 1545-AM71

Statute of Limitations on Collection After Assessment and Collection After Commencement of Judicial Proceedings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulatory amendments regarding the statute of limitations on collection after assessment and collection after the commencement of judicial proceedings. The existing regulations provide that a proceeding in court to collect an assessable tax may be begun, or a levy for the collection of an assessable tax may be made, within six years after the timely assessment of such tax. The Omnibus Budget Reconciliation Act of 1990 amended the Internal Revenue Code by extending the statute of limitations on collection after assessment from six to ten years. The existing regulations also provide that the period during which a tax liability may be collected by levy shall not be extended or curtailed by reason of a judgment against the taxpayer. The Technical and Miscellaneous Revenue Act of 1988 amended the Internal Revenue Code to provide that if a timely proceeding in court for the collection of a tax is commenced, the period during which the tax may be collected by levy shall be extended until the liability or a judgment arising out of the liability is satisfied or becomes unenforceable. The proposed regulations amend the existing regulations to conform them to the present law.

DATES: Written comments and requests for a public hearing must be received by August 2, 1991.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604 Ben Franklin Station, Attn: CC:CORP:T:R (GL-721-88), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, 202-535-9682 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6502 of the Internal Revenue Code. The regulations reflect the amendment of section 6502 by section 11317 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-5080, by section 1015(u)(1) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100-647), and by section 7811(k)(2) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. No. 101-239).

Explanation of Provisions

Section 11317 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. No. 101-508, 104 Stat. 1388) amended section 6502(a) of the Internal Revenue Code by extending the statute of limitations on collection after assessment from six years to ten years. The proposed regulation would conform the existing regulations to section 6502(a) in its present form.

Section 1015(u)(1) of the Technical and Miscellaneous Revenue Act of 1988 (TAMRA) (Pub. L. No. 100-647, 102 Stat. 3573) amended section 6502 of the Internal Revenue Code to provide that if a timely proceeding in court for the collection of a tax is commenced, the period during which the tax may be collected by levy shall be extended until the tax liability or a judgment against the taxpayer arising from the liability is satisfied or becomes "enforceable." The word "enforceable" appeared in the statute through a clerical error. The error was corrected by section 7811(k)(2) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. No. 101-239, 103 Stat. 2412), which changed the word "enforceable" to "unenforceable." The existing regulations under section 6502(a) of the Internal Revenue Code provide that the period for collection by levy after an assessment shall not be extended or curtailed by reason of a judgment against a taxpayer. This is now an incorrect statement of the law, in view of the TAMRA amendment. The proposed regulations would conform the existing regulations to section 6502(a) in its present form.

Effective dates

The proposed amendment concerning the statute of limitations on collection after assessment would be effective for taxes assessed after November 5, 1990, and for taxes assessed on or before November 5, 1990, if the period prescribed in section 6502 of the Internal Revenue Code of 1986 (determined without regard to the amendments made by the Omnibus Budget Reconciliation Act of 1990) for the collection of such taxes has not expired as of November 5, 1990. The proposed amendment concerning collection after commencement of judicial proceedings would be effective for levies issued after November 10, 1988.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure 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, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time, place and date for the hearing will be published in the Federal Register.

Drafting Information

The principal authors of these proposed regulations are Kevin B. Connelly and Anne P. Rosselot, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is proposed to be amended as follows:

Paragraph 1. The authority citation for part 301 continues to read in part:

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

Par. 2. § 301.6502–1 is amended by removing the words "6 years" and adding the words "10 years" in their place.

2. Paragraph (a)(2)(i) is amended by removing the words "6-year period of limitation" and adding "10-year period of limitation" in their place.

3. Paragraph (a)(3) is revised to read as set forth below.

4. Paragraph (c) is added to read as set forth below.

§ 301.6502–2 Collection after assessment.

(a) * * *

(3) If a proceeding in court for the collection of a tax is begun within the period provided in paragraph (a)(1) of this section (or within any extended period as provided in paragraph (a)(2) of this section), the period during which the tax may be collected by levy is extended until the liability for the tax or for a judgment against the taxpayer arising from the liability is satisfied or becomes unenforceable.

* * * * *

(c) **Effective dates.** (1) Paragraph (a)(1) of this section shall apply to—

(i) Taxes assessed after November 5, 1990; and

(ii) Taxes assessed on or before November 5, 1990, if the period prescribed in section 6502 of the Internal Revenue Code of 1986 (determined without regard to the amendments made by the Omnibus Budget Reconciliation Act of 1990) for the collection of such taxes has not expired as of such date.

(2) Paragraph (a)(3) of this section shall apply to levies issued after November 10, 1988.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 91–14164 Filed 6–17–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AB34

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Information To Be Made Available to the Public

AGENCY: Minerals Management Service Interior

ACTION: Further notice of proposed rulemaking.

SUMMARY: The Minerals Management Service's (MMS) regulations governing oil and gas and sulphur operations in the Outer Continental Shelf (OCS) include provisions for release of data and information to the public. The MMS believes that the rules need modification and clarification to ensure that the items of data and information submitted on Forms MMS–1866, Request for Reservoir Maximum Efficient Rate (MER); MMS–1867, Request for Well Maximum Production Rate (MPR); MMS–1868, Well Potential Test Report; MMS–1869, Quarterly Oil Well Test Report; and MMS–1870, Semiannual Gas Well Test Report, that are made available for public inspection are clearly identified in the regulations. This notice revises the previously published amendment to clarify which data and information submitted in association with MMS's permitting of drilling and production operations in the OCS will be available to the public.

DATES: Comments must be received or hand delivered by July 18, 1991.

ADDRESSES: Comments should be mailed or hand delivered to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070; Attention: John V. Mirabella.

FOR FURTHER INFORMATION CONTACT: John V. Mirabella, Acting Chief, Engineering and Standards Branch, telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: The rules at 30 CFR part 250 governing offshore oil and gas and sulphur operations, which were published in the **Federal Register** on April 1, 1988, included provisions in § 250.18 governing the release of data and information to the public. Section 250.18 specifies periods of time when certain geological and geophysical data and information will be protected from disclosure to the public. Section 250.18(d) identifies specific items of data and information on Forms MMS–330, MMS–331, and MMS–331C which are to be protected from disclosure for specified time periods. The release of data and information on other MMS reporting forms is not mentioned in 30 CFR part 250. This apparent inconsistency makes it necessary to determine whether data and information submitted on Forms MMS–1866, MMS–1867, MMS–1868, MMS–1869, or MMS–1870 should be available for public inspection when the same data or information is protected from disclosure under § 250.18 when submitted on Forms MMS–330, MMS–331, or MMS–331C.

Under OCS Order No. 12, Public Inspection of Records, which was rescinded by a **Federal Register** Notice published April 1, 1988 (53 FR 10596), lessees were advised regarding the specific data and information that would be protected from disclosure for specified time periods. The provisions of § 250.18 are not as inclusive as OCS Order No. 12.

Under revised part 250, the Gulf of Mexico OCS Region issued further guidance in the form of a Notice to Lessees and Operators (NTL). The NTL 88–03 was issued on June 29, 1988, and provided an interpretation on the data and information to be made available to the public. To provide additional specificity in the regulations, MMS published a notice of proposed rulemaking on August 4, 1989, in the **Federal Register** (54 FR 32316). The proposed rule would have amended § 250.18 to identify those items of data and information submitted on MMS reporting Forms MMS–1866 and MMS–1868 that would be subject to protection from disclosure and the timetables for release of the protected data and information. The proposed rule also provided that all data and information submitted on Forms MMS–1867, MMS–1869, and MMS–1870 would be available for public inspection upon receipt.

Following the public comment period, the comments received were reviewed, further analysis conducted within MMS, and a decision was made to propose a revised rule that more closely follows the framework of OCS Order No. 12.

This proposed rule modifies the previously published proposal to provide that, with the exception of summary of the porous zones, all information on Forms MMS–330, MMS–331, and MMS–331C will be released when the well goes on production. Data and information on Forms MMS–1867, MMS–1868, MMS–1869, and MMS–1870, which are not submitted until after the well is on production, will be released upon receipt of the forms. Although MMS–1866 is submitted after the well is on production, most of the data on the form is used to estimate the reserves and will not be available for public inspection without the consent of the lessee for the same periods as those provided for in paragraph (b) of this section. The MMS believes that returning to the basic approach of releasing certain information when a well goes on production will provide a balance between the commercial interests of the lessees to protect data and information from disclosure and the interests of the public to have access to data and information concerning public lands.

Specific comments received in response to the proposed rule are discussed below.

Comment: Two commenters recommended that proprietary information received with the MPR not be released along with the MPR.

Response: Narrative information and other supporting information submitted with the MPR is released in accordance with paragraphs (a) and (b) of § 250.18 and is not affected by this rule change.

Comment: Two commenters recommended that items specified in paragraphs (d)(6)(iii) through (vii) and (ix) of § 250.18 should be released since similar information has already been released on other forms.

Response: The rule has been revised to release all information except the summary of porous zones and the reserve data when a well goes on production. This will resolve any problems of inconsistency between protection of data and information on various reporting forms.

Comment: Several commenters recommended that information be protected if similar information is available through other sources.

Response: When data and information are protected from release, it is done to maintain the commercial value of the data and information for the lessee. The fact that similar information is released on a different form is not sufficient reason to protect data and information from release.

Comment: One commenter expressed the view that information on Form MMS–1866 be treated as interpreted information and protected for 10 years rather than analyzed information which is protected for 2 years.

Response: Information on forms frequently does not fit into a clear category of either analyzed or interpreted. In deciding when information should be released, MMS has attempted to balance the protection of the lessee's commercial rights associated with the information and the public's right of access to data and information concerning public lands. In this particular case, as discussed earlier, most of the data and information submitted on Form MMS–1866 will be protected for 2 years or as otherwise provided for in paragraph (b) of this section.

Due to the changes from the August 14, 1989, proposed rule, MMS has decided to publish a new proposed rule and provide a new comment period to allow additional comments to be submitted. Comments may be submitted by the date indicated above in the **DATES** section of this preamble.

In an effort to reduce the burden associated with information collection, MMS continuously reviews forms on which information is developed. In response to this review, MMS has developed revisions to several MMS forms. These revisions have been described in **Federal Register** Notices published August 9, 1990 (55 FR 32484–32502), and August 13, 1990 (55 FR 32973). When new forms are adopted, information will be protected from being released based on the type of information. Accordingly, although this proposed rule pertains to item numbers on existing forms, information will be protected on new forms based on requirements as modified by rule changes resulting from this notice.

Author: This document was prepared by John V. Mirabella, Engineering and Technology Division, MMS.

Executive Order (E.O) 12291

The Department of the Interior (DOI) has determined that this rule will not have any effect on the economy and is not a major rule.

Regulatory Flexibility Act

The DOI has determined that this rule will not have a significant effect on a substantial number of small entities. In general, the entities that engage in offshore activities are not considered small due to the technical and financial resources and experience necessary to safely conduct such activities.

Paperwork Reduction Act

This rule does not affect any information collection which requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Takings Implication Assessment

The DOI has determined that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment has not been prepared pursuant to Equal Opportunity 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The DOI has determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, preparation of an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: April 26, 1991.

Barry A. Williamson,

Director, Minerals Management Service.

For the reasons set forth above, 30 CFR part 250 is proposed to be amended as follows:

PART 250—[AMENDED]

1. The authority for part 250 continues to read as follows:

Authority: Sec. 204 Pub. L. 95–372, 92 Stat. 629 (43 U.S.C. 1334).

2. Section 250.18 is amended by revising the introductory text of paragraph (d) and by adding new paragraphs (d)(4), (d)(5), (d)(6), (d)(7), and (d)(8) to read as follows:

§ 250.18 Data and information to be made available to the public.

* * * * *

(d) Data and information identified in paragraphs (d)(1) through (d)(4) of this section shall not be available for public inspection without the consent of the lessee for the same periods as those provided in paragraph (b) of this section or until the well goes on production, whichever is earlier, except that the summary of porous zones shall not be released when the well goes on production unless the period of time specified in paragraph (b) has expired. Paragraphs (d)(5) through (d)(8) of this section identify forms on which all data and information are available for public inspection.

* * * * *

(4) On Form MMS–1866, Request for Reservoir Maximum Efficient Rate (MER), in the "Basic Data Required" section, items 1 through 31.

(5) On Form MMS–1867, Request for Maximum Production Rate, all items of data and information are available for public inspection.

(6) On Form MMS–1868, Well Potential Test Report, all items of data and information are available for public inspection.

(7) On Form MMS–1869, Quarterly Oil Well Test Report, all items of data and information are available for public inspection.

(8) On Form MMS–1870, Semiannual Gas Well Test Report, all items data and

information are available for public inspection.

* * * * *

[FR Doc. 91-14461 Filed 6-17-91; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 218 and 229

[Docket No. LI-7; Notice 2]

RIN 2130-AA53

Event Recorders

AGENCY: Federal Railroad Administration (FRA), (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to improve the safety of railroad operations and to enhance the quality of information available for post accident investigations by requiring event recorders on passenger trains and on heavy, fast freight trains.

DATES: (1) *Written comments:* Written comments must be received by September 20, 1991.

(2) *Public hearing:* A public hearing will be held at 10 a.m. on August 22, 1991. Persons desiring to make an oral statement at the hearing should notify the Docket Clerk before August 19, 1991.

ADDRESSES: (1) *Written comments:* Address comments to the Docket Clerk, Office of Chief Counsel, RCC-30, Federal Railroad Administration, Department of Transportation, 400 Seventh Street, SW., room 8209, Washington, DC 20590. Comments should identify the docket and notice number and five copies should be submitted. Persons wishing to receive confirmation of the receipt of their comments should include a self-addressed stamped postcard. The Dockets Section is located in room 8209 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday, except holidays.

(2) *Public hearing:* A public hearing will be held at room 2230, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Persons making statements at the hearing should provide five copies of their remarks at the hearing.

FOR FURTHER INFORMATION CONTACT: Phil Olekszyk, Deputy Associate Administrator for Safety, RRS-2, room 8320A, Federal Railroad Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 (telephone 202- 366-0897), or Thomas A Phemister, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590 (telphone 202-366-0635).

SUPPLEMENTARY INFORMATION:

Statutory background

Sections 10 and 21 of the Rail Safety Improvement Act of 1988 (RSIA), Public Law 100-342, 102 Stat. 624 (June 22, 1988), provide as follows:

Sec. 10. Event Recorders.

Section 202 of the Federal Railroad Safety Act of 1970 is amended by adding at the end the following new subsection:

"(m)(1)(A) The Secretary shall, within 18 months after the date of the enactment of the Rail Safety Improvement Act of 1988, issue such rules, regulations, standards, and orders as may be necessary to enhance safety by requiring that trains be equipped with event recorders within 1 year after such rules, regulations, orders, and standards are issued.

(B) If the Secretary finds that it is impracticable to equip trains as required under subparagraph (A) within the time limit under such subparagraph, the Secretary may extend the deadline for compliance with such requirement, but in no event shall such deadline be exended past 18 months after such rules, regulations, orders, and standards are issued.

"(2) For the purpose of this subsection, the term 'event recorders' means devices that—

"(A) record train speed, hot box detection, throttle position, brake application, brake operations, and any other function the Secretary considers necessary to record to assist in monitoring the safety of train operation, such as time and signal indication; and

"(B) are designed to resist tampering."

(Sec. 21. Tampering With Safety Devices.

Section 202 of the Federal Railroad Safety Act of 1970 is amended by adding at the end the following new subsection:

"(o)(1) The Secretary shall, * * *, issue such rules, regulations, orders, and standards as may be necessary to prohibit the willful tampering with, or disabling of, specified railroad safety or operational monitoring devices.

"(2)(A) * * *.

"(B) * * *.

(Subparagraphs (A) and (B) establish penalties for "railroad companies" and "individuals" who tamper with or disable safety or operational monitoring devices.)"

Proceedings to Date

On November 23, 1988, FRA published an advance notice of proposed rulemaking (ANPRM) in this docket. 53 FR 47557. The ANPRM summarized the state of FRA's knowledge about event recorders, called for written comments, and announced a public hearing to gather further information.

The substantive comments submitted by interested parties, the testimony given, and the exhibits received at the January 1989 hearing were helpful to the agency. A brief summary shows:

- That the producers of event recorders are fully capable of developing a unit that will detect and record virtually any parameter mandated by FRA;
- That the installed cost of an 8-10 event recorder ranges from $4,000 to $7,000;
- That the major railroads are ordering event recorders on most of their new locomotives;
- That the line haul railroads have between 40 and 75 percent of their road locomotives equipped with some kind of event recorder;
- That event recorders have proven useful in many major and minor accident investigations and that they have utility in monitoring engineer performance as well;
- That recorders, other than those gathering data on paper tapes, do not require daily maintenance and can be adequately maintained on the standard 92-day interval; and
- That the state of the art in event recorders is rapidly developing, both in terms of the capabilities of the equipment and in terms of its economic efficiency and that FRA should craft any event recorder requirement so that future innovations are not discouraged.

The railroad industry, especially the short line segment of it, believes that mandatory black box installations cannot be cost justified; rail labor believes that recorders are a good idea, as long as they are accurate; and the National Transportation Safety Board favors the installation of their devices. FRA is well aware of the costs of event recorders, and of the other requirements mandated by DOT, but FRA has been charged by the Congress to require that trains be equipped with event recorders if doing so will enhance safety.

On February 3, 1989, in a related proceeding, FRA published a final rule in Docket RSOR-10 (54 FR 5485). Published primarily in implementation of section 21 of the RSIA, FRA addressed tampering with "safety devices" and "operational monitoring" devices, including event recorders. In that rule, FRA prohibited tampering with event recorders and granted limited authority to deactivate such devices as were currently installed.

Background

According to the 1989 edition of Railroad Facts, a compendium of railroad industry statistics published by

the Association of American Railroads (AAR), Washington, DC, there were approximately 20,000 locomotive units in service on the major freight railroads and Amtrak at the close of 1988. The vast majority of these were in freight or passenger road service. About two-thirds of the fleet has been added since 1970 and just under one-fourth of locomotives are eight years old or less.

Every major railroad uses event recorders of some type. Of the road locomotives in the national fleet, over 17,000 are owned and operated by ten major railroads and Amtrak. More than 9,000 of these are now equipped with a recorder retaining eight or more events and over 3,500 carry recorders for two or three events. This total of 12,500 locomotives is a significant increase from the nearly 7,500 locomotives determined to be equipped at the time FRA published the ANPRM in this proceeding in November 1988; more than 70 percent of the road locomotives on the nation's major railroads are now equipped with some form of event recorder.

Public attention focused on locomotive safety devices following the January 4, 1987, Amtrak/Conrail accident at Chase, Maryland. Several entities interested in the investigation of that accident mentioned the help that event recorders could have been in analyzing the events leading up to the fatal collision.

What an Event Recorder Does

It seems safe to say that the public perception of the role and capabilities of an event recorder is largely based on the use made of such devices in the air transport industry. In the investigation of an air disaster, it is often the flight data recorder that, together with the cockpit voice recorder, provides either the key clues about what happened leading up to the crash or the most reliable verification of a disaster hypothesis based on observations made of the debris. The importance of a flight data recorder stems from the complex, three dimensional environment in which airplanes move, the typical disintegration of the aircraft when it hits the ground, and the fact that the plane may fall to earth a considerable distance, both vertically and horizontally, from the actual "place" where the catastrophic event took place.

By contrast, railroads operate in two dimensions and, except in rare cases, investigators usually have significantly more wreckage at the actual site of the accident from which they can glean the clues that lead to a determination of cause. None of the locomotive event recorders in common use on America's railroads records as much data as the black boxes in a transport airplane and FRA has not found any railroad equipping its locomotives with anything like the cockpit voice recorders found in large passenger airplanes.

Section 10 of the RSIA defines an event recorder as a device that records "train speed, hot box detection, throttle position, brake application, brake operations," and other functions the Secretary considers necessary to assist in monitoring the safety of train operations, "such as time and signal indications."

The newer recorders in common use by the railroad industry, those on the more than 9,000 road locomotives already equipped with a device that records at least eight events, accumulate the following information:

1. Time;
2. Speed;
3. Traction motor amperage;
4. Distance traveled;
5. Throttle position;
6. Dynamic brakes;
7. Locomotive individual brake; and
8. Train brake pipe pressure reduction.

A typical locomotive-mounted device records (on magnetic tape or in digital form in a computer "memory") the last 48 hours of locomotive events. The information is stored on three data channels, with a fourth dedicated to tracking elapsed time.

The timing channel carries a constant, analog signal of 6.25 Hertz used as a time reference, especially when the data are played back. This channel is used in the generation of time, speed, and distance.

A second channel records wheel revolutions. When calibrated for drive wheel diameter, this channel, working with the time signal, is used to generate unit speed and distance travelled.

A third channel records traction motor current, thus measuring the amount of "work" the motor is performing. Among other derivatives of this data is the determination of presence and force of the dynamic brake.

The fourth channel records what has been called a "digital word." Such a word, with eight bits of information, is used to retain information on throttle position, automatic brake pipe pressure, application of the locomotive (the "independent") brake, and such parameters as direction of travel. Each condition is sampled, placed into correct order within the eight-bit digital word, and recorded. When and if the data are retrieved, a playback unit reads and decodes the proper sequence and displays the data on a readout medium such as a strip chart. Because the "digital word" recorder collects and stores "samples" of conditions, a condition change may be noted after the time in which it actually happens. This lag may be as much as 15 seconds.

Skilled technicians can use recorder data to recreate, typically, a history of the last 48 hours of a locomotive's operation. While airplane black boxes usually retain only the final minutes of a trip, locomotives need to record over a longer interval. Unless damaged, for instance, the power consist on a train is often used to remove from the scene any cars still on the tracks, clearing them for the rerailing and cleanup crews. A 48-hour "tape loop" is common, both to provide a picture of the entire trip leading to the accident and to allow the locomotives pulling a train involved in an accident to play a clean-up role without "erasing" essential data by recording over it.

Experts in accident reconstruction use all available data to determine the cause of an accident and are almost always successful. Sometimes, the initial determination is relatively easy: If the cars are tipped off the track and lying in consist order along the outside of a curve, overspeed is a safe initial assumption. Cause is also readily determined from visible evidence in cases such as a broken wheel on the first car derailed, a rail turned under the second locomotive, or marks of a derailed wheel down the ties until that car meets a switch or a grade crossing.

Other accidents are more difficult to analyze, and even seemingly simple accidents may very occasionally have contributing causes that elude investigators. FRA believes it has generally been successful in determining the cause of an accident, whether or not event recorder data are available. Of the nearly 300 accidents (of all types, including grade crossing accidents and employee fatalities) directly investigated by the agency each year, all but 3 to 6 percent are closed with known cause. Because of the nature of the railroad environment, it is usually possible to interview the crew and learn from them what was happening immediately before the accident. With recorder data, the accuracy of their statements can be verified, but even without event recorder data, the stated actions of the crew can often be programmed into train simulators and the train "run" to test the accuracy of the crew's testimony.

Event recorder data increases both the quality and the quantity of information available to the investigator, an especially important factor in analyzing complex post-accident scenes. When the death of the

head-end crew means that eyewitness testimony is not available, or when the combined effects of high speed, heavy tonnage, or fire make it extremely difficult to read the physical evidence, the event recorder may provide or lead to vital intelligence otherwise destroyed. Even so, it would be wishful thinking to believe that, as more and more trains are equipped with event recorders, it will significantly change the already very low percentage of "undetermined" accidents. As an example, in 1989, FRA investigated 225 train and grade crossing accidents. In almost half the cases (44 percent) agency records show that the investigators had recorder data available to them. FRA determined the cause in all but three of the 225 accidents; of that three, two of the trains did not have event recorders and one did.

While they cannot guarantee discovery of the cause of an accident, event recorder data have demonstrated their utility. On May 12, 1989, a Southern Pacific train ran away on a hill outside San Bernardino, California, and derailed at a curve near the botton of the hill. Portions of the train and its cargo landed in a residential area, resulting in four fatalities, two serious injuries, and seventeen minor ones. An early suspected cause was poor train handling by the crew, but after rigorous analysis of all the data, including that available from the event recorders, the National Transportation Safety Board absolved the crew from blame. Instead, the crucial factors included a failure to accurately report the total weight of the trains, a failure to tell the crew about the condition of the dynamic brakes available to them, and an unclear operating rule about brake applications with heavy trailing tonnage on grades. FRA understands that Southern Pacific has made operational changes to its train handling procedures, including a change in its air brake rules, as a result of the information learned in this accident investigation. At San Bernardino, it was immediatley obvious that the train left the tracks because it was going too fast, but the data provided by the on-board event recorder also allowed investigators to look more closely at and for the cause of the overspeed. Once this was known, a "lessons learned" approach led to operational corrections aimed at enhancing the quality of information available to the engineer and improving the decision making capabilities of this key position.

FRA's mission, to enhance the safety of railroad operations overall, cannot be centered on an exhaustive look at each railroad accident. FRA must deal with the railroad industry as a whole and use a total program of investigation, incentives, research, and enforcement to foster the safest system possible. Certainly, valuable insight is possible from the detailed examination of a single accident—as is proven by the San Bernardino example and by the detailed examinations the National Transportation Safety Board performs on a handful of rail accidents each year—and the expanded availability of event recorder data will allow FRA to reap the benefits of both wide- and narrow-based accident analysis.

The Presence of Event Recorders in the Railroad Industry

As noted, major freight railroads in the United States already have more than 70 percent of their road locomotives equipped with an event recorder of some type; because most trains are powered by more than one locomotive, it is well within probability that up to 90 percent of the major freight railroads' trains are equipped with event recorders. Essentially all of the National Railroad Passenger Corporation's (Amtrak's) locomotives are equipped and, while FRA's information is incomplete, at least some commuter railroads have event recorder equipped locomotives. FRA cannot make a precise estimate of the percentage of "equipped" commuter equipment based on the information now available to this agency, nor can it be certain that the recording devices on all "equipped" power or control units meet RSIA standards. Commuter railroads and railroads operating commuter service are urged to supply this information in response to this notice.

Only a very few of the switching and terminal railroads and smaller line-haul companies have equipped their locomotives with event recorders, but these power units are most often used in low speed operations for which speed indicators are not required.

So far as FRA has been able to determine, virtually all new road locomotives purchased by major United States railroads are factory equipped with an event recorder capable of gathering and retaining information on the parameters established by the RSIA, with one exception: "Hot box" (over heated journal) detection. The reasons this "event" is not captured by any locomotive-mounted recorder in common current use are simple: First, the railroads have determined that hot box readings should be recorded at central locations and, for reasons developed below, FRA agrees with this practice. Second, the over-heated journal is something that happens outside the locomotive. Signals from hot box detectors are now routed to other locations on a railroad; bringing that signal "on board" could be done, but recording data on the locomotive that is now recorded elsewhere would be duplicative and would serve no apparent safety purpose. Third, FRA believes that the present methods of hot box detection and recording is more complete; it is also more secure in that there is virtually no chance that the data would be destroyed, altered, or tampered with in an accident.

Some railroads notify the crew of a train passing a hot box detector of both negative and positive readings, but the common procedure is either to call the crew with orders to stop and inspect a suspected hot box or to have a wayside indicator convey the same message. In either event, the fact of the detection of a suspected over-heated journal and of the notification to the crew is recorded and available for examination by FRA and railroad officials. FRA's review of the railroad industry's practices regarding hot box detection, reporting, and recording have convinced the agency that no additional requirements are necessary. There would be no safety purpose served by requiring the recording of hot box detection by a device mounted on a locomotive.

Cost and Utility Considerations

Since approximately 9,000 of the nearly 20,000 locomotives operated by the freight railroads and Amtrak are now equipped with an eight (8) event recorder, the $7,000 installed cost (a composite of costs mentioned in testimony at the ANPRM hearing in this matter) of this recorder means that the railroad industry would have to pay about $77,000,000 to equip the remainder of the fleet. The annual cost of maintenance and supply would be approximately $3,300,000 for these additional recorders. The situation with the commuter railroads, as noted earlier, is more complex due to the variety of equipment operated and the lack of precise information about the extent to which it is equipped with event recorders that meet RSIA standards. FRA's estimate is that the additional cost to have event recorders on this equipment could exceed $7,000,000. Maintenance expenses would add additional, continuing costs.

Because the smaller freight railroads are not now equipped with recorders as a general rule, the cost impact of a rule requiring event recorders on each locomotive would be borne disproportionately by this segment of

the industry. However, section 10 of the RSIA does not require each locomotive to be equipped; the statutory requirement is that, where necessary to enhance safety, trains shall be equipped.

Unlike good brakes, sound track, and qualified engineers, event recorders only indirectly prevent accidents. Their primary safety benefit lies in their use as a tool to diagnose train handling accidents, to continue building a knowledge base of accident causation and, through sampling actual train movements, to evaluate changes in methods of train operation. Event recorders also provide a way to sample the train-handling ability of an engineer in a real-world environment rather than in a locomotive simulator. Another regulatory proceeding, Docket No. RSOR–9, Qualifications for Locomotive Engineers, will deal more directly with the possibilities of and the opportunities for using electronic devices rather than human supervisors to monitor the performance of locomotive engineers.

The Need for Event Recorders

FRA has determined that event recorders are necessary in the railroad environment. Whether they are used to aid accident analysis, to record locomotive engineers, or to monitor equipment performance, event recorders provide data that is free from bias, free from the inconsistent powers of human observation, and free from the possible taint of self-interest. The data extracted from recorders can be played over and over as part of the analysis process without losing its consistency.

Event recorders provide FRA with a growing pool of verifiable factual information about how trains are operated and what happens when they become part of an accident.

Even the presence of event recorder data will not ensure the discovery of the cause of every accident nor eliminate all sources of controversy about causation, but as shown in the Southern Pacific's San Bernardino derailment, event recorder data can help direct the attention of an accident investigator to possible causes not at first suspected.

FRA has heard some interested parties say that event recorders cannot prevent accidents, they can only give information about the accident that just happened. However, the mere presence of a recorder may make train crews operate more closely to the desired parameters and adhere more strictly to the railroad's book of rules. More important, by reducing the potential for bias from accident investigations, the data from event recorders can help pinpoint operational changes that may prevent the next accident.

It is axiomatic that complex accidents are the hardest to analyze and the most likely to challenge the investigator. FRA believes that event recorders will prove most advantageous as an aid in investigating "complex" accidents, that is, accidents with the greatest potential to destroy evidence or to hamper evidence gathering. In FRA's experience, the faster a train goes, and the heavier it is, the higher the in-train dynamic forces and the more likely it is to leave a confused, complex post-accident scene.

Recognizing this, FRA proposes to require that, within 12 months of the publication of a final rule in this docket, freight trains moving at speeds of more than 30 miles per hour and with a consist of 50 or more cars, or longer than 4,000 feet, whichever is less, be powered by at least one locomotive equipped with an in-service event recorder. Section 10 of the RSIA permits an extension of this deadline upon a finding that it is impracticable to equip trains within a year; FRA welcomes comments on the proposed deadline.

There is precedent for adopting a low speed "floor" for railroad safety regulations. Federal rules now exempt locomotives that operate at 20 miles per hour or less from a mandatory speed indicator requirement (49 CFR 229.117). Twenty miles per hour is just under the maximum speed for Class two track and FRA's experience is that Class two track does not produce the kinds of complex post-accident environments that call the full capabilities of event recorders into play. This is at least partially the result of the laws of physics: The energy of a moving object, that is, the energy that must be dissipated in a train accident, varies with the square of speed. Thus, the energy of even a single rail car at 20 miles per hour is more than doubled at 30.

Speed is one parameter that can lead to a complex post-accident environment, the size of the train is another. In the railroad industry, there are two common expressions to describe "big" trains: Train length and trailing tonnage. Of the two, train length is far easier to calculate because, most of the time, it requires only a count of the cars (and an allowance for a long string of unusually long care such an multi-platform intermodel flat cars). An accurate measure of trailing tonnage means either passing the whole train across a scale or adding the known weights of all cars in the train. This may seen no more difficult that counting the cars, but so many cars move subject to a weight agreement that calculating trailing tonnage yields an estimate at best. With the lessons of the San Bernardino accident still fresh, FRA could not condone estimated trailing tonnages.

FRA realizes that 50 coal hoppers are certainly much shorter that 50 intermodal flat cars, especially if many of the latter are multi-platform cars. Thus, while "faster than 30 miles per hour and longer than 50 cars (30/50)" might be a convenient, shorthand way of thinking about the requirement under consideration, the regulation proposed in this notice would set a standard of 50 cars or 4,000 feet, whichever is less. This agency believes that such a standard will strike a fair balance between short, heavy cars and long, light ones, at least in terms of their potential to create the kind of complex accident scene for which Federal investigators see the event recorder as most advantageous.

FRA also proposes to require that, within 12 months of the publication of a final rule in this docket, all passenger trains be powerful by at least one locomotive equipped with an in-service event recorder, regardless of operating speed or train length. As with freight trains, FRA realizes that section 10 of the RSIA permits an extension of this deadline upon a finding that it is impracticable to equip trains within a year; FRA welcomes comments on the proposed deadline.

While FRA recognizes a special duty of care owed to railroad passengers, this agency is also aware that passenger trains have significant operational and equipment differences from freight trains and that these differences may allow what would otherwise seem different treatment to be accorded passenger and freight operations while maintaining equivalent, high levels of safety. In general:

- Passenger trains have faster acting brakes than freight trains, (with less draft gear slack their brake control valves can be designed to produce faster application);
- Passenger trains have a graduated release feature and a higher brake pipe pressure; with a brake pipe that is typically shorter than a freight train's, they also have less pressure gradient;
- Passenger trains have more even brake application throughout the train because there is only a little variation between the empty and loaded weight of passenger cars and because there is significantly less variation in density throughout the train;
- Passenger trains have an anti-skid feature that allows more controlled stops under adverse traction conditions;
- Passenger equipment in general, and commuter equipment in particular, is not interchanged away from its owner, thus allowing inspection and

maintenance forces to become more familiar with each piece of equipment and more directly responsible for its safe and efficient operation; and

• Commuter operations are characterized by tight control over trains through automatic train control, centralized dispatching, short blocks, tight schedules, cab signals, and short trains; these factors allow fairly precise isolation of accident causes.

FRA believes that event recorders are necessary to enhance safety on big, fast freight trains and on passenger trains; in addition, FRA believes that it is appropriate for railroad safety for all railroad locomotives equipped with speed indicators to also, eventually, be equipped with event recorders. In this notice, FRA is proposing that railroad locomotives ordered new or rebuilt after 24 months from the publication of a final rule in this docket, if they are equipped with a speed indicator, be equipped with an event recorder.

For these purposes, FRA will adopt the same definition for "rebuilt" as in the glazing standards: A locomotive shall be considered "rebuilt" if it has undergone an overhaul that has been identified by the railroad as a capital expense under Interstate Commerce Commission accounting standards.

In that the vast majority of new and rebuilt locomotives are being equipped with event recorders now, this requirement will impose virtually no additional burden on the industry; because the event recorder will, essentially, have paid for itself by the time today's new locomotives are purchased by small railroads, FRA anticipates no measurable cost penalty at the timer of that transaction, either.

FRA proposes to exempt locomotives from an event recorder requirement if they are also exempt from the speed indicator requirement at 49 CFR 229.117. FRA believes it would serve no useful safety purpose to require the recording of speed (or other operating functions) on a locomotive that was not required to have a device to indicate its speed to the engineer.

FRA has not proposed an immediate requirement to install event recorders on new and rebuilt locomotives in recognition of the long lead times typical in the acquisition of large machinery.

FRA's proposal covers only the minimum data to be recorded and maintained and does not mean in any way to limit the initiative of any railroad or any developer of event recorders to purchase, or to develop, a device with greater capabilities than are proposed here. To the same effect, this proposed rule does not touch on the issue of how data shall be captured, how it shall be stored, or how it shall be retrieved. Railroads and suppliers are encouraged to continue to make the advances in the state of the art that have characterized the recent past.

The recorders to be required by this proposal must be capable of collecting and retaining, for a 48-hour time span (that is, the most recent 48-hour period of locomotive operation) data on train speed, throttle position, brake applications and operations (including dynamic brake application and operation), time, distance, and direction of motion. This proposal includes a requirement that event recorder data be preserved for Federal investigators if an equipped locomotive is involved in an accident required to be reported under part 225.

In addition to requiring that passenger trains, and freight trains of 50 or more cars operating at speeds in excess of 30 miles per hour, be equipped with event recorders, this proposal mandates that event recorders be serviced at the quarterly inspection interval and that they be in full functional operation before the quarterly inspection is deemed to have been completed.

FRA is also proposing that, except under very limited circumstances, individuals who deliberately disable event recorders be subject to civil penalties and disqualification from safety-sensitive functions.

FRA believes that railroads may have valid reasons for turning off event recorders or for temporarily removing from service those already installed. Accordingly, it is proposed that a qualified person may temporarily remove an event recorder from service by disconnecting its power, by removing the recording medium, or by physically removing the unit from the locomotive. The reason for taking the recorder out of service must be noted on a tag attached to the device (or left in its place) and the recorder may not stay out of service beyond the next quarterly inspection. Compliance with these requirements will protect the qualified individual from allegations of tampering or deliberate disabling.

This proposal also includes a requirement that, if a train powered by a locomotive equipped with an event recorder is involved in a reportable accident, the railroad must, to the extent possible, preserve the data recorded by the device for analysis by Federal investigators.

FRA has assumed throughout the proceeding thus far that the event recorder would be installed in, and operate on electrical power from, a locomotive. If any interested party believes this is an incorrect assumption or believes that this proposal needs to be modified to accommodate railroad vehicles other than locomotives as the location of an event recorder, FRA specifically solicits such comments. In this same vein, FRA is prepared to accommodate commuter "push/pull" operations where the operating railroad has elected to place the recorder in the control car and would welcome suggested regulatory language on this point.

FRA is particularly interested in receiving comments about the kinds of events that should be recorded, for instance, on electric MU equipment used in commuting service. One major commuter authority has suggested that the parameters should be:

(1) Time;
(2) Speed;
(3) Power mode of train;
(4) Brake mode of train;
(5) Cab signal aspect; and
(6) ATC cut-out.

FRA solicits comments on this suggestion and on the cost of implementing it for MU electric commuter operations rather than the parameters now proposed.

FRA realizes that "passenger trains" includes more than Amtrak and certain commuter operations. As only some of the potential examples, while steam operations are excluded from part 229, this agency is aware that some excursion trains are powered by diesel or electric locomotives of no less historical importance than a restored steam locomotive and that steam excursions often include a current-vintage diesel locomotive as a "helper." Circus trains, together with what are commonly known as "Director's" or "Shipper's Specials" are, most likely, passenger trains, as are trains with guard cars, and with camp cars. Wreck trains, where mechanical, track, and signal forces ride to a derailment to assist in rerailing and cleanup efforts also fall under the description of passenger trains.

On the surface, FRA does not see an easy, logical reason to exclude the examples described above from the passenger train category; however, FRA is very interested in the thoughts of those most affected by inclusion or by exclusion. In the area of commuter rail operations, FRA would appreciate comments exploring the possibility that a speed and length "floor," as proposed for freight operations, will place event recorders where they will have a significantly favorable impact on railroad safety.

Finally, FRA recognizes that there may be railroad operations where event

recorders are neither necessary nor desired. In developing a final rule in this proceeding, FRA invites comments about any such operations. FRA requests that anyone furnishing information on this topic do so with as much specificity as possible, including, where applicable, such facts as accident rates/records, unique operational characteristics, and the inadaptability of particular equipment to event recorders. While the agency believes it is premature now to establish the criteria for successfully seeking a waiver of any event recorder regulation which may emerge from this proceeding, FRA is always willing to consider such petitions from affected parties.

Relation to Other Rulemaking Proceedings

In its final rule proscribing tampering with safety devices, published February 3, 1989 (54 FR 5485), FRA required installed event recorders to be operative unless the locomotive was being hauled dead-in-tow or unless the event recorder became inoperative enroute, in which case FRA imposed a notification requirement similar to that used for certain signal-related equipment that controls or restricts train operations. The AAR filed a Petition for Reconsideration in that Docket. Some of what is being proposed in this NPRM responds to that petition.

FRA agrees that it serves no safety purpose to create a situation in which a locomotive without an installed event recorder could be used in a power consist while a locomotive with an inoperative event recorder could not. FRA notes that section 10 of the RSIA seeks to have event recorders, not on locomotives, but on those trains where the equipment is necessary to enhance safety.

FRA also agrees with the AAR that restricting the operations of locomotives with inoperative event recorders may discourage their installation. As noted above, event recorders must be in operating order at the time the locomotive is cleared from the quarterly inspection, but these devices, like any mechanical or electronic device, are subject to random failures and FRA sees no safety benefit in severely restricting the operation of a locomotive costing upwards of a million dollars because of the failure of a fifty dollar part in a black box. This proposal would, of course, impose some restriction on the use of a locomotive without an operating event recorder: It could not be the only power unit on a freight train hauling 50 or more cars faster than 30 miles per hour, nor could it be the only power unit on a passenger train.

Based on FRA's further analysis and on the arguments advanced in the AAR's Petition for Reconsideration, FRA believes that, while event recorders come under the general category of safety devices by some meanings of that term and, while they may positively encourage crews to obey, they are not the kind of active safety devices that have an immediate effect on train operation. Event recorders do not function in the same way or for the same purpose as does equipment used to assure that the locomotive operator is alert, or that the engineer is not physically incapacitated, or that the person at the controls is aware of and complying with the indications of a signal or other operational control system.

Accordingly, FRA proposes to remove references to event recorders from subpart D of part 218 and to include all regulations relating to event recorders in the Railroad Locomotive Safety Standards in part 229.

The use of event recorders in the monitoring of locomotive engineer performance is covered in Docket No. RSOR–9.

Qualifications for Locomotive Engineers

Analysis by Section

Section 229.5

This section would be amended by adding a definition of "event recorder" as a tamper resistant device to record data on train speed, direction of motion, time, distance, throttle position, and brake applications and operations over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed.

Section 229.25. This section would be amended by adding a requirement that event recorders be maintained according to standards set by the manufacturer, the supplier, or the owner of the unit. A written copy of the maintenance instructions would have to be maintained at the location where the work is being done.

Section 229.135

This new section of the regulations would contain the bulk of FRA's event recorder requirements. Subsection (a) would require that passenger trains, and freight trains operated at speeds of more than 30 miles per hour and with a consist of more than 50 cars or more than 4,000 feet in length, whichever is less, be powered by at least one locomotive equipped with an in-service event recorder.

Subsection (b) would require that new and rebuilt locomotives placed in service after 24 months following the publication of a final rule in this proceeding be equipped with an event recorder.

Subsection (c) would exempt locomotives that operate at 20 miles an hour or less from the requirement to have an event recorder.

Subsection (d) would define "rebuilt" as an overhaul identified by the railroad as a capital expense under Interstate Commerce Commission accounting standards.

Subsection (e) would provide that individuals who willfully disable event recorders would be subject to civil penalties and disqualification proceedings. Subsection (f) would allow a railroad to take an event recorder out of service in one of three enumerated ways and would require that the reason for removing it from service be recorded on a tag attached to the unit or left in place of the unit. Event recorders would not remain out of service beyond the next quarterly inspection and maintenance of the locomotive on which they are installed.

Subsection (g) would provide for the security, and subsequent use by Federal investigators, of data from the recorders of locomotives involved in accidents. Subsection (h) would establish part 229 as the exclusive part dealing with locomotive event recorders.

Regulatory Impact

E.O. 12291 and DOT Regulatory Policies

This proposal has been evaluated in accordance with existing policies and procedures, and is considered to be nonmajor under Executive Order 12291 but significant under DOT policies and procedures (44 FR 11034, February 26, 1979).

In an effort to design a regulatory approach that would achieve the maximum benefits at the minimum cost to the industry, FRA developed five regulatory options:

(1) Taking no action;

(2) Requiring the installation of event recorders on all locomotives;

(3) Requiring the installation of event recorders on all new and rebuilt locomotives;

(4) Requiring event recorders on Amtrak inter-city passenger trains as well as all high-speed, heavy, tonnage freight trains; and

(5) Requiring event recorders on all passenger trains, high-speed and heavy tonnage freight trains, and all new and rebuilt locomotives.

FRA's analysis shows that, while the fourth option is the most economically efficient, the fifth option is both economically reasonable and fully responsive to the public interest as

expressed by Congress in the RSIA. It will result in event recorders first being present when and where they do the most good, and at the same time direct that, over the period of the industry's normal purchase/rebuild cycle, virtually all locomotives will be equipped, thus increasing, for example, the potential that at least one unit's event recorder data will survive even a major, head-on collision. The chosen option avoids a massive, immediate, and costly retrofit program, the burden of which would fall disproportionately on small and medium sized railroads, and it will improve FRA's ability to accurately identify the causes of accidents involving complex scenarios involving emergency train handling and train dynamics.

A full analysis of economic impact, including the impact on small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), of the rule proposed here and of the other options considered by FRA has been made and is included in the docket file of this proceeding.

Regulatory Flexibility Act

These regulations will not have any measurable impact on small entities. FRA therefore certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The proposed rule contains information collection requirements. FRA will submit these information collection requirements to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). FRA has endeavored to keep the burden associated with this proposal as simple and minimal as possible. The proposed sections that contain information collection requirements and the estimated time to fulfill each requirement are as follows:

Proposed Section	Brief Description	Estimated Avg. Time
229.25	Maintaining manufacturer's, supplier's, or owner's instructions for event recorder inspection, maintenance, and testing	15 min.
229.135(f)	Tagging reason for removing event recorder from service	1 min.
229.135(g)	Record of "security" of event recorder data	15 min.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. FRA solicits comments on the accuracy of the estimates, the practical utility of the information, and alternative methods that might be less burdensome to obtain this information. Persons desiring to comment on this topic should submit their views in writing to FRA and to Mr. Wayne Brough, Regulatory Policy Branch (OMB No. 2130-New), Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Washington, DC 20530.

Environmental Impact

This rule will not have any identifiable environmental impact.

Federalism Implications

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

The Proposed Rule

In consideration of the foregoing, FRA is proposing to amend parts 218 and 229, title 49, Code of Federal Regulations as follows

PART 218

§ 218.5 [Amended]

1. By amending § 218.51(b)(3) by removing the reference to "event recorder" so that it will read as follows:

* * * * *

(b) * * *

(3) Under the provisions of § 229.9 of this chapter, provided that when a locomotive is being operated under the provision of § 229.9(b) a designated officer has been notified of the defective alerter or deadman pedal at the first available point of communication.

§ 218.53 [Amended]

2. By amending § 218.53(c) by removing the phrase: "or to record data concerning the operation of that locomotive or the train it is powering."

§ 218.61 [Amended]

3. By removing § 218.61(c) in its entirety.

Appendix B to Part 218 [Amended]

4. By amending appendix B to part 218 by removing all references to event recorders and to devices which record data such as train speed and air brake operations.

PART 229—[AMENDED]

1. The authority citation for part 229 is revised to read as follows:

Authority: 45 U.S.C. 22–34, as amended; 45 U.S.C. 431, 437, 438, as amended, 49 App U.S.C. 1655(e), as amended; Pub. L. 100–342; and 49 CFR 1.49 (c), (g), and (m).

§ 229.4 [Amended]

2. By amending § 229.4 (information collection requirements) as required.

§ 229.5 [Amended]

3. By amending § 229.5 to redesignate paragraphs (g) through (m) as paragraphs (h) through (n) and add a new paragraph (g) as follows:

* * * * *

(g) *Event Recorder* means a device that monitors and records data on train speed, direction of motion, time, distance, throttle position, and brake applications and operations (including dynamic brake applications and operations) over the most recent 48 hours of operation of the electrical system of the locomotive on which it is installed and is designed to resist tampering.

* * * * *

§ 229.25 [Amended]

4. By amending § 229.25 by adding a new paragraph (e) as follows:

* * * * *

(e) The event recorder, if installed, shall be inspected, maintained, and tested in accordance with the instructions of the manufacturer, supplier, or owner thereof. A written copy of the instructions in use shall be kept at the point where the work is performed.

5. By adding a new § 229.135 as follows:

§ 229.135 Event recorders

(a) Effective (12 months after the publication of a final rule in this docket) passenger trains, and freight trains

operated at speeds of 30 miles an hour or more and with a consist of more than 50 cars or more than 4,000 feet long, whichever is less, must be powered by at least one locomotive equipped with an in-service event recorder.

(b) Except as provided in paragraph (c) of this section, new or rebuilt locomotives placed in service after (24 months after the publication of a final rule in this docket) shall be equipped with event recorders.

(c) Event recorders are not required on locomotives that operate exculsively at a speed of 20 miles per hour or below.

(d) For purposes of this part, a locomotive shall be considered "rebuilt;; if it has undergone an overhaul that has been identified by the railroad as a capital expense under Interstate Commerce Commission accounting standards.

(e) Except as provided in paragraph (f) of this section, any individual who willfully disables an event recorder or tampers with or alters the data recorded by such a device is subject to a civil penalty as provided in appendix B of this part and to disqualification from performing safety-sensitive functions on a railroad if found unfit for such duties under the procedures in 49 CFR part 209.

(f) An event recorder may be removed from service by disconnecting its power source, by physically removing it from the locomotive on which it is installed, or by removing its recording medium, only upon the authorization of a qualified person who shall record the reasons for removing the device from service and the period during which the device will remain out of service on a tag to be applied to the device or to the place from which the device was removed, as appropriate. The tag described in § 229.9(a)(3) or other suitable tag may be used for this purpose. An event recorder may not remain out of service beyond the completion of the next periodic inspection as set forth in §§ 229.23 and 229.25 of this subpart.

(g) If any locomotive equipped with an event recorder is involved in an accident that is required to be reported under part 225, the railroad using the locomotive shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the date recorded by the device, either by safeguarding the locomotive until FRA or the National Transportation Safety Board (Board) removes the recording medium or the recorder or by removing the recording medium or the recorder from the locomotive and providing secure storage for it, for analysis by FRA or by the Board. This preservation requirement shall expire 60 days after the date of the accident unless FRA or the Board notifies the railroad in writing that the data are desired for analysis. Upon receipt of this written notification, the railroad may either deliver the data to the requesting Federal agency or retain it pending written notification from the same agency that the data are no longer necessary for analysis.

(h) Notwithstanding any other requirements in this Chapter, inspection, maintenance, and testing of event recorders is limited as set forth in § 229.25(e) of this subpart. Other than a locomotive due for periodic inspection under §§ 229.23 and 229.25 of this subpart, a locomotive with an inoperative event recorder is not deemed to be in improper condition or unsafe to operate or a non-complying locomotive under §§ 229.7 and 229.9 of this subpart.

Issued in Washington, DC., on June 11, 1991.

Gilbert E. Carmichael,

Administrator, Federal Railroad Administration.

[FR Doc. 91-14255 Filed 6-13-91; 2:57 pm]

BILLING CODE 4910-06-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018AB56

Endangered and Threatened Wildlife and Plants; Threatened Status Proposed for Sedum Integrifolium ssp. Leedyi (Leedy's roseroot)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Sedum integrifolium* ssp. *leedyi* (Leedy's roseroot) as a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This rate inhabitant of algific talus cliffs occurs in only 6 locations (4 sites in Minnesota and two sites in New York). This species is threatened by the rarity of its fragile and unique habitat. This proposed rule, if made final, will extend Federal protection provided by the Act to *Sedum integrifolium* ssp. *leedyi*. Critical habitat is not proposed for this plant. The Service seeks data and comments from the public.

DATES: Comments from all interested parties must be received by August 19, 1991. Public hearing requests must be received by August 2, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to Division of Endangered Species, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Endangered Species, (See ADDRESS section), at 612/725-3276 or FTS 725-3276.

SUPPLEMENTARY INFORMATION:

Background

Leedy's roseroot, *Sedum integrifolium* ssp. *leedyi* (Rosendahl et Moore) Clausen, was discovered by John L. Leedy in 1936 growing high on a limestone cliff along the Root River, in Olmsted County, Minnesota (Claussen 1975). Leedy's roseroot is an isolated subspecies of a common, western United States species. The range of the western subspecies and Leedy's roseroot do not overlap and they appear to have been isolated for a long time (approximately 10,000 years). Leedy's roseroot is more robust than most other *Sedum* sp. and it is characterized by tall floral stems. Its leaves are glaucious, oblong, and blue-green averaging 30mm long with irregularity dentate to entire margins. The plant is dioecious and the flowers are small arranged in cormybose cymes. The petals are usually dark red with varying shades of yellowish white at the base. Some populations from Minnesota have petals that are dark red to the base and others have petals with greenish white bases. Some plants in New York have petals with yellow or greenish yellow at the base. The subspecies has a thick, scaly rhizome that is usually conspicuous in the crevices of rock cliffs where it grows (Rosendahl and Moore 1947; Coffin and Pfannmuller 1988).

Leedy's roseroot grows on moderate cliffs in Minnesota (limestone cliffs with bands of bentonite) and on limestone and shale cliffs in New York. The plant is limited to those areas on the cliffs where ground water seeps through the cracks in the rock. As a result, the local environment remains cool and wet throughout the summer; a condition probably similar to the climate of the last ice age. Leedy's roseroot is believed to be a remnant of the Pleistocene flora and it may have once ranged across most of the continent before the last period of glaciation (Coffin and Pfannmuller 1988).

Leedy's roseroot was added to the Plant Notice of Review in 1990 as a Category 2 species. At present, it is known to occur in only six sites, five of these sites are viable. Four locations occur in Minnesota and two in New York. The Minnesota population is robust; each site contains 1000 to 3000 individuals and occupies over 100 yards of cliff face. The four Minnesota locations include Deer Creek and Bear Creek (in Fillmore County), Simpson Cliff and the Whitewater Wildlife Management Area (in Olmsted County) (Ostlie, *in litt.*, 1988, Coffin and Pfannmuller 1988, Refsnider, pers. comm.). The New York population occurs on the western edge of Seneca Lake, with approximately 10,000 individuals in an area 1 mile long (Rosendahl and Moore 1947). A single robust individual plant occurs at Watkins Glen; but, it is thought to have been introduced (Clausen 1975).

Because of its unique habitat, the subspecies is often associated with other globally rare and endangered species. For example, several species of rare landsnails are often found in conjunction with Leedy's roseroot including *Novisuccinea* ssp. *A* and *N.* ssp., *Hendersonia occulta*, and *Vertigo hubrichti*. In addition, several rare plants occur at these sites including *Adoxa moschatellina, Chrysosplenium iowense, Draba arabiasans, Arabis laevigata* (smooth rock cress), *Poa wolfii* (Wolf's spear grass) (Ostlie *in litt.*, 1988).

Summary of Factors Affecting the Species

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 set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Sedum integrifolium* supp. *leedyi* (Leedy's roseroot) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range

In Minnesota, ground water contamination and change are the greatest threat to this subspecies. Contamination of the ground water is likely through filling or dumping in sink holes adjacent to the cliffs. Sink holes are highly vulnerable because they provide direct access to the ground water and are the main source of seepage on the cliffs. One of the largest sink holes behind Simpson Cliff in Minnesota has already been used for dumping.

In New York, the Glenora Cliff site is threatened by residential development along Seneca Lake. The uplands adjacent to the cliff are primarily wooded and the homes are being built away from the cliff edge along Glenora Road. However, many homeowners have built stairs down to the lake shore and some have cleared vegetation from the cliff to enhance their view of the lake. In some areas, trees have been cut and dumped over the cliff edge onto to the areas where the roseroot grows. These changes can directly impact the plants, as well as affect the microhabitate of the area causing inadvertent damage to the population.

Agricultural pesticides in adjacent upland farmland (cropland in Minnesota and vineyards in New York) directly affect the quality of the ground water. Road building and quarrying within the karst formations of the Minnesota region pose additional threats. This type of disruption would affect the subsurface water flow in the area and change the ground water seepage at the cliff face. Since the plants require this seepage, any change could impact them. Residential development around Seneca Lake in New York could also affect ground water quality and flow.

Erosion of the cliffs is another major threat. The slopes are unstable, and in places, overlying vegetation sloughs off leaving behind bare talus and soil. Natural erosion and rock slides often result in the loss of individual plants. In 1990, runoff from heavy rains dislodged many individual plants from the cliff face at Deer Creek in Minnesota. Uncontrolled cropland runoff has cut gullies into at least one of the sites in Minnesota. Grazing is a direct threat at one Minnesota site, especially where the cliff gives way to a more gentle slope. The talus slope below the Deer Creek maderate cliff in Minnesota was extensively damaged by grazing in 1990. The grazing completely extirpated another rare plant population, *Chrysosplenium iowense*, from the site. Logging in the hardwood forests above some of the sites will cause problems with erosion in the future (Coffin and Pfannmuller 1988, Ostlie 1988).

B. Overutilization for commercial, recreational, scientific, or educational purposes

Commercial trade in this species is not known to occur. It seems unlikely that commercial trade will develop because the species is difficult to propagate or cultivate.

C. Disease or predation

None that is known to affect this taxon.

D. The inadequacy of existing regulatory mechanisms

Sedum integrifolium ssp. *leedyi* is legally protected in New York where it is listed as endangered. State law prohibits removal or destruction of the plant without permission of the landowner. The largest population at Seneca Lake in New York is privately owned. A one acre parcel of land containing Leedy's roseroot along 289 feet of Seneca Lake is legally protected by the Finger Lakes Land Trust with a conservation easement through The Nature Conservancy. The subspecies is listed as endangered in the State of Minnesota where the state endangered species act prohibits the taking, transport, or sale of any endangered or threatened plant or animal (or parts thereof). However, the Minnesota law has numerous exceptions that weaken its coverage in agricultural areas. Three of the four areas in Minnesota with Leedy's roseroot are in agricultual areas and are owned privately, the fourth site is owned and protected by the State of Minnesota (plans are needed for the specific protection of Leedy's roseroot at this site). Two of the privately owned sites have been registered in the Minnesota Registry of Natural Areas with The Nature Conservancy; but, the registry does not confer legally binding protection. The Federal Endangered Species Act offers possibilities for additional protection of this taxon through section 6 cooperation between the States and the Service, and through section 7 (interagency cooperation) requirements.

E. Other natural or manmade factors affecting its continued existence

In addition to the dangers of development, ground water contamination, erosion, and grazing, the subspecies is highly vulnerable because the areas where it is located are isolated, disjunct, few in number, and for the most part, they are privately owned and vulnerable. It is unlikely that more populations will be found in Minnesota because extensive surveys of approximately 400 algific slopes have been undertaken during the last ten years with only one new location for Leedy's roseroot in that time.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the

preferred action is to list *Sedum integrifolium* spp. *leedyi* as threatened.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. This determination is based on the premise that such a designation would not be beneficial to the species (50 CFR 424.12). The limited number of populations and individuals of Leedy's roseroot make this plant particularly vulnerable to taking, an activity difficit to enforce against and only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Such provisions are difficult to enforce. Even though this species has not proven to be easily cultivated, collectors might be attracted to the locale of known populations by the publication of maps and other specific location information. The cliffs and slopes where these populations are located are unstable and trespass could increase erosion at the sites. No benefit from critical habitat designation has been identified that outweighs the threat of trespass and collection. The principal landowners have been notified of the location and importance of protecting this species habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. The Service finds that designation of critical habitat is not presently prudent for this species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally 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 listed subsequently, 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 such a species or to destroy or adversely modify its critical habitat. If a Fedeal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Act and its implementing regulations found at 50 CFR 17.71, and 17.72, for threatened species set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jursidiction. In addition, for listed plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 3507, Arlington, VA 22203 (703/358–2093).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concenring any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to the critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species; and

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

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** on October 25, 1983 (48 FR 49244).

References Cited

Clausen, R. T. 1975. *Sedum* of North American north of the Mexican Plateau. Cornell University Press, Ithaca.

Coffin, B. and ', Pfannmuller (Ed.s.). 1988. Minnesota's endangered flora and fauna. University of Minnesota Press, Minneapolis, MN. 474 pp.

Ostile W 1988. Simpson Maderitic Cliffs: Preserve Design. Report for The Nature Conservancy, Minnesota Field Office.

1988. Bear Creek Maderitic Cliff: Preserve Design. Report for The Nature Conservancy, Minnestoa Field Office.

1988. Deer Creek Maderitic Cliff: Preserve Design. Report for The Nature Conservancy, Minnestoa Field Office.

Rosendahl, C. O., and J. W. Moore. 1947. A new variety of *Sedum rosea* from southeastern Minnesota and additional notes on the flora of the region. Rhodora 49: 197–202.

Author

The primary author of this proposed rule is Jan L. Eldridge, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Exports, Imports, Reporting and recordkeeping Requirements and Transportation.

Proposed Regulation 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. 1531–1543, 16 U.S.C. 1531–1543, 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Crassulaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific Name	Common Name					
Crassulaceae	Orpine Family					
Sedum integrifolium ssp. *leedyi*	Leedy's roseroot	U.S.A. (MN, NY)	T		N/A	N/A

(Proposal: *Sedum integrifolium* ssp. *leedyi* (Rosend. and Moore) Clausen, Leedy's roseroot—Threatened)

Dated: June 11, 1991.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 91–14476 Filed 6–17–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 117
Tuesday, June 18, 1991

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

Agricultural Research Service

Public Availability of Minutes on the Closed Meeting Activities of Advisory Committee

Pursuant to the provisions of the Department of Agriculture's Committee Management regulations, an advisory committee of the Department which, through administrative error, held an unannounced meeting has prepared minutes on the activity of that meeting. Copies of the minutes have been filed at the following location: Federal Advisory Committee Desk, Federal Documents Section, Exchange and Gift Division, Library of Congress, Washington, DC 20540.

The name of the subject committee is listed below: Human Nutrition Board of Scientific Counselors.

Done at Washington, DC, this 4th day of June 1991.

Loretta A. Owens,

Committee Management Officer.

[FR Doc. 91–14456 Filed 6–17–91; 8:45 am]

BILLING CODE 3410–03–M

American Cyanamid Co.; Intent to Grant an Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to American Cyanamid Company, Wayne, New Jersey, on U.S. Patent Application Serial No. 07/609,848, "Compositions and Methods for Biocontrol Using Fluorescent Brighteners," filed November 7, 1990.

DATES: Comments must be received on or before August 19, 1991

ADDRESSES: Send comments to: USDA–ARS–Office of Cooperative Interactions, Beltsville Agricultural Research Center, Baltimore Boulevard, Building 005, room 401–A, BARC–W, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: M. Ann Whitehead of the Office of Cooperative Interactions at the Beltsville address given above; telephone: 301/344–2786, (FTS) 344–2786.

SUPPLEMENTARY INFORMATION: The USDA–ARS intends to grant to American Cyanamid Company an exclusive license to practice the aforementioned invention. Notice of Availability was given in the **Federal Register** on January 31, 1991. Patent rights to this invention are assigned to the United States of America as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as American Cyanamid Company has submitted a complete and sufficient application for a license and is collaborating with the Agricultural Research Service under the terms of a Cooperative Research and Development Agreement providing for further development of the invention.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7 and will conform to the intent of 15 U.S.C. 3710a. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, ARS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

William H. Tallent,

Assistant Administrator.

[FR Doc. 91–14457 Filed 6–17–91; 8:45 am]

BILLING CODE 3410–03–M

Forest Service

Kitty Stover Timber Sale, Beaverhead National Forest, Beaverhead County, MT

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare an Environmental Impact Statement (original notice of intent was published 3/6/90 55 FR 7923).

Due to other work projects delaying the analysis, the DEIS for the Kitty Stover Timber Sale is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by February 15, 1992 instead of the June 1, 1990 date published in the original Notice of Intent. Accordingly, the FEIS is re-scheduled for completion by July 1, 1992. All other information provided in 55 FR 7923 is still accurate. Additional comments on the project should be received by September 1, 1991 to receive timely consideration in preparation of the Draft EIS.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry Hicks, District Ranger, Dillon Ranger District, Beaverhead National Forest, 610 North Montana 59725, telephone (406) 683–3960.

Dated: June 3, 1991.

Ronald Prichard,

Forest Supervisor, Beaverhead National Forest.

[FR Doc. 91–14437 Filed 6–17–91; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Alabama Electric Cooperative

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of intent to hold scoping meetings and prepare an Environmental Assessment and/or Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR part 1794) may prepare an Environmental Assessment or an Environmental Impact Statement (EIS) for its Federal action related to a proposal by Alabama Electric Cooperative of Andalusia, Alabama, to repower its existing McWilliams Plant. REA may provide financing assistance to Alabama Electric Cooperative for project construction cost.

Notice is also given of a public scoping meeting to be held in conjunction with the review of the

possible environmental consequences and the determination of potentially significant environmental issues associated with the REA Federal action related to the proposed project.

FOR FURTHER INFORMATION CONTACT: The primary point of contact for this project is Mr. Alex M. Cockey, Jr., Director, Southeast Area—Electric, Rural Electrification Administration, room number 0270, South Agriculture Building, 14th and Independence Avenue, SW. Washington, DC 20250–1500, telephone number (202) 382–8436. For information on specific aspects of Alabama Electric Cooperative's proposal contact Mr. Mike Noel, Alabama Electric Cooperative, P.O. Box 550, Andalusia, Alabama 36420, telephone (205) 222–2571.

SUPPLEMENTARY INFORMATION: Alabama Electric Cooperative tentatively proposes to repower its McWilliams Plant by adding a 100 MW gas-fired combustion turbine to its existing 43 MW capacity.

Alternatives to be considered by REA and Alabama Electric Cooperative include: (a) No action, (b) purchase power from other utilities or independent power producers, (c) other technologies for electric generation, (d) conservation, (e) interruptible loads, and (f) load management.

A public scoping meeting related to REA's environmental review of the project will be held at the Headquarters of Alabama Electric Cooperative, Highway 29 North, Andalusia, Alabama, on Tuesday, July 30, 1991.

Comments regarding the proposed project may be submitted orally or in writing at the scoping meeting or in writing within 30 days after the July 30 meeting to REA at the address provided in this notice.

Government agencies, other organizations, and the public are invited to participate in the planning and analysis of the proposed project. Issues to be discussed at the public scoping meeting may include, but are not limited to, determination of the project scope, the nature and extent of reasonable alternatives, identification of environmental issues and the scope of those issues, and other reviews or studies that REA or other Federal, State of Alabama, or local agencies may conduct.

To be presented at the meeting will be an alternative evaluation and site selection study prepared by Alabama Electric Cooperative. The alternative evaluation and site selection study are available for public review at REA or Alabama Electric Cooperative at the address provided herein. They can also be reviewed at the Andalusia Public Library, South Three Notch Street, Andalusia, Alabama 36420, telephone 222–6612.

From information provided in the alternative evaluation, the siting study, input from interested local, State of Alabama and Federal agencies and the public, Alabama Electric Cooperative will prepare an Environmental Analysis to be submitted to REA for review. If significant effects are not evident based on a review of the Environmental Analysis and other relevant information, REA will prepare an Environmental Assessment to determine if the preparation of an EIS is warranted.

Should REA determine that the preparation of an EIS is not warranted, it will prepare a Finding of No Significant Impact (FONSI). The FONSI will be made available for public review and comment for 30 days. REA will not take its final action related to the project prior to the expiration of the 30-day period.

Any final action by REA related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental procedures as prescribed by CEQ and REA environmental policies and procedures as applicable.

Dated: June 10, 1991.

John H. Arnesen,

Assistant Administrator-Electric.

[FR Doc. 91–14471 Filed 6–17–91; 8:45 am]

BILLING CODE 3410–15–M

COMMISSION ON CIVIL RIGHTS

Michigan Advisory Committee of Public Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will be held from 6 p.m. until 9 p.m. on Wednesday, July 10, 1991, at the OMNI Hotel, 333 E. Jefferson, Detroit, MI 48226. The purpose of the meeting is to discuss current issues, orient members, and plan future activities.

Persons desiring additional information should contact Committee Chairperson Dennis Gibson at (313) 864–9394 or Constance Davis, Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 11, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–14382 Filed 6–17–91; 8:45 am]

BILLING CODE 6335–01–M

Michigan Advisory Committee Public Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Michigan Advisory Committee to the Commission will be held from 8:30 a.m. until 5 p.m. on Wednesday, July 11, 1991, at the OMNI Hotel, 333 E. Jefferson, Detroit, MI 48226. The purpose of the meeting is to conduct a community forum on the rise of hate crimes in Michigan.

Persons desiring additional information should contact Committee Chairperson Dennis Gibson at (313) 864–9394 or Constance Davis, Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 11, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–14383 Filed 6–17–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

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

ACTION: Notice of initiation of antidumping and countervailing duty administration reviews.

SUMMARY: The Department of Commerce has received requests to

conduct an administrative review of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Commerce Regulations, we are initiating these administrative reviews.

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests in accordance with § 353.22(a)(1), of the Department's regulations, for an administrative review of various antidumping and countervailing duty orders and findings with May anniversary dates.

Initiation of Reviews

In accordance with § 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings with May anniversary dates. We intend to issue the final results of these reviews not later than May 31, 1992.

Antidumping duty proceedings	Periods to be reviewed
Brazil:	
Frozen Concentrated Orange Juice; A-351-605—Cargill Citrus Limitada, Montecitrus Trading S.A., Coopercitrus Industrial, Frutesp S.A., Citrosuco Paulista, Frutropic, Bascitrus, Branco, Citrovale	5/1/90-4/30/91
The People's Republic of China:	
Certain Iron Construction Castings; A-570-502—China National Metals and Minerals Import and Export Corp. including the Beijing, Guangdong, Liaoning (Dalian), Jilin, and Anhui Branches, China National Machinery and Equipment Import and Export Corporation (CMEC) China National Light Industrial Products Import and Export Corp.	5/1/90-4/30/91
India:	
Circular Welded Carbon Steel Pipes and Tubes; A-533-502—Tata Iron and Steel Co., Ltd	5/1/90-4/30/91
Japan:	
Portable Electric Typewriters; A-588-087—Matsushita Brother, Nakajima, Canon, Silver	5/1/90-4/30/91
Taiwan:	
Circular Welded Carbon Steel Pipes and Tubes; A-583-008—Kao Hsing Chang, Yieh Hsing, FEMCO, AnMau, Vulcan, Yieh Loong, Kalemanis Plywood	5/1/90-4/30/91
Countervailing Duty Proceedings	
Brazil:	
Certain Heavy Iron Construction; Castings; C-351-504	1/1/90-12/31/90
Mexico:	
Ceramic Tile; C-201-003	1/1/90-12/31/90
Singapore:	
Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof; C-559-802;	1/1/90-12/31/90
Sweden:	
Viscose Rayon Staple Fiber; C-401-056	1/1/90-12/31/90
Thailand:	
Ball Bearings and Parts Thereof; C-542-802	1/1/90-12/30/90

Interested parties musst submit applications for administrative protective orders in accordance with § 353.34(b) and § 355.4(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) (1989) and § 355.22(c) (1989).

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Dated: June 11, 1991.

[FR Doc. 91-14475 Filed 6-17-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-301-602]

Initiation of Administrative Review and Request for Revocation in Part of the Antidumping Duty Order on Certain Fresh Cut Flowers From Colombia

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

ACTION: Notice of initiation of administrative review and request for revocation in part of the antidumping duty order on certain fresh cut flowers from Colombia.

SUMMARY: The Department of Commerce has received requests to conduct an administrative review of the antidumping duty order on fresh cut flowers from Colombia. Requests for revocation from the antidumping order were also received from specific exporters/growers. In accordance with the Commerce Regulations, we are initiating this administrative review for the period March 1, 1990 through February 28, 1991. We are initiating this review for those named exporters/growers for whom a request for review was received and who shipped subject merchandise to the United States during the period March 1, 1990 through February 28, 1991. The Department is also noting those exporters/growers who have requested revocation from the antidumping duty order.

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests in accordance with §§ 353.22 (a)(1), (a)(2), (a)(3), of the Department's regulations, for an administrative review of the antidumping duty order on fresh cut flowers from Colombia. The Department has also received requests for revocation from the exporters/growers noted.

Initiation of Review

In accordance with §§ 353.22(c) of the Department's regulations, we are initiating an administrative review on fresh cut flowers from Colombia. The Department is not initiating an administrative review of any Colombian exporters and/or producers who were not named in a review request because such exporters and/or producers were not specified as required under § 353.22(a). We intend to issue the final results of this review no later than March 31, 1992.

We received requests for review on the following specifically named exporters/growers who shipped subject merchandise during the period:

Abaco Tulipanex de Colombia
Agricola Arenales Ltda.
Agricola Benilda Ltda.
Agricola Bojaca Ltda.
Agricola Cardenal S.A.
Agricola De La Fontana Y Cia
Agricola De Los Alisos Ltda.
Agricola El Cactus S.A.
Agricola El Jardin
Agricola El Mortino Ltda.
Agricola El Redil Ltda.
Agricola El Retiro Ltda.
Agricola Guacari
Agricola Guacatay S.A.
Agricola La Corsaria Ltda.
Agricola Las Cuadras Ltda.
Agricola Los Abroles
Agricola Los Gaques Ltda.
Agricola Malqui Ltda.
Agricola Papagayo Ltda.

Agro Koralia Ltda.
Agrodex
Agroindustria Del Riofrio Ltda.
Agromonte Ltda.
Agropecuria Cuernavaca Ltda.
Agrosuba
Alstroflores Ltda.
Becerra Castellanos y Cia. Ltda.
Cienfuegos Ltda.
Claveles Colombianos Ltda.
Claveles De Los Alpes Ltda.
Conflores Ltda.
Colflores Ltda.
Crop S.A.
Cultivos Buenavista Ltda.
Cultivos Del Caribe
Cultivos Medellin Ltda.
Cultivos Miramonte S.A.
Cultivos Tahami Ltda.
Daflor Ltda.
Del Tropico Ltda.
Degaflores
Dianticola Colombiana Ltda.
Exportaciones Bochica S.A.
Fantasia Flores Ltda.
Flora Bellisima Ltda.
Floral Ltda.
Floralex Ltda.
Floramerica S.A.
Florandia Herrera Camacho y Cia.
Flores Aquaclara Ltda.
Flores Aquila Ltda.
Flores Alborada S.A.
Flores Alfaya Ltda.
Flores Altamira S.A.
Flores Arco Iris Ltda.
Flores Aurora Ltda.
Flores Camino Real
Flores Cigarral Ltda.
Flores Colombianas Ltda.
Flores Colon Ltda.
Flores Condor De Colombia Ltda.
Flores De Cajibio Ltda.
Flores De Explortacion S.A.
Flores De Funza S.A.
Flores De Hacaritama
Flores De Hunza Ltda.
Flores De La Comuna
Flores De La Maria
Flores De La Montana
Flores De La Pradera Ltda.
Flores De La Sabana y Cia S.A.
Flores De La Vega Ltda.
Flores De Las Mercedes
Flores De Los Amigos Ltda.
Flores De Los Andes Ltda.
Flores De Los Arrayanes Ltda.
Flores De Nemecon Ltda.
Flores De Pueblo Viejo Ltda.
Flores De Serrezuela Ltda.
Flores De Suba Ltda.
Flores De Suesca Ltda.
Flores Del Bosque Ltda.
Flores Del Campo Ltda.
Flores Del Cauca S.A.
Flores Del Gallinero Ltda.
Flores Del Lago Ltda.
Flores Del Monte Ltda.
Flores Del Potrero Ltda.
Flores Del Rio S.A.
Flores Depina Ltda.
Flores Dos Hectareas Ltda.
Flores El Arenal Ltda.
Flores El Lobo Ltda.
Flores El Puente Ltda.
Flores El Rosal Ltda.
Flores El Trentino Ltda.
Flores El Zorro Ltda.
Flores Estrella Ltda.
Flores Cicro Ltda.
Flores Guaicata Ltda.
Flores Hana Ichi De Colombia Ltda.
Flores Horizonte Ltda.
Flores Juanambu Ltda.
Flores Juncalito Ltda.
Flores La Cabanuela
Flores La Conchita De German-Ribon y Cia.
Flores La Conjera Ltda.
Flores La Estancia Ltda.
Flores La Frangancia S.A.
Flores La Union Gomez Arango
Flores La Valvanera
Flores Las Caicas
Flores Las Palmas Ltda.
Flores Marandua Ltda.
Flores Monserrate Ltda.
Flores Mountgar Ltda.
Flores Petaluma Ltda.
Flores Sagaro
Flores Santa Fe Ltda.
Flores Santa Rosa Ltda.
Flores Tairona Ltda.
Flores Tiba S.A.
Flores Tibati Ltda.
Flores Tokai Hisa
Flores Tocarinda Ltda.
Flores Tomine
Flores Tropicales Ltda.
Flores Urimaco
Floricola La Guitana S.A.
Floricola La Ramada Ltda.
Florlinda
Groex S.A.
Hacienda Curubital Ltda.
Happy Candy Ltda.
Horticultura De La Sabana S.A.
Industrial Agricola Ltda.
Ingro Ltda.
Innovacion Andina
Inpar
Interflora Ltda.
Inverflores Ltda.
Inverpalmas
Inversiones Calypso S.A.
Inversiones Cubivan Ltda.
Inversiones Istra Ltda.
Inversiones La Serena Ltda.
Inversiones Miraflores Ltda.
Inversiones Oro Verde S.A.
Inversiones Penas Blancas Ltda.
Inversiones Santa Rita Ltda.
Inversiones Santa Rosa Arw Ltda.
Inversiones Targa Ltda.
Inversiones Targa S.A.
Iturrama S.A.
Jaramillo Y Daza Ltda.
Jardines Bacata Ltda.
Jardines Carolina
Jardines De Chia Ltda.
Jardines De Colombia Ltda.
Jardines De Los Andes S.A.
Jardines Del Muna
Jardines Fredonia Ltda.
Las Amalias S.A.
Linda Colombiana Ltda.
Los Geranios Ltda.
Manjui Ltda.
Mercedes Ltda.
M.G. Consultores Ltda.
Mini Spray S.A.
Monteverde
Plantaciones Delta Ltda.
Plantas Ornamentales De Colombia
Pompones Ltda.
Productos el Cartucho
Queens Flowers De Colombia Ltda.
Rosas De Exportacion Ltda. (Rosex)
Rosas Sabanilla Ltda.
Rosas Y FLores Ltda.
Santa Helena S.A.
Santana Flowers
Shasta Flowers Y Cia Ltda.
Splended Flowers Ltda.
Sun Flowers Ltda.
Sunset Farms
Toto FLowers Ltda.
Tuchany S.A.
Uniflor Ltda.
Velez De Monchaux e Hijos

We have received requests for revocation from the antidumping duty order for the following exporters/growers:

Agrodex Group:
- Agricola El Retiro
- Agricola Los Gaques
- Agrodex
- Degaflores
- Flores Camino Real
- Flores Colon
- Flores De La Comuna
- Flores De La Maria
- Flores De Las Mercedes
- Flores De Los Amigos
- Flores De Los Arrayanes
- Flores De Pueblo Viejo
- Flores Del Gallinero
- Flores Del Potrero
- Flores Dos Hectareas
- Flores El Lobo
- Flores El Puente
- Flores El Trentino
- Flores Juananbu
- Flores La Conejera
- Flores Tibati
- Florlinda
- Inverflores
- Inverpalmas
- Inversiones Santa Rosa

Clavecol Group:
- Claveles Colombianos
- Fantasia Flowers
- Splendid Flowers
- Sun FLowers

Exportaciones Bochica/Floral Ltda.
Floramerica Group:
- Cultivos Del Caribe
- Floramerica
- Flores Las Palmas
- Jardines De Colombia

Flores Colombianas Group:
- Agrosuba
- Flores Colombianas
- Jardines De Los Andes
- Productos El Cartucho

Flores Condor De Colombia Ltda.
Flores De Serrezuela S.A.
Flores El Zorro
Las Amalias/Pompones

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) of the Department's regulations.

This initiation and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 353.25(c) (1990).

Dated: June 11, 1991.

Joseph A. Spetrini,

Deputy Assistance Secretary for Complaince.

[FR Doc. 91-14473 Filed 6-17-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-570-804]

Antidumping Duty Order: Sparklers rom the People's Republic of China

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

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Ready, 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) 377-2613.

Scope of Order

The products covered by this order are sparklers from the People's Republic of China (PRC). Sparklers are fireworks, each comprising a cut-to-length wire, one end of which is coated with a chemical mix that emits bright sparks while burning. Sparklers are currently classified under Harmonized Tariff Schedule (HTS) subheading 3604.10.00. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

SUPPLEMENTARY INFORMATION: In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on April 26, 1991, the Department made its final determination that sparklers from the PRC are being sold at less than fair value (56 FR 20588, May 6, 1991). On June 10, 1991, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of sparklers from the PRC. These antidumping duties will be assessed on all unliquidated entries of sparklers from the PRC entered, or withdrawn from warehouse, for consumption on or after December 17, 1990, the date of publication of the Department's preliminary determination in the **Federal Register** (55 FR 51743). On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Margin percentage
Guangxi Native Produce Import & Export Corporation, Beihai Fireworks and Firecrackers Branch	1.64
Hunan Provincial Firecrackers & Fireworks Import & Export (Holding) Corporation	93.54
Jiangxi Native Produce Import & Export Corporation, Guangzhou Fireworks Company	65.78
All others	75.88

This notice constitutes an antidumping duty order with respect to sparklers from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 12, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-14474 Filed 6-17-91; 8:45 am]

BILLING CODE 3510-DS-M

[Application No. 90-2A007]

Export Trade Certificate Of Review

ACTION: Notice of issuance of an Amended Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the United States Surimi Commission (USSC). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing title III are found at 15 CFR part 325 (1990) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs (OETCA) is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in an appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 90-00007 was issued to the United States Surimi Commission on August 22, 1990 (55 FR 35445, August 30, 1990). USSC previously amended its Certificate on December 12, 1990 (55 FR 53031, December 26, 1990).

USSC's Export Trade Certificate of Review has been amended to:

1. Add the following two companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2 (1)): Pacific Orion Seafoods, Inc., Seattle, WA (controlling entities: Bellingham Trawlers, Inc., Seattle, WA (40%); Westcod, Inc., Seattle, WA (40%); and Pacific Orion Seafoods, Inc., Seattle, WA, (20%)) and Golden Alaska Seafoods Inc., Seattle, WA (controlling entities: Nichiro Pacific, Ltd., Seattle, WA (70%) and Union Bay Industries, Inc., Seattle, WA (30%)) .

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 12, 1991.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 91-14422 Filed 6-17-91; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

June 13, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: June 20, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as recent consultations held between the Governments of the United States and the Dominican Republic have not resulted in a mutually satisfactory solution on Category 448, the United States Government has decided to control imports in this category for the twelve-month period beginning on March 28, 1991 and extending through March 27, 1992.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 56 FR 15334, published on April 16, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 13, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 20, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 448, produced or manufactured in the Dominican Republic and exported during the period beginning on March 28, 1991 and extending through March 27, 1992, in excess of 45,966 dozen [1].

Textile products in Category 448 which have been exported to the United States prior to March 28, 1991 shall not be subject to the limit established in this directive.

Textile products in Category 448 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Import charges will be provided as data become available.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–14423 Filed 6–17–91; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Government of Pakistan

June 13, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: June 20, 1991.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6498. For information on embargoes and quota re-openings, call (202) 377–3715.

[1] The limit has not been adjusted to account for any imports exported after March 27, 1991.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 29, 1991, under the terms of the Bilateral Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan, the United States Government requested consultations with the Government of Pakistan with respect to Categories 239 (cotton and man-made fiber infantswear) and 617 (man-made fiber twill and sateen fabric).

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Categories 239 and 617, the Government of the United States has decided to control imports during the prorated period which began on May 29, 1991 and extends through August 26, 1991.

Summary market statements concerning Categories 239 and 617 follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 239 and 617, under the agreement with the Government of Pakistan, or to comment on domestic production or availability of products included in these categories, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption

contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 239 and 617. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—Pakistan

Category 239—Cotton and Man-Made Fiber Infantswear

May 1991

Import Situation and Conclusion

U.S. imports of cotton and man-made fiber infantswear, Category 239, from Pakistan reached 750,416 kilograms for the year ending March 1991, almost four times the 202,234 kilograms imported during the same period a year earlier. During the first quarter of 1991, imports of Category 239 from Pakistan reached 246,182 kilograms, almost double the 126,828 kilograms imported during the first quarter of 1990.

The sharp and substantial increase in Category 239 imports from Pakistan is causing a real risk of disruption in the U.S. market for cotton and man-made fiber infantswear.

U.S. Production and Market Share

U.S. production of cotton and man-made fiber infantswear, Category 239, fell to 16,693 thousand kilograms in 1990 from 18,231 thousand kilograms in 1989, a decline of 8 percent. The domestic manufacturers' share of the cotton and man-made fiber infantswear market fell from 46 percent in 1989 to 39 percent in 1990, a decline of 7 percentage points.

U.S. Imports and Import Penetration

U.S. imports of cotton and man-made fiber infantswear, Category 239, increased 23 percent from 21,225 thousand kilograms in 1989 to 26,044 thousand kilograms in 1990. During the first three months of 1991 imports increased three percent over the level imported during the same period a year earlier. The ratio of imports to domestic production reached 156 percent in 1990, up 40 percentage points from 116 percent in 1989.

Duty-Paid Value and U.S. Producers' Price

Ninety-five percent of the Category 239 imports from Pakistan for the year ending March 1991 entered under HTSUSA number 6209.20.5040—cotton diapers. These diapers entered the U.S. at landed duty-paid values below the U.S. producers' prices for comparable diapers.

Market Statement—Pakistan

Category 617—Man-Made Fiber and Sateen Fabric

May 1991

Import Situation and Conclusion

U.S. imports of man-made fiber twill and sateen fabric, Category 617, from Pakistan reached 7,677,904 square meters during the year ending March 1991, almost four and half times the 1,736,226 square meters imported a year earlier. In the first three months of 1991, Pakistan shipped 2,321,935 square meters, nearly double their January—March 1990 level. Pakistan is the second largest supplier of Category 617, accounting for 24 percent of total imports for the year ending March 1991. In the year ending March 1990, Pakistan accounted for seven percent of total Category 617 imports.

The sharp and substantial increase of Category 617 imports from Pakistan is causing a real risk of disruption in the U.S. market for man-made fiber twill and sateen fabrics.

Import Penetration and Market Share

U.S. production of man-made fiber twill and sateen fabric dropped to 366,725,000 square meters in 1990, 19 percent below the 1989 production level and 27 percent below the 1988 level. In comparison, U.S. imports of man-made fiber twill and sateen fabrics declined to 23,597,355 square meters in 1989, then surged to 28,513,496 square meters in 1990, 21 percent above the 1989 level. Category 617 imports continue to surge, increasing 81 percent in the first three months of 1991 over the January—March 1990 level.

The U.S. producers' share of the man-made fiber twill and sateen fabric market was 93 percent in 1990, two percentage points below their 1989 share. The ratio of imports to domestic production increased from five percent in 1989 to eight percent in 1990.

Duty-Paid Value and U.S. Producers' Price

Approximately 83 percent of Category 617 imports from Pakistan during the year ending March 1991 entered under HTSUSA number 5513.12.000—3-thread or 4-thread polyester staple twill, weighing less than 170 grams per square meter. These fabrics entered the U.S. at duty-paid landed values below U.S. producers' prices for comparable twill fabrics.

Committee for the Implementation of Textile Agreements

June 13, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Man-Made Fiber Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated May 20, 1987 and June 11, 1987, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 20, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Pakistan and exported during the period beginning on May 29, 1991 and extending through August 26, 1991, in excess of the following restraint limits:

Category	Ninety-day restraint limit [1]
239	260,181 kilograms.
617	2,533,121 square meters.

[1] The limits have not been adjusted to account for any imports exported after May 28, 1991.

Textile products in Categories 239 and 617 which have been exported to the United States prior to May 29, 1991 shall not be subject to the limits established in this directive.

Textile products in Categories 239 and 617 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-14424 Filed 6-17-91; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronic) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday and Wednesday, 30–31 July 1991.

ADDRESSES: The meeting will be held at Naval Ocean Systems Center, San Diego, CA.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities, or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: June 13, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–14434 Filed 6–17–91; 8:45 am]

BILLING CODE 3810–01–M

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, 1 August 1991.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, One Crystal Park, suite 307, Arlington VA 22202.

FOR FURTHER INFORMATION CONTACT: Becky F. Terry, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The microwave device area includes such programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. This review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: June 13, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–14435 Filed 6–17–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 8–19 July 1991 from 8 a.m. to 5 p.m. at the Naval Ocean Systems Center (NOSC) in San Diego, California.

The purpose of this meeting is to finalize the study and prepare briefings for the Air Force Chief of Staff containing observations, findings, and conclusions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) and (4) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 703–697–4648.

Grace T. Rowe,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 91–14413 Filed 6–17–91; 8:45am]

BILLING CODE 3910–01–M

Department of the Army

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Army, DOD.

ACTION: Amend Privacy Act record systems.

SUMMARY: The Department of the Army proposes to amend eight record systems in its inventory of record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on July 18, 1991, unless comments are received that would result in a contrary determination.

ADDRESSES: Contact Ms. Alma Lopez, Office of Systems Management Branch (ASOP–MP), Ft. Huachuca, AZ 85613–5000.

SUPPLEMENTARY INFORMATION: The Department of the Army record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
51 FR 23576, Jun. 30, 1986
51 FR 30900, Aug. 29, 1986
51 FR 40479, Nov. 7, 1986
51 FR 44361, Dec. 9, 1986
52 FR 11847, Apr. 13, 1987
52 FR 18798, May 19, 1987
52 FR 25905, Jul. 9, 1987
52 FR 32329, Aug. 27, 1987
52 FR 43932, Nov. 17, 1987
53 FR 12971, Apr. 20, 1988
53 FR 16575, May 10, 1988
53 FR 21509, Jun. 8, 1988
53 FR 28247, Jul. 27, 1988
53 FR 28249, Jul. 27, 1988
53 FR 28430, Jul. 28, 1988
53 FR 34576, Sep. 7, 1988
53 FR 49586, Dec. 8, 1988
53 FR 51580, Dec. 22, 1988
54 FR 10034, Mar. 9, 1989
54 FR 11790, Mar. 22, 1989
54 FR 14835, Apr. 13, 1989
54 FR 46965, Nov. 8, 1989
54 FR 50268, Dec. 5, 1989
55 FR 13935, Apr. 13, 1990
55 FR 21897, May 30, 1990 (Army Address Directory)
55 FR 41743, Oct.15, 1990
55 FR 46707, Nov. 6, 1990
55 FR 46708, Nov. 6, 1990

55 FR 48671, Nov. 21, 1990 (Army System ID Changes)
55 FR 48678, Nov. 21, 1990
56 FR 7018, Feb. 21, 1991
56 FR 15593, Apr. 17, 1991
56 FR 21134, May 7, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the record systems are set forth below followed by the record system notices published in their entirety, as amended.

Dated: June 11, 1991.

L.M. BYNUM,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0001SAIS

System name:

Carpool Information/Registration System (55 FR 22110, May 5, 1985).

Changes:

* * * * *

System manager(s) and address:

Delete entry and replace with "Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310 0107."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the command, installation, or activity where they participated in a carpool. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individuals should provide full name, current address, and sufficient information to permit locating the record."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the command, installation, or activity where they participated in a carpool. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individuals should provide full name, current address, and telephone number."

* * * * *

A0001SAIS

SYSTEM NAME:

Carpool Information/Registration System.

SYSTEM LOCATION:

Decentralized to Army installations/activity levels. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel participating in carpool programs who voluntarily provide information for release.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual, Social Security Number, home address and telephone, office address and telephone, map coordinates of home or nearby reference points, working hours, and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and Executive Order 9397.

PURPOSE(S):

To assign and administer allocated carpool parking assignments; establish priority of assignments, assist members and applicants in contacting one another and provide printout of individuals in system to other participants who desire to arrange a carpool.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Reference cards, computer cards, disk or tape, and file folders.

RETRIEVABILITY:

By name, Social Security Number, grid coordinate reference, and working hours.

SAFEGUARDS:

Accessible only to authorized personnel and those providing identification and purpose for which information is requested; may be accessed by persons seeking members who have provided consent for release of information.

RETENTION AND DISPOSAL:

Retained only on active participants; destroyed upon request/reassignment.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the command, installation, or activity where they participated in a carpool. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individuals should provide full name, current address, and sufficient information to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the command, installation, or activity level. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices. For verification purposes, individuals should provide full name, current address, and sufficie information to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0025–55SAIS

System name:

Request for Information Files, (50 FR 22115, May 29, 1985).

Changes:

* * * * *

System manager(s) and address:

Delete entry and replace with "Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD,

Department of the Army, Washington, DC 20310–0107."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107.

For verification purposes, individual should provide enough information to permit locating the record."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107.

For verification purposes, individual should provide enough information to permit locating the record.

Personal visits may be made to the office maintaining the records upon presentation of acceptable identification, such as a valid driver's license, and furnishing verbal information that can be verified."

* * * * *

A0025–55SAIS

SYSTEM NAME:

Request for Information Files

SYSTEM LOCATION:

Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving requests to access records pursuant to the Freedom of Information Act or to declassify documents pursuant to Executive Order 12356. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who requests an Army record under the Freedom of Information Act, or requests mandatory review of a classified document pursuant to Executive Order 12356.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's request, related papers, correspondence between office of receipt and records custodians, Army staff offices and other government agencies; retained copies of classified or other exempt materials; and other selective documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552; Freedom of Information Act, as amended by Public Law 93–502; and Executive Order 12356.

PURPOSE(S):

To control administrative processing of requests for information either pursuant to the Freedom of Information Act or to Executive Order 12356, including appeals from denials.

ROUTINE USES OF RECORDS, MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfilm.

RETRIEVABILITY:

By requester's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly trained and have official need therefor.

RETENTION AND DISPOSAL:

Records reflecting granted requests are destroyed after 2 years. When requests have been denied, records are retained for 5 years; and if appealed, records are retained 4 years after final denial by the Army or 3 years after final adjudication by the courts, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107

For verification purposes, individual should provide enough information to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310—0107.

For verification purposes, individual should provide enough information to permit locating the record.

Personal visits may be made to the office maintaining the records upon presentation of acceptable identification, such as a valid driver's license, and furnishing verbal information that can be verified.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The majority of records in this system are not exempted. Copies of documents residing in the office of an Initial Denial Authority having a law enforcement mission which fall within (j)(2) are exempt from the following provisions of title 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

Copies of documents maintained by other Initial Denial Authorities not having a law enforcement mission which fall within 5 U.S.C. 552a (k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

A0380–380SAIS

System name:

Access to Computer Areas, Systems Electronically, and/or Data Control Records, (50 FR 22114, May 29, 1985).

Changes:

* * * * *

System manager(s) and address:

Delete entry and replace with "Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD,

Department of the Army, Washington, DC 20310-0107."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Army Information Processing Installation Operations Center. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Army Information Processing Installation Operations Center. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature."

* * * * *

A0380-380SAIS

SYSTEM NAME:

Access to Computer Areas, Systems Electronically, and/or Data Control Records.

SYSTEM LOCATION:

Information Processing and/or Communications Activities Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel assigned to the Army Information Processing and/or Communications installation; contractor personnel; authorized customers/users.

CATEGORIES OF RECORDS IN THE SYSTEM:

Operator's/user's name, Social Security Number, organization, telephone number, and office symbol; security clearance; level of access; subject interest code; user identification code; data files retained by users; assigned password; magnetic tape reel identification; abstracts of computer programs and names and phone numbers of contributors; and similar relevant information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and Executive Order 9397.

PURPOSE(S):

To administer passwords and identification numbers for operators/users of data in automated media; to identify data processing and communication customers authorized access to or disclosure from data residing in information processing and/or communication activities; and to determine propriety of individual access into the physical data residing in automated media.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; punch cards; and magnetic tapes/discs.

RETRIEVABILITY:

Name, subject, user identification code, news item number, user password, application program key word/author.

SAFEGUARDS:

All information is maintained in secured areas accessible only to designated individuals having official need therefor in the performance of official duties. Either Army Information Processing Installation security guards or remote location operators check access against system reports.

RETENTION AND DISPOSAL:

Individual data remain on file while a user of computer facility; destroyed on person's reassignment or termination.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS-PDD, Department of the Army, Washington, DC 20310-0107.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Army Information Processing Installation Operations Center. Official mailing addresses as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Army Information Processing Installation Operations Center. Official mailing addresses as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, sufficient details to permit locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340-21; 32 CFR Part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

System managers, computer facility managers, automated interfaces for user codes on file at Army sites.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0340-21SAIS

System name:

Privacy Case Files, (50 FR 22115, May 29, 1985).

Changes:

* * * * *

System location:

After the first sentence add "Official mailing addresses are published as an appendix to the Army's compilation of system notices."

* * * * *

Categories of records in the system:

Delete entry and replace with "Documents accumulated in notifying requesters of the existence of records on them, providing or denying access to or amendment of records, acting on appeals or denials to provide access or amend records, and providing or developing information for use in litigation; Department of the Army Privacy Review Board minutes and actions; coordination actions, copies of the requested amended or unamended records; statements of disagreement; and other related documents."

* * * * *

System manager(s) and address:

Delete entry and substitute "Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record."

Record accesss procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the office that processed the initial inquiry, access request, or amendment request. Individual may obtain assistance from the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

Personal visits may be made to the office maintaining the records upon presentation of acceptable identification, such as a valid driver's license, and furnishing verbal information that can be verified from the individual's case file."

Contesting record procedures:

Add at the end "or may be obtained from the system manager."

* * * * *

A0340–21SAIS

SYSTEM NAME:

Privacy Case Files.

SYSTEM LOCATION:

These records exist at Headquarters, Department of the Army, staff and field operating agencies, major commands, installations and activities receiving Privacy Act requests. Official mailing addresses are published as an appendix to the Army's compilation of system notices.

Records also exist in offices of Access and Amendment Refusal Authorities when an individual's request to access and/or amend his/her record is denied. Upon appeal of that denial, record is maintained by the Department of the Army Privacy Review Board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request information concerning themselves which is in the custody of the Department of the Army or who request access to or amendment of such records in accordance with the Privacy Act of 1974, as amended.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents notifying requesters of the existence of records on them, providing or denying access to or amendment of records, acting on appeals or denials to provide access or amend records, and providing or developing information for use in litigation; Department of the Army Privacy Review Board minutes and actions; copies of the requested and amended or unamended records; statements of disagreement; and other related documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012; and 5 U.S.C. 552a, the Privacy Act of 1974, as amended.

PURPOSE(S):

To process and coordinate individual requests for access and amendment of personal records; to process appeals on denials of requests for access or amendment to personal records by the data subject against agency rulings; and to ensure timely response to requesters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfilm.

RETRIEVABILITY:

By name of requester on whom the records pertain.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Approved requests, denials that were not appealed, denials fully overruled by appellate authorities and appeals adjudicated fully in favor of requestor are destroyed after 4 years. Appeals denied in full or in part are destroyed after 10 years, provided legal proceedings are completed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the office that processed the initial inquiry, access request, or amendment request. Individual may obtain assistance from the Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107.

For verification purposes, individual should provide full name, date and place of birth, current address and other personal information necessary to locate the record. Personal visits may be made to the office maintaining the records upon presentation of acceptable identification, such as a valid driver's license, and furnishing verbal information that can be verified from the individual's case file.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or

may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army organizations, Department of Defense components, and other Federal, state, and local government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The majority of records in this system are not exempted. Copies of documents residing in the office of an Access and Amendment Refusal Authority having a law enforcement mission which fall within (j)(2) are exempted from the following provisions of Title 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

Copies of documents maintained by the Department of the Army Privacy Review Board and by those Access and Amendment Refusal Authorities not having a law enforcement mission which fall within 5 U.S.C. 552a (k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

A0360SAIS

System name:

Mailing List for Army Newspapers/ Periodicals/Catalogs, (50 FR 22134, May 29, 1985).

Changes:

* * * * *

System location:

Delete last sentence and replace with "Official mailing addresses are published as an appendix to the Army's compilation of system notices."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to either the editor of the publication, registrar of the school, or the Army or National Guard Public Affairs Office publishing the periodical. Official mailing addresses are published as an appendix to the Army's compilation of system of records notices.

For verification purposes, individual should provide full name and current address to permit locating the record."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to either the editor of the publication, registrar of the school, or the Army or National Guard Public Affairs Office publishing the periodical. Official mailing addresses are published as an appendix to the Army's compilation of system of records notices.

For verification purposes, individual should provide full name and current address to permit locating the record."

Contesting record procedures:

Add at the end "or may be obtained from the system manager."

* * * * *

A0360SAIS

SYSTEM NAME:

Mailing List for Army Newspapers/ Periodicals/Catalogs.

SYSTEM LOCATIONS:

Headquarters, Department of the Army staff and field operating agencies, major commands, field installations and activities, Army service schools/ colleges, Army National Guard Bureau Headquarters and field activities. Official mailing addresses are published as an appendix to the Army's compilation of system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Name and current mailing address of recipients of Army and/or National Guard magazines, newspapers, professional and trade publications, journals, catalogs, admissions policies and procedures, digests, and newsletters. Recipients may be current or former Army and/or National Guard personnel, staff and faculty or graduate/ resident/correspondence student of Service Schools, military reservists, Reserve Officers Training Corps cadets, civilian academicians, professional or other personnel who have requested inclusion on mailing lists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mailing lists containing names and addresses of recipients of various periodicals published by the Army/or the National Guard which have public relations value. Types of periodicals include but are not limited to journals, catalogs, admissions policies and procedures published by military schools and colleges, medical facilities, and training institutions; and Army newspapers or digests containing official or quasi-official but non-directive data of either a technical or administrative nature.

Other personnel data may be included such as Alumni Association Member number, professional society or trade organization of which a member and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and 32 U.S.C. 110.

PURPOSE(S):

To produce mailing lists for distribution of Army periodicals, newspapers and various journals, catalogs, digests and newsletters; and to perform statistical analyses and surveys of reader interest and opinion.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, magnetic tape disc, cards, printouts, and addressograph plates.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are accessed and maintained only by authorized personnel who have need therefor.

RETENTION AND DISPOSAL:

Retained until no longer needed, normally until individual requests deletion, after which record is destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Heads of Department of Army staff and field operating agencies, major commands, commanders of installations/activities, Army service schools/colleges and National Guard activities that publish periodicals, command newspapers, catalogs or other special-interest recurring publications.

Official mailing addresses are published as an appendix to the Army's compilation of system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this records system should address inquiries to either the editor of the publication, registrar of the school, or the Army or National Guard Public Affairs Office publishing the periodical. Official mailing addresses are published as an appendix to the Army's compilation of system notices.

For verification purposes, individual should provide full name and current address to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address inquiries to either the editor of the publication, registrar of the school, or the Army or National Guard Public Affairs Office publishing the periodical. Official mailing addresses are published as an appendix to the Army's compilation of system notices.

For verification purposes, individual should provide full name and current address to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; records of the Army or National Guard organization publishing the document.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0735SAIS–SF

System name:

Library Borrowers'/Users' Profile Files, (52 FR 18805, May 19, 1987).

Changes:

* * * * *

System location:

Add at the end "Official mailing addresses of installations and activities are published as an appendix to the Army's compilation of record systems notices."

* * * * *

Storage:

Delete entry and replace with "Card files, magnetic tapes, compact discs, and computer printouts".

* * * * *

System manager(s) and address:

Delete entry and replace with "Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107"

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the specific installation library that provided services. Official mailing addresses published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, period in which a user has or had an account, and any other information that would assist in locating applicable records."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the specific installation library that provided services. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, period in which a user has or had an account, and any other information that would assist in locating applicable records".

Record contesting procedures:

Add at the end "or may be obtained from the system manager."

* * * * *

A0735SAIS–SF

SYSTEM NAME:

Library Borrowers'/Users' Profile Files.

SYSTEM LOCATION:

Libraries on Army installations and activities. Official mailing addresses of installations and activities are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Authorized users of Army library facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, Social Security Number, and telephone number of the user.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 9397.

PURPOSE(S):

To identify individuals authorized to borrow library materials; to ensure that all library property is returned and individual's account is cleared, and to provide librarian useful information for selecting, ordering, and meeting user requirements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Card files, magnetic tapes, compact discs, and computer printouts.

RETRIEVABILITY:

By user's surname, Social Security Number, and/or residence.

SAFEGUARDS:

Information is maintained in areas accessible only to authorized persons who have official need therefor. Libraries are secured during non-duty hours.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed to obtain and/or control library materials.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Systems for Command, Control, Communications, and Computers, ATTN: SAIS–PDD, Department of the Army, Washington, DC 20310–0107.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the specific installation library that provided services. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, period in which a user has or had an account, and any other information that would assist in locating applicable records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the specific installation library that provided services. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, period in which a user has or had an account, and any other information that would assist in locating applicable records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0360SAPA

System name:

Media Contact Files.

Changes:

* * * * *

System location:

Add "New York, NY;" after "Los Angeles, CA;" and delete "Kansas City, MO;"; add at the end "Official mailing addresses may be obtained from the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system".

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

For verification purposes, individual should provide full name, and current address and telephone number".

Record access procedures:

Delete entry and substitute "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

For verification purposes, individual should provide full name, and current address and telephone number"

Contesting record procedures:

Add at the end "or may be obtained from the system manager."

* * * * *

A0360SAPA

SYSTEM NAME:

Media Contact Files.

System location:

Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500 and their field operating agencies at Los Angeles, CA; New York, NY; and Washington, DC; public affairs office of Army Staff agencies, major commands, installations, and activities. Official mailing addresses may be obtained from the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Journalists, authors, editors, columnists, researchers, and news media representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, biographical data, public media affiliation, and correspondence between the Army and the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 U.S.C 3012.

PURPOSE(S):

To maintain contact with public media representatives on issues of common interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards and papers in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Information is accessed only by individuals having need in the performance of official duties.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed for current operations.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

For verification purposes, individual should provide full name, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

For verification purposes, individual should provide full name, and current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR Part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, newspapers, libraries, Army and Department of Defense records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0360–5SAPA

System name:

Biography Files, (50 FR 22145, May 29, 1985).

Changes:

* * * * *

System location:

Delete "and their field operating agencies at Los Angeles, CA; Washington, DC; and Kansas City, MO;" and add at the end "Official mailing addresses may be obtained from the Official mailing addresses may be obtained from the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500."

* * * * *

Retention and disposal:

Delete entry and substitute "Records are destroyed 2 years after retirement, transfer, separation, or death of the person concerned."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Public Affairs Office in the organization to which the individual is or was assigned or employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, current address and telephone number, and signature".

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in the record system should address written inquiries to the Public Affairs Office in the organization to which the individual is or was assigned or employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, current address and telephone number, and signature".

Contesting record procedures:

Add at the end "or may be obtained from the system manager."

* * * * *

A0360–5SAPA

SYSTEM NAME:

Biography Files.

SYSTEM LOCATION:

Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500; public affairs offices of Army staff agencies, field operating agencies, major commands, installations, and activities. Official mailing addresses may be obtained from the Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Leading Department of the Army military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical material including photographs, newspaper clippings, speeches, and related documents. Name, position/rank/grade, summary of service, and outstanding achievements may also be included.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012 and Executive Order 9397.

PURPOSE(S):

To respond to queries from the press and Army agencies/commands relating to individuals concerned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated officials having need therefor in the performance of their assigned duties. Storage areas are locked during non-duty hours.

RETENTION AN DISPOSAL:

Records are destroyed 2 years after retirement, transfer, separation, or death of the person concerned.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Public Affairs, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310–1500.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Public Affairs Office in the organization to which the individual is or was assigned or employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in the record system should address written inquiries to the Public Affairs Office in the organization to which the individual is or was assigned or employed. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, individual should provide full name, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial agency determinations by the individual concerned are published in Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; clippings from published media; published biographical data from Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–14389 Filed 6–17–91; 8:45 am]

BILLING CODE 3810–01–M

Defense Mapping Agency

Membership; Defense Mapping Agency Performance Review Board

AGENCY: Defense Mapping Agency (DMA) Department of Defense (DoD).

ACTION: Notice of membership of the Defense Mapping Agency Performance Review Board (DMA PRB).

SUMMARY: This notice announces the appointment of the members of the DMA PRB. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4). The Board provides fair and impartial performance appraisals and makes recommendations regarding performance ratings and performance awards to the Director, DMA.

EFFECTIVE DATE: 20 August 1991.

FOR FURTHER INFORMATION CONTACT: B.R. Webster, Defense Mapping Agency, Civilian Personnel Division, 8613 Lee Highway, Fairfax, VA 22031–2137, telephone (703) 285–9522.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following is a standing register of executives appointed to the DMA PRB; specific PRB panels will be constituted from this standing register. Executives listed will serve a one-year renewable term, effective 20 August 1991.

Ancell, A. Clay

Deputy Director for Programs, Production and Operations, DMA Aerospace Center
Barrowman, Douglas R.
Deputy Director for Plans and Requirements, Headquarters, DMA
Berg, Richard A.
Chief, Scientific Data Department, DMA Hydrographic/Topographic Center
Brown, William J.
Deputy Director for Programs, Production and Operations, DMA Hydrographic/Topographic Center
Coghlan, Thomas K.
Chief, Mapping and Charting Department, DMA Hydrographic/Topographic Center
Daugherty, Kenneth I.
Director, DMA Systems Center/ Deputy Director for Research and Engineering, Headquarters, DMA
Dierdorff, Curtis L.
Deputy Director for Human Resources, Headquarters, DMA
Gilliam, Penman R.
Deputy Director, Management and Technology, Headquarters, DMA
Gustin, Russell T.
Chief, Digital Products Department, DMA, Reston Center
Hall, Charles D.
Technical Director, Hydrographic/ Topographic Center, DMA
Hall, Robert H.
Deputy Director for Programs, Production and Operations, DMA Reston Center
Hennig, Thomas A.
Deputy Director for Programs and Operations, DMA Systems Center/Assistant Deputy Director for RDT&E, Plans and Programs, Headquarters, DMA
Hogan, William N.
Deputy Director for Programs, Production and Operations, Headquarters, DMA
Jackson, Mikel F.
Chief, Digital Products Department Hydrographic/Topographic Center, DMA
Knopfel, Lawrence
Technical Director/Deputy Director, DMA Combat Support Center
Krygiel, Annette J.
Deputy Director for Modernization Development, DMA Systems Center
Labovitz, Mordecai Z.
Deputy Director for Acquisition, Installations and Logistics, Headquarters, DMA
Mendez, John M.
Deputy Director for Transition Management, Headquarters, DMA
Muncy, Larry N.
Chief, Scientific Data Department, DMA Aerospace Center
Peeler, Paul L., Jr.
Technical Director, DMA Reston Center
Phillips, Earl W.
Assistant Deputy Director for Production, Headquarters, DMA
Pratt, Joseph
Brigadier General, USA, Deputy Director, DMA
Robinson, Bill E.
Director, Technical Services Center
Skidmore, James R.
Technical Director, DMA Aerospace Center
Smith, Kathleen M.
Chief, Digital Products Department, DMA Aerospace Center
Smith, Lon M.
Deputy/Technical Director, DMA Systems Center/Assistant Deputy Director for Research & Engineering, Headquarters, DMA
Smith, Robert N.
Chief, Data Services Department, DMA Reston Center
Smith, William D.
Chief, Resource Management Division (Deputy Comptroller), Headquarters, DMA
Vaughn, John R.
Comptroller, Headquarters, DMA
Ward, Curtis B.
Assistant Deputy Director for Resources Headquarters, DMA

Dated: June 12, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-14390 Filed 6-17-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Case No. F-027]

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Furnace Test Procedures to Amana Refrigeration, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-027) grranting Amana Refrigeration, Inc. (Amana), a waiver for its model GUD condensing gas furnace from existing Department of Energy (DOE) test procedures regarding blower time delay for determining the model's energy efficiency.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Amana has been granted a waiver for its model GUD condensing gas furnace, permitting the company to use an alternate test method in determining the Annual Fuel Utilization Efficiency (AFUE).

Issued in Washington, DC, May 29, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Decision and Order

In the matter of: Amana Refrigeration, Inc. (Case No. F-027).

Background

The Energy Conservation Program for Consumer Products (other than automobiles) established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, requires DOE to prescribe standardize test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver

will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Amana filed a "Petition for Waiver" dated May 15, 1990, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on January 9, 1991, Amana's petition and solicited comments, data and information respecting the petition. 56 FR 853. Amana also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on January 2, 1991. 56 FR 853, January 9, 1991.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver". DOE consulted with Federal Trade Commission (FTC), concerning the Amana petition. The FTC did not have any objections to the issuance of a waiver to Amana.

Assertions and Determinations

Amana's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Amana requests the allowance to test using a 30-second blower time delay when testing its GUD series condensing gas furnaces. Amana states that since the 30-second delay is indicative of how this model actually operates and since such a delay results in an improvement in efficiency of approximately 1.7 percent, the waiver should be granted.

Under specific circumstances, the DOE test procedures contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Amana indicates that it is unable to take advantage of any of these exceptions for the GUD series condensing gas furnaces.

Since the blower controls incorporated on the Amana furnace are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Amana GUD condensing gas furnace. Accordingly, with regard to testing the GUD condensing gas furnace, today's Decision and Order exempts Amana from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is therefore, ordered that: (1) The "Petition for Waiver" filed by the Amana Refrigeration, Inc., (Case No. F–027) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4) and (5).

(2) Not withstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, the Amana Refrigeration, Inc. shall be permitted to test its GUD condensing gas furnace on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and eplaced with the following paragraph:

3.0 *Test procedure.* Testing and measurements shall be as specified in section 9 of ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 *Gas- and oil-fueled central furnaces.* The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) come on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 in. of water gauge of the manufacturer's recommended on-period draft.

(iii) With the exception of the modification set forth above, Amana Refrigeration, Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GUD condensing gas furnace manufactured by Amana Refrigeration, Inc.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective May 29, 1991, this Waiver supersedes the Interim Waiver Granted Amana Refrigeration, Inc. on January 2, 1991. 56 FR 853, January 9, 1991, (Case No. F–027).

Issued In Washington, DC, May 29, 1991.

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 91–14463 Filed 6–17–91; 8:45 am]

BILLING CODE 6450–01–M

[Case No. F-031]

Energy Conservation Program for Consumer Products; Application for Interim Waiver and Petition for Waiver of Furnace Test Procedures from Inter-City Products Corporation

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Inter-City Products Corporation (Inter-City) from the existing Department of Energy (DOE) test procedures for furnaces blower time delay for the company's PGAA gas furnace.

Today's notice also publishes a "Petition for Waiver" from Inter-City. Inter-City's Petition for Waiver requests DOE to grant relief from the DOE test procedures relating to the blower time delay specification. Inter-City seeks to test using a blower delay time of 30 seconds for its PGAA gas furnace instead of the specified 1.5 minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATE: DOE will accept comments, data, and information not later than July 18, 1991.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F–031, Mail Stop CE–90, room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–3012.

FOR FURTHER INFORMATION CONTACT: Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–43, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, and the National

Appliance Energy Conservation Amendments of 1988 (NAECA) 1988), Public Law 100–357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 28, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject to the waiver.

The interim waiver provisions, added by the 1986 amendment, allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On February 18, 1991, Inter-City filed an Application for an Interim Waiver regarding blower time delay. Inter-City's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Inter-City requests the allowance to test using a 30-second blower time delay when testing its PGAA gas furnace. Inter-City states that the 30-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.6 percent. Since current DOE test procedures do not address this variable blower time delay, Inter-City asks that the interim waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182; April 9, 1990; Amana Refrigeration Inc., 56 FR 853, January 9, 1991; and Armstrong Air Conditioning, Inc., 56 FR 10553, March 13, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Inter-City an Interim Waiver for its PGAA series of gas furnaces. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations, the following letter granting the Application for Interim Waiver to Inter-City Products Corporation was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, May 29, 1991.

J. Michael Davis, P.E.,

Assistant Secretary for Conservation and Renewable Energy.

Assistant Secretary, Conservation and Renewable Energy,

United States Department of Energy, 1000 Independence Avenue SW., Washington, District of Columbia 20585.

Gentlemen: Please consider this Petition for Waiver and Application for Interim Waiver pursuant to Title 10 CFR 430.27.

Waiver is requested from the test procedures covering gas furnaces found at appendix N to subpart B of 10 CFR Part 430. The current Heat-Up Test procedure requires a 1.5 minute time delay between burner and blower startup. Inter-City Products is requesting to use 30 seconds instead of 1.5 minutes for Series "PGAA" Packaged Gas Furnaces.

These models will employ an electronic blower time control that starts the blower in approximately 30 seconds. Our testing indicates an increase of .6 percent in AFUE using the 30 second time delay.

Inter-City Products Corporation seeks an interim waiver because it is likely that our waiver will be granted. Similar waivers have been granted to other manufacturers in the past.

A copy of this Petition for Waiver and Application for Interim Waiver will be sent to other manufacturers of similar type products.

Respectfully yours,

William E. Dalton,

Vice President, Engineering.

Mr. William E. Dalton,

Vice President, Engineering, Inter-City Products Corporation, 1136 Heil-Quaker Boulevard, Lavergne, TN 37086–1985.

Dear Mr. Dalton: This is in response to your February 18, 1991, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedures for furnaces regarding blower time delay for the Inter-City Products Corporation (Inter-City) PGAA gas furnace.

Previous waivers for timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, and 55 FR 3253, January 31, 1990; Trane Company, 54 FR 19226, May 4, 1989, and 55 FR 41589, October 12, 1990; DMO Industries, 55 FR 4004, February 6, 1990; Heil-Quaker Corporation, 55 FR 13184, April 9, 1990; Carrier Corporation, 55 FR 13182, April 9, 1990; Amana Refrigeration Inc., 56 FR 853, January 9, 1991; and Armstrong Air Conditioning Inc., 56 FR 10553, March 13, 1991.

Inter-City's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Inter-City will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Inter-City's Application for an Interim Waiver from the DOE test procedures for its PGAA gas furnace regarding blower time delay is granted.

Inter-City shall be permitted to test its time of PGAA gas furnace on the basis of the test procedures specified in 10 CFR part 430, subpart B, Appendix N, with the modification set forth below.

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section

9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes aftere the main burner(s) comes on. After the burner start-up, delay the blowder start-up by 1.5 minutes (t-), unless, (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within +0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This interim wavier may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 day period, if necessary.

Sincerely,

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 9114464 Filed 6–17–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE; FRL–3966–4]

Anticipated Pesticide Residues in Food; Availability of Document

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The Document "Anticipated Pesticide Residues in Food" is available to the public. This report contains a pesticide food residue data base. Hardcopy and microfiche copies of the report can be purchased through the National Technical Information Service (NTIS). Electronic searches of the data base may also be purchased. Ordering information is provided.

DOCUMENT DESCRIPTION: "Anticipated Pesticide Residues in Food" is comprised of our volumes. Volume one describes the sources of data contained in the report, the format of the computerized data base and the recommendations of the report. Volumes two through four list the data records included in the data base.

ORDERING INFORMATION: Volume 1 has been assigned the NTIS number PB91–154591. Volumes two through four have been assigned the NTIS number PB91–154609. The NTIS number for all four volumes is PB91–154583. Use this information when ordering. The price for volume one is $17.00 ($8.00 for microfiche). The price for volumes two through four is $88.00 ($29.50 for microfiche). Orders may be placed by telephone to the NTIS order desk and charged against a deposit account of American Express, VISA, Mastercard, or sent by mail with a check, money order, or account number.

ADDRESSES: National Technical Information Services, attn: Order Desk, 5285 Port Royal Rd., Springfield, VA 22161 (703–487–4650).

DATA BASE SEARCHES: For information on procedures for having electronic data base searches carried out, contact Dynamac Corporation (301–417–6126).

FOR FURTHER INFORMATION CONTACT: Joseph C. Reinert, Waste and Chemicals Policy Division (PM–220), Office of Policy, Planning and Evaluation, EPA, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 34 Waterside Mall, EPA, (202–382–7557).

Dated: June 7, 1991.

Daniel Fiorino,

Associate Director, Office of Policy Analysis.

[FR Doc. 91–14449 Filed 6–17–91; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–44571; FRL 3929–3]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on 4-nonylphenol, branched (CAS No. 84852–15–3), submitted pursuant to a consent order under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: David Kling, Acting Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for 4 nonylphenol, branched were submitted by the Chemical Manufacturers Association's Alkylphenol and Ethoxylates Panel pursuant to a consent order at 40 CFR 799.5000. They were received by EPA on May 20, 1991. The submissions describe the chronic toxicity of nonylphenol to the Mysid, *Mysidopsis bahia*, and the early life stage toxicity of nonylphenol to the fathead minnow, *Pimephales promelas*. Environmental effects testing is required by this test rule. This chemical is used: (1) As an intermediate in the production of nonionic ethoxylated surfactants, (2) as a reactive intermediate in lube additives formaldehyde resins, polymeric stabilizers and epoxy resins, and (3) in the manufacture of phosphate antioxidant, oil additives, synthetic lubricants and corrosion inhibitors.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d)receipt of data notice (docket number OPTS–44571). This recordincludes copies of all studies reported in this notice. The recordis available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: June 7, 1991.

Charles M. Auer,

Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 91–14450 Filed 6–17–91; 8:45 am]

BILLING CODE 6560–50–F

[OPTS-59289B; FRL 3931-2]

Certain Chemical; Approval of Modification to Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of a modification of the test marketing period for a test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA designated the original test marketing application as TME-91-1. The test marketing conditions are described below.

EFFECTIVE DATES: June 11, 1991.

FOR FURTHER INFORMATION CONTACT: Rick Keigwin, New Chemicals Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St. SW., Washington, DC 20460, (202) 382-2440.

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 human 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 the modification of the test marketing period for TME-91-1. EPA has determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application and modification request, and for the modified time period specified below, will not present an unreasonable risk of injury to human health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the original Notice of Approval of Test Marketing Application must be met.

T-91-1

Notice of Approval of Original Application: December 21, 1991 (55 FR 52317).

Modified Test Marketing Period: 6 month extension from the original 9 months.

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 human health or the environment.

Dated: June 11, 1991.

John W. Melone,

Director, Chemical Control Division, Office of Toxic Substances.

[FR Doc.91-14451; Filed 6-17-91 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Anti-Arson Program

AGENCY: Federal Emergency Management Agency.

ACTION: Notice of solicitation for award of cooperative agreement.

Notice of Solicitation is hereby given that the Federal Emergency Management Agency, under the Fire Prevention and Control Act of 1974, will issue a Request for Assistance (RFA) No. EMW-91-S-3648 on or about June 1, 1991, regarding the design and implementation of an anti-arson strategy program. This program is limited to Community-Based Organizations (CBO). This notice informs the public of the availability of $260,000.00 appropriated for this program by the Federal Emergency Management Agency.

The purpose of this assistance is to focus on nationwide efforts to reduce the number of arson related fires that occur every year throughout this country.

Some broad objectives of this program are:

- To encourage neighborhood involvement in reducing arson fires through new and innovative broad spectrum programs.
- To expand the neighborhood involvement to a community-wide participation in fighting arson.
- To make information available to other neighborhoods and communities regarding successful programs.
- To increase the cooperation between neighborhood residents, community groups and public service organizations such as fire, police, building and code departments.
- To build a comprehensive community anti-arson program.

Organizations wishing to apply for this program must meet certain eligibility requirements:

a. The applicant must be a true community-based organization. Among the criteria to be used to determine whether the applicant is a true CBO are the following:

1. An organization that is made up of community representatives and is lcoated in a neighborhood within the community.

2. An organization that is designed to serve members of a neighborhood in dealing with problems on a voluntary basis.

3. A non-profit organization capable to leveraging private sector funding.

4. Must be a community-based organization that is indigenous to the neighborhood.

5. An organization must have been in existence for at least one year prior to the issuance of this RFA.

The following evaluation factors (numerically weighed to ensure consisent and balanced scoring) are for consideration by the Anti-Arson Evaluation Panel:

a. The relationship between the proposed program approach and objectives of FEMA/USFA CBO Programs (Factor weight: 10)

b. The experience of the organization relating to previous projects in fire/arson prevention (Factor weight: 10)

c. The amount of involvement demonstrated with public sector agencies such as fire, police, building codes, housing, etc. (Factor weight: 15)

d. The identification of significant problems and issues that impact on the arson problem in their neighborhood (Factor weight: 5)

e. The indication of previous projects in the neighborhood and how residents benefited from those projects in the past (Factor weight: 5)

f. Evidence of previous CBO involvement in Anti-Arson Activities and that these activities have continued and some indication of project personnel experience in community problem solving and development (Factor weight: 15)

g. Identification, availability and ability to obain resources, other that federal funding, necessary to implement and maintain the project (Factor weight: 20)

h. The commitment of the officers, directors and staff as indicated through regular attendance at organizational

meetings, and meetings with public and private officials (Factor weight: 10)

i. The reasonableness, practicality and completeness of the organization's plan for implementing and managing the proposed project (Factor weight: 10)

Application for assistance must be requested in writing and addressed as follows: Federal Emergency Management Agency, Office of Acquisition Management, 500 C Street, SW., room 731, Washington, DC 20472, attn: Rhonda Hudson, Contract Specialist. Request for Assistance No. EMW–91–S–3648. Please include a self-addressed mailing label with the request.

Cooperative Agreements are anticipated to be awarded as a result of this request for assistance. It is anticipated that a minimum of five (5) and a maximum of twenty-five (25) assistance awards will be made. The minimum anticipated funding level of this program is $5,000.00 based on the criteria that will be outlined in he solicitation package.

Kenneth J. Brzonkala,

Director, Office of Acquisition Management.

[FR Doc. 91–14439 Filed 6–17–91; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

Request for Additional Information

Agreement No: 202–010776–059.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.,
Kawasaki Kisen Kaisha, Ltd.,
A.P. Moller-Maersk Line,
Mitsui O.S.K. Lines, Ltd.,
Neptune Orient Lines, Ltd.,
Nippon Liner Systems, Ltd.,
Nippon Yusen Kaisha Line,
Sea-Land Service, Inc.

Synopsis: Notice is hereby given that the Federal Maritime Commission, pursuant to section 6(d) of the Shipping Act of 1984 (46 U.S.C. app. 1705), has requested additional information from the parties to the Agreement in order to complete the statutory review of Agreement No. 202–010776–059 required by the Act. This action extends the review period as provided in section 6(c) of the Act.

By Order of the Federal Maritime Commission.

Dated: June 12, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91–14378 Filed 6–17–91; 8:45 am]

BILLING CODE 6730–01–M

The Board of Trustees of the Galveston Wharves/Dunavant Enterprises, Inc.; 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 10220. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200529.

Title: The Board of Trustees of The Galveston Wharves/Dunavant Enterprises, Inc. Terminal Agreement.

Parties:

The Board of Trustees of The Galveston Wharves (Galveston),
Dunavant Enterprises, Inc. (DE).

Synopsis: The Agreement, filed June 10, 1991, provides for DE to pay Galveston the tariff wharfage rate on the first 50,000 bales of cotton shipped through the Port of Galveston in 1991 and then $0.35 per bale thereafter. The term of the Agreement expires December 31, 1991.

Dated: June 12, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–14379 Filed 6–17–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Area Bancshares Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 8, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Area Bancshares Corporation, Owensboro, Kentucky; to acquire First Federal Savings and Loan Association of Bowling Green, Bowling Green, Kentucky, and thereby engage in operating a savings and loan association pursuant to § 225.25(b)(9) of the Board's Regulation Y. This activity will be conducted in Bowling Green and Franklin, Kentucky.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Brooke Holdings, Inc., Jewell, Kansas; to acquire MidAmerica Insurance Agency, Phillipsburg, Kansas, and thereby engage in the sale of general insurance (excluding life insurance and annuities) pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y. **Comments on this application must be received by July 2, 1991.**

Board of Governors of the Federal Reserve System, June 12, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14414 Filed 6-17-91; 8:45 am]

BILLING CODE 6210-01-F

Chambers Bancshares, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 8, 1991.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Chambers Bancshares, Inc., Danville, Arkansas; to engage *de novo* in providing real estate appraisal services pursuant to § 225.25(b)(13) of the Board's Regulation Y. This activity will be conducted in the State of Arkansas.

Board of Governors of the Federal Reserve System, June 12, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14415 Filed 6-17-91; 8:45 am]

BILLING CODE 6210-01-F

Eastern Illinois Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 8, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Eastern Illinois Bancorp, Inc., Casey, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Casey National Bank, Casey, Illinois.

2. FS BancShares, Inc., Markeson, Wisconsin; to merge with Fox Lake Bankshares, Inc., Fox Lake Wisconsin, and thereby indirectly acquire State Bank of Fox Lake, Fox Lake, Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Hansen Freeborn, Inc., Freeborn, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Freeborn, Freeborn, Minnesota.

Board of Governors of the Federal Reserve System, June 12, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14416 Filed 6-17-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0177]

Seiwa Technological Laboratories, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Seiwa Technological Laboratories, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4-isopropyltropolone as a preservative for fresh fruits and vegetables

FOR FUTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that Seiwa Technological Laboratories, Ltd., suite 340-650, West 41st Ave., Vancouver, B.C. Canada V5Z 2M9, has filed a petition (FAP 9A4156) proposing that the food additive regulations be amended to provide for the safe use of 4-isopropyltropolone as a preservative for fresh fruits and vegetables.

The potential environmental impact of this action is being reviewed. If the agency finds that an envionmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: June 7, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-14432 Filed 6-17-91; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselor's Meeting; Review of Draft NTP Technical Reports

Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselor's Technical Reports Review Subcommittee on July 9 and 10, 1991, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 9 a.m. both days and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies and short-term toxicity studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on July 9 and 10 are draft Technical Reports of long-term studies on nine chemicals, listed alphabetically, along with supporting information in Table 1. All studies were done using Fischer 344 rats and B6C3F1 mice. The order of review is given in the far right column of the table.

Also scheduled to be peer reviewed are draft Technical Reports of toxicity studies on four chemicals, listed alphabetically, along with supporting information in Table 2. Order of presentation is given in the far right column of the table.

Additionally, if time permits, following the Technical Report reviews, there will be three scientific presentations. They are: (1) Variability in Tumor Rates Among Control F344 Rats in NTP Studies; (2) Mononuclear Cell Leukemia in the F344 Rat—Research Approaches; and (3) Evaluation of the Usefulness of Interim Sacrifices in NTP Studies.

Persons wanting to make a formal presentation regarding a particular Technical Report must notify the Executive Secretary by telephone or by mail no later than July 2, 1991, and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members and staff and make available at the meeting for attendees. Oral presentations should supplement and not just repeat the written statement. Presentations should be limited to no more than seven minutes.

The program would welcome receiving toxicology and carcinogenesis information from completed, ongoing or planned studies by others, as well as current production data, human exposure information, and use patterns on any of the studies listed in this announcement. Please contact the staff scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709.

The Executive Secretary, Dr. Larry G. Hart, P.O. Box 12233, RTP, North Carolina 27709 (telephone 919/541/3971, FTS 629–3971) will furnish final agenda, a roster of Subcommittee members, and other program information prior to the meeting. Summary minutes subsequent to the meeting will be available upon request.

Dated: June 12, 1991.

David G. Hoel,

Acting Director, National Toxicology Program.

TABLE I.—SUMMARY DATA FOR LONG TERM NTP TOXICOLOGY AND CARCINOGENESIS TECHNICAL REPORTS SCHEDULED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON JULY 9–10, 1991

Chemical CAS No.	Staff scientist/technical report No.	Primary uses	Route/exposure levels	Study laboratory	Review order
Gamma-butyrolactone 96–48–0	Dr. S. Eustis 919–541–3231 TR–406 07/09/91E	Intermediate in the synthesis of polyvinylpyrrolidone, dl-methionine, piperidine, phenylbutyric acid, and thiobutyric acids. Solvent for resins. Constituent of paint removers, textilbe aids. Drilling oil.	Oral, Gavage (corn oil): MR: 0,112,225, FR: 0,225, 450, M: 0, 262, 522 MG/KG/50/ per group.	Southern Research Institute.	3
C.I. Pigment Red 3 2425–85–6	Dr. K. Abdo 919–541–7819 TR–407 07/09/91E	Used in manufacture of paints, inks, plastics, rubber.	Oral in feed (feed): R: 0, 6000,12500, 25000; M: 0, 12500, 25000, 50000 PPM (60 per group).	Southern Research Institute.	5
4,4'-diamino-2,2'-stilbendedisulfonic acid. 81–11–8	Dr. J. Hailey 919–541–0294 TR–412 07/09/91E	Chemical intermediate for dyes and fluorescent brightners.	Oral in feed: R: 0, 125000, 25000, M: 0, 6250, 12500 PPM/60 per group.	International Research & Development Corp.	6
Ethylene glycol 107–21–1	Dr. M. McDonald 919–541–4132 TR–413 07/09/91E	Antifreeze in cooling and heating systems. Extraction solvent. Cleaning agency. Chemical intermediate for polyesters, urethanes, and alkyd resins, vehicle for pharmaceutical preparations, food extracts, flavorings, skin lotions (HSDB 1990).	Oral in feed (feed): MN: 0, .625,1.25, 2.5%, FM: 0,1.25, 2.5,5.0%/ 50 per group.	Southern Research Institute.	2
HC yellow 4 59820–43–8	Dr. K. Abdo 919–541–7819 TR–419 07/09/91E	In semi-permanent hair dye formulations (HSDB 1990).	Oral in feed (feed): MR: 0,0.25,0.5%, FR&M: 0,0.5,1.0%/70 per group.	T.S.I. Mason Research Institute.	4
Mercuric chloride 7487–94–7	Dr. G. Boorman 919–541–3440 TR–408 07/09/91E	Preserving wood, embalming. Browning and etching steel and iron. Reagent. Chemical intermediate. Insecticide. Fungicide. Mordant for furs. Veterinary disinfectant and antiseptic. (TDB).	Oral, Gavage: R: 0, 2.5,5, M: 0,5,10 MG/ KG/60 per group.	International Research & Develop Corp..	9

TABLE I.—SUMMARY DATA FOR LONG TERM NTP TOXICOLOGY AND CARCINOGENESIS TECHNICAL REPORTS SCHEDULED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON JULY 9–10, 1991—Continued

Chemical CAS No.	Staff scientist/technical report No.	Primary uses	Route/exposure levels	Study laboratory	Review order
P-nitrophenol 100–02–7	Dr. C. Shackelford 919–541–1451 TR–417 07/09/91E	Intermediate for insecticides. Azo and sulfur dyes. Leather preservatives, fungicide (HSDB 1990).	Skin paint (acetone) 0,40,80,175 MG/KG/ 60 per group.	Hazelton Labs, Rockville, Gov't Services,Inc.	7
Polysorbate 60 (glycol) 9005–65–6	Dr. M. Jokinen/Dr. R. Irwin. 919–541–3233/919–541–3340. TR–415 07/09/91E	Emulsifier and dispersing agent for internal medicinal products. Defoamer in foods. Neutralizer for quaternary ammonium compounds. (TDB).	Oral in feed (feed): 0,2.5,5.0%/20 per group.	Southern Research Institute.	8
1,2,3-trichloropropane 96–18–4	Dr. R. Irwin 919–541–3340 TR–384 07/09/91E	Paint and varnish remover. Solvent. Degreasing agent. Intermediate for polysulfide liquid polymers. (TDB).	Oral, Gavage (corn oil): R: 0,3,10,30, M: 0,6,20,60 MG/KG.	T.S.I. Mason Research Institute.	1

TABLE 2.—SUMMARY DATA FOR SHORT TERM NTP TOXICITY STUDY TECHNICAL REPORTS SCHEDULED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON JULY 9–10, 1991

Chemical CAS No.	Staff scientist/toxicity report No.	Primary uses	Route/exposure levels	Study laboratory	Review order
Black newsprint ink EMTDP–75	Dr. J. Mahler 919–541–0770 TOX–17 07/09/91E	Used in newsprint inks	Skin paint (mineral oil): R&M:Untreated controls & neat application with USP mineral oil, printing ink mineral oil, letter press ink, & offset ink.	Battelle Columbus Laboratory.	12
Formic acid 64–18–6	Dr. M. Thompson 919–541–0651 TOX–19 07/09/91E	Fumigant, dyeing of textiles and paper, prep. of wire stripping compds., mfr. of insecticides, animal feed additive, solvent for perfumes, natural component of foods, human tissues.	Inhalation: R & M 0, 8, 16, 32, 64, 128 PPM/ 10/group.	Battelle Northwet Laboratory.	10
Glyphosate 1071–83–6	Dr. P. Chan 919–541–7561 Dr. J. Mahler 919–541–0770 TOX–16 07/09/91E	Agricultural chemical	Oral in feed (NIH–07): R&M:0, 3125, 6250, 12500, 25000, 50000PPM/10 per group. Male rats: Vehicle, vehicle + glyphosate 50000 PPM, glyphosate 50000 PPM + propranolol (1.2 MG/KG/day) isoproterenol pump (1 MG/KG/day: positive control), isoproterenol + propranolol pump (1, 1.2 MG/KG/day: blocking control) for 14 DA.	Southern Research Institute. NIEHS	11
2-Hydroxy-4-methoxybenzophenone 131–57–7	Dr. J. French 919–541–2569 TOX–21 07/09/91E	Sunscreen agent. Photostabilizer for synthetic resins. (TDB)	Oral in feed (feed): R&M:0, 3125, 6250, 12500, 25000, 50000 PPM. Skin paint (acetone) R:0,12.5, 25, 50, 100, 200; M:0, 22.75, 45.5, 91, 182, 364 MG/KG.	T.S.I. Mason Research Institute. T.S.I. Mason Research Institute.	13

[FR Doc. 91–14384 Filed 6–17–91; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-050-4212-08]

Royal Gorge Management Framework Plan, Chaffee Co., CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning amendment to the Royal Gorge Management Framework Plan, Colorado.

SUMMARY: The following described land, found in Chaffee County, Colorado, shall be evaluated under the criteria of section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1701, 1713) for its suitability for sale under that section and the mineral estate under section 209 of the same act.

New Mexico Principal Meridian, Colorado

T.51N., R.8E., section 21, N½NE¼, SE¼NE¼ containing approximately 120 acres, 8 miles north of Salida, Colorado on US Highway 285.

The County of Chaffee wishes to purchase the land to serve "important public objectives, * * * which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, * * * which would be served by maintaining such tract in Federal ownership." This parcel was not specifically identified for disposal in the Royal Gorge Management Framework Plan.

DATES: Interested parties may submit comments and concerns until July 19, 1991.

ADDRESSES: District Manager, Bureau of Land Management, P.O. Box 2200, Canon City, CO 81215–2200.

FOR FURTHER INFORMATION CONTACT: David Hallock, Bureau of Land Management, 3170 East Main St., Canon City, Colorado at (719) 275–0631.

Roger Underwood,

Assistant District Manager.

[FR Doc. 91–14377 Filed 6–17–91; 8:45 am]

BILLING CODE 4310-JB-M

[CO-050-4212-14-COC-51088]

Realty Action, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, COC–51088, proposed sale of public land and simultaneous conveyance of mineral interests, Conejos County, Colorado.

SUMMARY: The following land has been found suitable for modified competitive sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713):

New Mexico Principal Meridian, Colorado

T.32N., R.8E.

Sec. 13, Lot 2:

Containing 5.72 acres.

The parcel of land is separated from other public land by a county road. The parcel is difficult and uneconomic to manage in federal ownership, and disposal is in conformance with land use planning. The sale will be modified competitive format, with three designated bidders: Candido Sandoval, Gallegos Ranches, and Paul Clark. The land will not be sold for less than the appraised fair market value of $550.00; in addition, the successful bidder will be responsible for survey costs of $500.00.

DATES: Comments will be accepted for 45 days from this publication. Sale date will be not less than 60 days after publication.

ADDRESSES: Comments should be sent to the District Manager, Bureau of Land Management, P.O. Box 2200, Canon City, Colorado 81215–2200.

FOR FURTHER INFORMATION CONTACT: Bill Miller, Realty specialist, BLM San Luis Resource Area, Alamosa, Colorado (719–589–4975).

SUPPLEMENTARY INFORMATION: Publication of this notice segregates the described land from the public land laws, including the mining laws, for two years from publication, or until patent issues. Any patent issued will be subject to valid existing rights, a reservation to the United States for Ditches and Canals under the Act of August 30, 1890 (26 Stat. 391) and necessary rights-of-way for the unsuccessful bidders. Designated bidders will be provided detailed sale procedures including oral bidding procedures, payment requirements, bidder qualifications, time and place of sale and patent reservations.

Roger Underwood,

Acting District Manager.

[FR Doc. 91–14376 Filed 6–17–91; 8:45 am]

BILLING CODE 4310-JB-M

[WO-340-4333-11]

Wild and Scenic Rivers

AGENCY: Bureau of Land Management (BLM), Department of the Interior (DOI).

ACTION: Notice of availability, Draft Manual Section, Wild and Scenic Rivers—Policy and Program Direction For Identification, Evaluation, and Management.

SUMMARY: The BLM hereby gives notice to making available a proposed Draft Manual concerning policy and program direction for the identification, evaluation, and management of Wild and Scenic Rivers under the stewardship of the BLM.

DATES. Effective with publication of this notice.

ADDRESSES: Send requests for copies to Director (340), room 3360, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Gary G. Marsh, Recreation and Cultural Resources Branch, (202) 208–3353.

SUPPLEMENTARY INFORMATION: This Draft Manual Section makes use of existing authorities and regulations. and proposes policy, program direction, and procedural guidelines for fulfilling requirements of the Wild and Scenic Rivers Act. When finalized, it will provide the BLM line manager and program staff professional with specific policies for evaluating rivers within the BLM's resource management planning process.

In addition, it will set forth requirements for the identification, evaluation, reporting, and management of potential and existing wild, scenic, and/or recreational rivers in the National Wild and Scenic River System under the BLM's administration. This Draft Manual Section was developed as a direct result of field requests and experience, in furtherance of BLM's multiple-use mission, and in order to consolidate program guidance into one document. The Draft Manual supplements other BLM Manual Sections and guidance, e.g., BLM Manual Section 1623—Supplemental Program Guidance, and the U.S. Department of the Interior—U.S. Department of Agriculture (USDI–USDA) Final Revised Guidelines for Eligibility, Classification, and Management of River Areas (47 FR 39454).

Dated: June 3, 1991.

Cy Jamison,

Director.

[FR Doc. 91–14364 Filed 6–17–91; 8:45 am]

BILLING CODE 4310-84-M

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission; Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: July 18, 1991 at 2 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Public Safety Building, 10 East Church Street, room P–205, Bethlehem, PA 18018.

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P–208, Bethlehem, PA 18018, (215) 861–9345.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100–692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to National Park Service, Mid-Atlantic Regional Office, Division of Park and Resource Planning, 260 Custom House, 200 Chestnut Street, Philadelphia, PA 19106, attention: Deirde Gibson.

Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

James W. Coleman, Jr.,

Regional Director, Mid-Atlantic Region.

[FR Doc. 91–14482 Filed 6–17–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before January 1, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 3, 1991.

Carol D. Shull,

Chief of Registration, National Register.

MICHIGAN

Shiawassee County

Martin Road Bridge, Martin Rd. across the Shiawassee R., Caledonia Township, Corunna vicinity, 91000876

Tuscola County

Hotel Montague, 100 S. State St., Caro., 91000875

NEW YORK

Madison County

Bittersweet [Cazenovia MRA], 4448 E. Lake Rd., Cazenovia vicinity, 91000872
Cedar Cove [Cazenovia MRA], W side of E. Lake Rd., Cazenovia vicinity, 91000876
Hillcrest [Cazenovia MRA1], Ridge Rd. S of Hoffman, Cazenovia, 91000869
Lehigh Valley Railroad Depot [Cazenovia MRA], William St., Cazenovia, 91000874
Longshore House [Cazenovia MRA], W. Lake Rd., Cazenovia vicinity, 91000873
Notleymere [Cazenovia MRA], 4641 E. Lake Rd., Cazenovia vicinity, 91000868
Old Trees [Cazenovia MRA], W side of Rippleton Rd., Cazenovia vicinity, 91000865
Ormonde [Cazenovia MRA], Between E. Lake Rd. and Ormonde Dr., Cazenovia vicinity, 91000866
The Hickories [Cazenovia MRA], 47 Forman St., Cazenovia, 91000870
Upenough [Cazenovia MRA], Rippleton St., Cazenovia vicinity, 91000871.

[FR Doc. 91–14483 Filed 6–17–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 8, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by July 3, 1991.

Carol D. Shull,

Chief of Registration, National Register.

MARYLAND

Somerset County

Smith, William S., House, S. side of Oriole Rd. E of jct. with Crab Island Rd., Oriole, 91000891

MINNESOTA

Pine County

Kettle River Sandstone Company Quarry, N of MN 123 on W bank of Kettle R., Sandstone Twp., Sandstone, 91000877

MISSISSIPPI

Lauderdale County

Wechsler School, 1415 30th Ave., Meridian, 91000880

Lawrence County

Monticello Consolidated School, 125 E. Broad St., Monticello, 91000879

Madison County

Kirkpatrick Dental Office, 229 E. Center St., Canton, 91000878

MISSOURI

Greene County

Gillioz Theater, 325 Park Central E., Springfield, 91000887

MONTANA

Fergus County

N-Bar Ranch, 15 mi. SW of Grass Range, Grass Range vicinity, 91000881

NEW JERSEY

Essex County

Evergreen Cemetery, 1137 N. Broad St., Hillside, 91000882

Monmouth County

Seabright Lawn Tennis and Cricket Club, Jct. of Rumson Rd. and Tennis Court Ln., Rumson, 91000883

Morris County

Hartley Farms, Jct. of Spring Valley and Blue Mill Rds., Harding Twp., Morristown vicinity, 91000888

NEW YORK

Livingston County

St. John's Episcopal Church, Jct. of State and Stanley Sts., Mount Morris, 91000892

TEXAS

Blanco County

Blanco Historic District, Roughly bounded by Fifth St., Live Oak St., Town Cr. and rear property lines W of Main St., Blanco, 91000890

Harris County

Peden, D. D., House, 2 Longfellow Ln., Houston, 91000889

VIRGINIA

Albemarle County

Arrowhead, E side US 29, 1.5 mi. NE of jct. with VA 608, Charlottesville vicinity, 91000885

Wavertree Hall Farm, S side VA 692, 3500 ft. W of jct. with VA 637, Batesville vicinity, 91000886

Augusta County

Sugar Loaf Farm, W of jct. of VA 695 and VA 710, Staunton vicinity, 91000884

[FR Doc. 91-14484 Filed 6-18-91; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry no later than ten days after publication. Comments may also be addressed to, and copies of the submissions obtained from the Reports Management Officer, Fred D. Allen, (703)-875-1573, MS/AS/ISS, room 1209B, SA-14, Washington, DC 20523-1413.

Date Submitted: June 10, 1991.
Submitting Agency: Agency for International Development.
OMB Number: 0412-0510.
Type of Submission: Revision.
Title: Information Collection Requirements Contained in A.I.D.'s Handbook 13, Grants and Cooperative Agreements.
Purpose: Section 635(b) of the Foreign Assistance Act (FAA) authorizes A.I.D. to make grants and cooperative ageeements with any corporation or body of persons, whether within or without the United States, and international organizations in furtherance of the purposes and within the limitations of the FAA. A.I.D. is required to ensure the recipients are responsible and that they prudently manage public funds. These information collection and recordkeeping requirements are necessary for A.I.D. to review and monitor recipient's responsibility and compliances with U.S. Government requirements concerning use of funds.
Annual Reporting Burden
Respondents: 400; *annual responses:* 2.75; *average hours per response:* 36; *burden hours:* 39,600.
Reviewer: Marshall Mills (202) 395-7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: June 10, 1991.

Elizabeth Baltimore,

Communications and Program Management Division.

[FR Doc. 91-14438 Filed 6-17-91; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 489]

Railroad Revenue Adequacy; 1989 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Revision of 1989 Railroad Revenue Adequacy Determinations.

SUMMARY: On November 16, 1990, the Commission served a final decision in this proceeding (7 I.C.C.2d 158 (1990)). On January 30, 1991, the Association of American Railroads filed a Motion for Reconsideration seeking to eliminate the allocation of non-rail deferred taxes from the computation of net railway operating income. The motion for reconsideration is granted and the Commission's 1989 calculations of return on investments are revised. This revision does not change, however, the ultimate determinations of revenue adequacy or inadequacy for the involved railroads.

EFFECTIVE DATE: This decision shall be effective on June 18, 1991.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489 (TDD for the hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: By decision served November 16, 1990, published at 7 I.C.C.2d 158 (1990), the Commission issued its revenue adequacy findings for the nation's Class I railroads for the year 1989. In that decision the Commission departed from its existing standards for calculating railroad revenue adequacy by disallowing the non-rail portion of deferred taxes as an expense in arriving at net railway operating income ("NROI"). This represented a change from prior procedures, but one that the Commission believed to be a minor technical matter. On January 30, 1991, the Association of American Railroads ("AAR") filed a motion for reconsideration arguing that this change was improper.

Upon consideration of the AAR's petition, we conclude that our decision to adjust the NROI to account for non-rail deferred taxes was improper. We therefore are eliminating this calculation. This will result in changed returns on net investment for four railroads for the year 1989. It will not impact on the findings of revenue adequacy or inadequacy for any of the railroads.

Because the instant action merely acknowledges the invalidity of our prior change and returns to the status quo existing prior to the change, a rulemaking proceeding is unnecessary.

Additional information is contained in a concurrent decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: June 7, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-14412 Filed 6-17-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-167 (Sub 1099X)],

Consolidated Rail Corp.—Abandonment Exemption—in Washington, DC; Exemption

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR 1152 subpart F—Exempt Abandonments to abandon a 1.37-mile line between the point of connection in Conrail's Jersey Yard, milepost 0.0, and the end of the line at Buzzard Point, milepost 1.37, in Washington, DC.

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 July 18, 1991 (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 banking statements under 49 CFR 1152.29 must be filed by June 28, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by July 8, 1991, 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: John J. Paylor, 1138 Six Penn Center Plaza, Philadelphia, PA 19103.

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 June 21, 1991. 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: June 3, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91–14351 Filed 6–17–91; 8:45 am]

BILLING CODE 7035–01–M

[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).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Office of Justice Programs; Bureau of Justice Assistance

Structured Sentencing Discretionary Grant Announcement

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Justice.

ACTION: Notice of a structured sentencing grant.

SUMMARY: The Bureau of Justice Assistance (BJA) in cooperation with the United States Sentencing Commission (USSC) announces an initiative to assist states in developing and implementing structured sentencing policies and practices that facilitate consistent and appropriate punishment of convicted offenders.

This initiative will be supported under the Edward Byrne Memorial State and Local Law Enforcement Discretionary Grant Program, authorized by the Anti-Drug Abuse Act of 1988. The initiative was described on pages 117 to 119 of the fiscal year 1991 BJA Discretionary Program Application Kit. The purpose of this initiative is to develop and disseminate information on a prototype structured sentencing program. The prototype will be based on state and USSC experience in the development, implementation and monitoring of sentencing guidelines.

BJA invites public and private organizations to submit competitive applications to develop and disseminate a prototypical structured sentencing program. Private or profit organizations must waive their fee in order to be eligible. Applicant organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such.

Up to $200,000 will be made available through a cooperative agreement for a 15 month period to support a two stage program: (1) Assessment and (2) Prototype (model) development.

DATES: The deadline for receipt of applications is 5 p.m. EDT, Monday, August 19, 1991.

ADDRESSES: All proposals must be mailed or sent to Corrections Branch, Discretionary Grants Program Division, BJA, room 600, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Xenos at the above address. Telephone, (202) 514–5943.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Structured Sentencing Program is guided by the priorities set by the National Drug Control Strategy. These priorities call for Federal funding to states for planning, developing and implementing alternative sentencing programs for nonviolent drug offenders, including house arrest and boot camps, and which encourage the states to adopt alternative sentencing statutes, for nonviolent offenders.

The program will be designed to promote the use of appropriate sanctions for convicted offenders, and utilize Federal and state expertise for the benefit of state and local governments. A prototype for developing and implementing sentencing policies and practices in conjunction with the implementation of intermediate sanctions and other innovative sentencing options will be developed and disseminated. This program will draw directly upon the expertise of the USSC, which has promulgated Federal sentencing guidelines following an extensive research and development process. The USSC continues to monitor guidelines implementation in the Federal system.

To initiate this collaborative effort, BJA and USSC conducted a workshop with selected states to identify: (1) Issues that states must address by formulating and implementing structured sentencing; (2) state training and technical assistance needs; and (3) alternative approaches for delivering training and technical assistance. Priority needs identified by the states included: (1) Access to information

regarding the ways in which states have authorized and organized programs and developed goals pertaining to sentencing guidelines; (2) access to the actual sentencing guidelines and other documents; (3) a means to communicate and interact regularly with other states; (4) quantified, comparable sentencing data that will allow for intra-state tracking and inter-state comparison; and (5) methodologies and technologies for the collection and analysis of sentencing data to facilitate program management and evaluation. The proceedings from this meeting will be made available to the recipient of this award to guide the assessment stage.

II. Program Goals and Objectives

Goals

- To develop a sentencing guideline program.
- To disseminate information about structured sentencing programs.

Objectives

- To identify promising and effective structured sentencing programs.
- To develop a prototypical structured sentencing program, based on Federal and state experiences and guidelines.
- To establish clearinghouse services to support state development and implementation of structured sentencing programs.

III. Program Strategy

This program will be conducted in two states: (1) Assessment; and (2) Prototype Development and Dissemination. The strategy will include clearinghouse services (to be implemented under a separate effort) and a national conference.

State I—Assessment

The first stage of the program consists of the identification and assessment of existing state-structured sentencing programs. The Federal sentencing guidelines developed by the USSC will be reviewed to provide a framework for the program identification and assessment process as well as for prototype development.

The products to be completed during this stage are:

- A plan specifying the method by which the assessment will be conducted;
- A draft and final report which includes:

—Criteria for identifying promising structured sentencing programs;
—Recommendations for refining the goals and objectives of the program; and
—Descriptions of Structured Sentencing Programs.

- Recommendations for the development of a prototype structured sentencing program; and
- A dissemination strategy to inform the field about the development of the program, the products and results of each program stage, including the establishment of clearinghouse services.

Stage II—Development of Prototype

Based on the results of the Assessment Stage, a prototype(s) Structured Sentencing Program and a program operations manual for developing, implementing, monitoring and evaluating a Structured Sentencing Program will be prepared. A national conference will be the central component of the dissemination strategy for this stage. The purpose of the conference will be to present the structured sentencing prototype and to identify state training and technical assistance needs related to implementation of the Structured Sentencing Program.

The products to be completed in this stage are:

- A plan for prototype design and for program operation manual development;
- A draft and final program operation manual; and,
- A dissemination strategy to inform the field about the development of the program and the products and results of this stage.

IV. Award Amount

Up to $200,000 has been allocated for the award. One cooperative agreement will be awarded competitively, with a project period of 15 months to support stages I and II.

V. Eligibility Requirements

Applications are invited from public and private organizations. Private for-profit organizations must waive their fee in order to be eligible. Applicant organizations may submit joint proposals with other eligible organizations. One organization must be designated in the application as the applicant and any co-applicants must be designated as such.

Applicants and co-applicants must demonstrate that they have: (1) Prior experience in the design, conduct and implementation of developmental programs; and (2) demonstrated knowledge of issues associated with structured sentencing and intermediate sanctions.

The applicants must also demonstrate that they have the management and financial capability to implement effectively a project of this size and scope.

VI. Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget, and budget narrative. All applications must include the information outlined in this section of the solicitation (section "I) and in part IV, Program Narrative of the application (SR–424).

Applications from more than one organization must set forth the relationships among the parties. As a general rule, organizations that describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered co-applicants.

In the event of a co-applicant submission, one co-applicant must be designated as the payee. This applicant will receive and disburse project funds and be responsible for the supervision and the coordination of the activities of the other co-applicant(s). Under this arrangement, each organization must agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate its acceptance of the conditions of joint and several responsibility with the other co-applicant(s).

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000.

The following information must be included in the application:

A. Organizational Capability—Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of the eligibility criteria specified in Section V above. Applicants must demonstrate the way in which their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative.

Applicants must demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly. Applicants who have not previously received Federal funds will be asked to submit a copy of the Office of Justice Programs Accounting System and Financial Capability Questionnaire (OJP Form 7120/1).

B. Program Goals and Objectives—A succinct statement of your

understanding of the goals and objectives of the program should be included. The application should also include a literature review, a problem statement and a discussion of the potential contribution of this program to the criminal justice field.

C. Program Strategy—Applicants should describe the proposed approach for achieving the goals and objectives as they relate to the activities and products of the program. A detailed discussion of how both stages of the program would be accomplished should be included.

D. Program Implementation Plan—Applicants should prepare a plan that outlines the major activities involved in implementing the program. Applicants should describe how they will allocate available resources to implement the program and how the program will be managed.

The plan also must include an annotated organizational chart describing the roles and responsibilities of key organizational and functional components and must list the key personnel responsible for managing and implementing the program.

E. Time-Task Plan—Applicants must develop a time-task plan for the project period including clearly identified major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the products identified in section III.

F. Products—Applicants must concisely describe the interim and final products of each stage of the program, and must address the purpose, audience and usefulness to the field of each product.

G. Program Budget—Applicants must provide a budget with a detailed justification for all costs, including the basis for computation of these costs. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet weighted criteria. Applications will be evaluated by a peer review panel.

The selection criteria and their point values (weights) are as follows:

A. Organizational Capability (25 points)

1. The extent and quality of organizational experience in the design and development of sentencing policies, procedures and practices.

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 disbursement and accounting of Federal funds.

B. Soundness of the Proposed Strategy (30 Points)

Appropriateness and technical adequacy of the approach to each stage of the program for meeting the goals and objectives of the program and potential utility of proposed products.

C. Qualifications of Project Staff (20 Points)

The qualifications of staff designated to manage and implement the program including staff to be hired through contracts. (10 points)

D. Clarity and Appropriateness of the Program Implementation Plan (15 Points)

Adequacy and appropriateness of the program activities, and the project management structure; and the feasibility of the time-task plan.

E. Budget (10 Points)

The relationship of the proposed costs to the proposed strategy and tasks to be accomplished.

Applications will be evaluated by a peer review panel. The result of the peer review rating process will be a relative aggregate ranking of applications in the form of "Summary of Ratings." Peer review recommendation, in conjunction with the results of internal review, will assist the BJA Director in considering applications and in the selection of an application for funding. The BJA Director will make the final award decision.

VIII. Notification of Applications

Applicants must submit the original signed application and three copies to BJA. The necessary application forms (Standard Form 424) will be provided upon request. Applications must be received by mail or hand delivered to BJA by 5 p.m. EDT on Monday, August 19, 1991. Those applications sent by mail should be addressed to: BJA, U.S. Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the BJA, room 1044, 633 Indiana Avenue, NW., Washington, DC, between the hours of 8 a.m. and 5 p.m. except Saturdays, Sundays or Federal holidays.

BJA will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter whether or not their submission will be recommended for funding.

IX. Civil Rights Compliance and other Requirements

A. All recipients of BJA assistance, including any contractors, must comply with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended; title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d); section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; title IX of the Education Amendments of 1972, 20 U.S.C. 1681; the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101–6107; and Department of Justice Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or state court or Federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient must forward a copy of the finding to the Office for Civil Rights (OCR) of the Office of Justice Programs.

C. Applicants shall maintain such records and submit to BJA upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in benefits of, or denied or prohibited from obtaining employment in connection with, any program or activity funded in whole or in part with funds made available under this program because of their race, color, national origin, sex, religion, or handicap. If the recipient of Federal funds contracts with any other person or group, the contractor shall submit compliance reports to the primary recipient.

D. Applicants must submit the original application with a certification that the organization has not been debarred (Form 4662/2). Additionally, applicants must also provide, with the application, a Certification Regarding Drug-Free Workplace Requirements, (Form 4061/3), which meets the requirements of the Drug-Free Workplace Act of 1988 (102 Stat. 4308, 41 U.S.C. 707), which will be supplied with the application information package. The applicant must also submit a completed and signed standard form LLL ("Disclosure of Lobbying Activities" Report) which will be supplied with an application information package.

Gerald P. Regier,

Acting Director, Bureau of Justice Assistance.

[FR Doc. 91–14481 Filed 6–17–91· 8:45 am]

BILLING CODE 4410–18–M

National Institute of Justice; Study of Police Use of Excessive Force

AGENCY: Office of Justice Programs, National Institute of Justice.

ACTION: Notice of funding for a National Institute of Justice study of Police Use of Excessive Force.

SUMMARY: The National Institute of Justice (NIJ) is publishing this Notice of the availability of funding for a study of Police Use of Excessive Force.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue NW., Washington, D.C. 20531.

FOR FURTHER INFORMATION CONTACT: Charles B. DeWitt, Director, National Institute of Justice, 633 Indiana Avenue NW., Washington, DC 20531. To obtain copies of the solicitation, call the National Criminal Justice Reference Service, 1–800–851–3420 (in Metropolitan Washington, 301–251–5500), Box 6000, Rockville, MD 20850.

DEADLINE: The deadline for receipt of proposals is July 26, 1991.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

Authority

This action is authorized under the Anti-Drug Abuse Act of 1988, 42 U.S.C. 3721–23.

Background

Attorney General Dick Thornburgh has directed elements of the Department of Justice to examine police use of excessive force, calling upon the Federal Bureau of Investigation, the Civil Rights Division, the Community Relations Service, and the National Institute of Justice. The Attorney General specifically requested that NIJ conduct a comprehensive study that will examine "the correlation, if any, between the incidence of police brutality and the presence or absence of department training programs and internal procedures to deter police brutality." Up to $400,000 is available for this project.

This project includes elements related to leadership, discretion, training, policymaking, and accountability as they influence the use of excessive force. The National Institute of Justice will fund a study that focuses on two central areas: (1) an overview of the nature and extent of the problem of excessive force, and (2) an examination of what is being done in training, local departmental policies, and internal control mechanisms to control the use of excessive force.

Charles B. DeWitt, Director,

National Institute of Justice.

[FR Doc. 91–14380 Filed 6–17–91; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review. As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC. 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment Standards Administration
Optional Use Payroll Form Under the Davis-Bacon Act
1215–0149; WH–347
Average 92 weeks per year
Individuals or households; State or local governments; businesses or other for profit; Federal agencies or employees; small businesses or organizations
95,572 respondents; 8,300,000 total hours; 56 min. per response; 1 form

Report is used by contractors to certify payrolls in accordance with requirements of Copeland and Davis-Bacon Acts, attesting that proper wage rates and fringe benefits were paid; reviewed by contracting agencies to verify that rates are legal and that employees are properly classified.

Signed at Washington, DC this 13th day of June, 1991.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 91–14454 Filed 6–17–91; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process:

The Employment and Training Administration has established a voice-mail service for the H–1A nurse attestation process. Call Telephone Number: 202–535–0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H–1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, subparts D and E) for the attestation process for H–1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H–1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H–1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H–1A attestation (however, see the telephone number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process:

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Divison. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Divison of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 7th day of June, 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

Division of Foreign Labor Certifications Approved Attestations

[05/01/91 to 05/31/91]

CEO-name/facility name/address	St.	Approval date
Mr. John O. Rohde, The Cooper Green Hospital, 1515 6th Ave. South, Birmingham, AL 35233, 205–934–0243	AL	05/10/91
Mr. Terry Andrus, East Alabama Med. Ctr., 2000 Pepperell Parkway, Opelika, AL 36802, 205–749–3411	AL	05/30/91
Mr. Kenneth K. Hahn, Cigna Hospital of Los Angeles, 1711 West Temple Street, Los Angeles, CA 90026, 213–484–3504	CA	05/01/91
Mr. James Tally, Scottish Rite Children's Med., 1101 Johnson Ferry Road, N.E., Atlanta, GA 30363, 404–265–5252	CA	05/01/91
Mr. Edwin C. Hiroto, Keiro Nursing Home, 2221 Lincoln Park, Los Angeles, CA 90031, 213–225–1393	CA	05/03/91
Mr. Edwin C. Hiroto, Minami Keiro Nursing Home, 3619 N. Mission Road, Los Angeles, CA 90031, 213–225–1353	CA	05/03/91
Mr. Bruce Bennett, Community Convalescent Center, 4070 Jurupa Avenue, Riverside, CA 92506, 714–682–2522	CA	05/03/91
Mr. Kaldeep Brar, STAT Medical Services, Inc., 6430 Sunset Boulevard, Suite 1207, Hollywood, CA 90028, 213–465–1134	CA	05/03/91
Ms. Veronica Lau, Pacific Alliance Med. Ctr., 531 W. College St., Los Angeles, CA 90012, 213–683–9439	CA	05/03/91
Mr. James C. Heidenreich, Southern Calif. Permanente Me, Kaiser Foundation Hospitals, Bellflower, CA 90706, 213–920–4321	CA	05/03/91
Mr. K.E. Blake, Beverly Hospital, 309 W. Beverly Blvd., Montebello, CA 90640, 213–726–1222	CA	05/09/91
Mr. David Bigelow, Goleta Valley Community Hospital, 351 South Patterson Avenue, Santa Barbara, CA 93111, 805–967–3411	CA	05/09/91
Mr. James C. Lester, Little Company of Mary Hospital, 4101 Torrance Blvd., Torrance, CA 90503, 213–540–7676	CA	05/09/91
Mr. Lonnie Barker, University Convalescent Hospital, 2122 Santa Cruz Avenue, Menlo Park, CA 94025, 415–854–4020	CA	05/15/91
Ms. Lorraine Zippiroli, Lucile Salter Packard Childrens Hospital at Stanford, Palo Alto, CA 94304, 415–327–4800	CA	05/15/91
Mr. Daniel Bunn, El Cajon Valley Convalescent, 510 E. Washington, El Cajon, CA 92020, 619–440–1211	CA	05/15/91
Mr. John T. Evans, Antelope Valley Hosp. Med. Ct., 1600 West Avenue J, Lancaster, CA 93534, 805–949–5000	CA	05/16/91
Mr. Irmka Schoebel, Hillhaven Convalescent Hosp., 1609 Trousdale Drive, Burlingame, CA 94010, 415–697–1865	CA	05/23/91
Ms. Betty Gillespie Pollack, VNA Continuing Care, Inc., 2025 Gateway Place, Suite 250, San Jose, CA 95110, 408–452–8295	CA	05/24/91
Mr. David Banks, Beverly Manor Convalescent Home, Beverly Enterprises, Los Angeles, CA 90039, 213–666–1544	CA	05/30/91
Mr. David Banks, Community Convalescent Hospital, Beverly Enterprises, Lynwood, CA 90262, 213–537–2500	CA	05/30/91
Mr. David Banks, Broadway Convalescent Hospital, Beverly Enterprises, San Gabriel, CA, 91776, 818–265–2165	CA	05/30/91
Mr. Sean O'Neal, Delano Regional Med. Ctr., 1401 Garces Highway, Delano, CA 93216, 805–725–4800	CA	05/30/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[05/01/91 to 05/31/91]

CEO-name/facility name/address	St.	Approval date
Mr. Ralph N. Tisdial, Ross Care Convs. Hosp., 370 Noble Court, Morgan Hill, CA 95037, 408-779-7346	CA	05/30/91
Mr. Jacob Friedman, Longwood Manor Convalescent, 4853 W. Washington Blvd., Los Angeles, CA 90016, 213-935-1157	CA	05/30/91
Mr. Sam Downing, Salinas Valley Memorial Hospital, 450 East Romie Lane, Salinas, CA 93901, 408-757-4333	CA	05/30/91
Mr. David Banks, Montrose Convalescent Hospital, Beverly Enterprises, Montrose, CA 91020 818-249-3925	CA	05/30/91
Mr. David Banks, Beverly Manor Westminster, Beverly Enterprises, Westminster, CA 92863, 714-892-6686	CA	05/30/91
Mr. David Banks, Beverly Manor Convalescent Hospital, Beverly Enterprises, Burbank, CA 91506, 818-843-2330	CA	05/30/91
Mr. David Banks, Beverly La Cumbre Convalescent, Beverly Enterprises, Santa Barbara, CA 93110 805-687-6651	CA	05/30/91
Mr. David Banks, Sherman Oaks Convalescent Hospital, Beverly Enterprises, Sherman Oaks, CA 91403 818-986-7242	CA	05/30/91
Sister John Berchmans, Poor Sisters of Naz. of San D, dba Nazareth House, San Diego, CA 92108, 619-563-0480	CA	05/30/91
Mr. Robert C. Bills, Valley Presbyterian Hospital, 15107 Vanowen Street, Van Nuys, CA 91409, 818-782-6600	CA	05/30/91
Mr. David Banks, Beverly Manor Convalescent Hospital, Beverly Enterprises, Santa Barbara, CA 93105, 805-682-7451	CA	05/30/91
Mr. Thomas G. Hennessy, Bay Harbor Hospital, 1437 W. Lomita Blvd., Harbor City, CA 90710, 213-325-1221	CA	05/30/91
Mr. Richard McCarthy, Orthopaedic Hospital, 2400 S. Flower Street, Los Angeles, CA 90017, 213-742-1114	CA	05/30/91
Mr. Lance Anastasio, Winter Haven Hospital, 200 Avenue F., N.E., Winter Haven, FL 33881 813-297-1818	FL	05/09/91
Mr. Arlen J. Reynolds, AMI/Palm Beach Gardens Med. C, 3360 Burns Road, Palm Beach Gardens, FL 33410, 407-694-7140	FL	05/15/91
Mr. Terry R. Upton, HCA Marion Community Hospital, 1431 S.W. First Avenue, Ocala, FL 32671, 904-732-2700	FL	05/16/91
Mr. Everett Benjamin, Sunrise Rehabilitation Hospital, Bravard Health Corporation D/B/A, Fort Lauderdale, FL 33351, 305-749-0300	FL	05/16/91
Mr. Peter Marmerstein, Peninsula Medical Center, 264 South Atlantic Avenue, Ormond Beach, FL 32176, 904-672-416111	FL	05/23/91
Mr. Ray Musselman, Fishermen's Hospital, 3301 Overseas Hwy., Marathon, FL 33042, 304-743-5533	FL	05/23/91
Mr. Joe D. Pinion, Highlands Regional Med. Ctr., P.O. Drawer 2066, Sebring, FL 33871, 813-385-6101	FL	05/23/91
Mr. Eugene C. Fleming, HCA North Florida Reg'l Med., P.O. Box NFR, Gainesville, FL 32602, 904-333-4114	FL	05/30/91
Ms. Judi Buxo, Harbour's Edge, 401 East Linton Boulevard, Delray Beach, FL 33483, 407-272-7979	FL	05/30/91
Mr. Daniel O. Wagster, Kaiser Foundation Hospitals, Kaiser Foundation Health Plan, Inc., Honolulu, HI 96819, 808-834-9520	HI	05/10/91
Ms. Frances Hallonquist, Pali Momi Medical Center, 98-1079 Moanalua Rd., Aiea, HI 96701, 808-486-6000	HI	05/30/91
Mr. Jeff S. Berns, Norridge Nursing Centre, 7001 West Cullom Avenue, Norridge, IL 60634, 708-457-0700	IL	05/03/91
Mr. Howard D. Geller, Garden View Home, 6450 N. Ridge, Chicago, IL 60626, 312-743-8700	IL	05/09/91
Mr. Bradley Alter, Danville Care Center, Ltd., 1701 N. Bowman, Danville, IL 61832, 217-443-2955	IL	05/09/91
Mr. Tali Tzur, Royal Terrace Healthcare Ctr., 803 Royal Drive, McHenry, IL 60050, 815-344-2600	IL	05/10/91
Mr. Tali Tzur, Maple Hill Nursing Ctr., LTD, Box 2308 R. F. D., Long Grove, IL 60047, 708-438-8275	IL	05/10/91
Mr. Peter Friedell, Jackson Park Hospital, 7531 South Stoney Island, Chicago, IL 60649, 312-947-7500	IL	05/15/91
Mr. Arthur Kohrman, La Rabida Children's Hosp. & Research, Chicago, IL 60649, 312-363-6700	IL	05/16/91
Mr. Sidney Glenner, Elston Nursing Home, 4340 N. Keystone, Chicago, IL 60641, 312-545-6700	IL	05/30/91
Mr. Fely Balabagno, Lake Cook Terrace Nursing Ctr, 222 Dennis Drive, Northbrook, IL 60062, 708-564-0505	IL	05/30/91
Mr. Larry Steusser, Kimberly Nurse Travelers, 8400 W. 110th Street, Overland Park, KS 66210, 913-661-0293	KS	05/02/91
Mr. Allen Tuten, Lincoln General Hosp., P.O. Drawer 1368, Ruston, LA 71273, 318-255-5780	LA	05/10/91
Mr. Frank A. Riddick, Alton Ochsner Med. Foundation, 1516 Jefferson Highway, New Orleans, LA 70121, 504-838-3604	LA	05/16/91
Mr. Barth Weinberg, Touro Infirmary, 1401 Foucher Street, New Orleans, LA 70115, 504-897-8900	LA	05/30/91
Ms. Elaine Ullian, Faulkner Hospital, 1153 Centre Street, Boston, MA 02130, 617-522-5800	MA	05/16/91
Ms. Leah Rama, Ramasean Nursing Service, Inc., 8091 Dequindre St. Ste. 909, Madison Heights, MI 48071, 313-546-1751	MI	05/01/91
Mr. Frank P. Iacobell, Hutzel Hospital, 4707 St. Antoine, Detroit, MI 48201, 313-745-7015	MI	05/23/91
Mr. Daniel B. McLaughlin, Hennegin County Med. Ctr., 701 Park Ave. South, Minneapolis MN 55303, 612-347-2277	MN	05/15/91
Glenn Terry, Brian Ctr. Nursing Care/State, 520 Valley Street, Statesville, NC 28677, 704-873-0517	NC	05/03/91
Mr. Terrance G. Brosseau, Medcenter One Inc., 300 N. 7th St., Bismarck, ND 58501, 701-224-6000	ND	05/23/91
Mr. Howard A. Sukoff, Edison Estates Rehab. & Conv., 465 Plainfield Ave., Edison, NJ 08817, 201-985-1500	NJ	05/01/91
Mr. Cark Underland, Voorhees Pediatric Facility, 1304 Laurel Oak Road, Voorhees, NJ 08043, 609-346-3300	NJ	05/03/91
Mr. Marion Penner, Claremont Care Center,1515 Hulse Road, Pt. Pleasant, NJ 08742, 908-295-9300	NJ	05/09/91
Mr. John P. Ferguson, Hackensack Medical Center, 30 Propsect Ave., 07601, 07601, 201-441-2180	NJ	05/09/91
Mr. George Cannata, Dover Christian Nursing Home, 65 N. Sussex Street, Dover, NJ 07801, 201-361-5200	NJ	05/10/91
Ms. Mary Jane Eicke, Hill Top Care Center, Hook Mountain Rd., Pine Brook, NJ 07058, 201-227-1330	NJ	05/15/91
Mr. Arnold Putterman, Morristown Rehab. Ctr., Inc., 66 Morris St., Morristown, NJ 07960, 201-539-3000	NJ	05/23/91
Mr. Morris Wiesel, Cedar Oaks Care Center, 1311 Durham Avenue, South Plainfield, NJ 07080, 908-287-9555	NJ	05/23/91
Ms. Shirley Lawler, Professional Nurse Recruitmen, 211 Main Avenue, Passaic, NJ 07055, 201-779-1479	NJ	05/23/91
Ms. Nancy Tofani, Stone Arch Nursing Home d/b/a, Stone Arch Health Care Center, Pittstown, NJ 08867, 908-735-6600	NJ	05/24/91
Mr. William J. Monagle, Somerset Medical Center, 110 Rehill Avenue, Somerville, NJ 08876, 908-685-2200	NJ	05/29/91
Mr. Geoffrey S. Perselay, B.S. Pollak Hospital of Hudson, 100 Clifton Place, Jersey City, NJ 07304, 201-915-1035	NJ	05/30/91
Mr. Samuel Paneth, Newark Extended Care Facility, 65 Jay Street, Newark, NJ 07103, 201-483-6800	NJ	05/30/91
Mr. Stephen Lazovitz, Lakewood of Voorhees Associate, 1302 Laurel Oak Road, Voorhees, NJ 08043, 609-346-1200	NJ	05/30/91
Mr. Leon N. Cohen, LaGuardia Hospital, 102-01 66th Rd., Forest Hills, NY 11375, 718-830-4276	NJ	05/09/91
Mr. Gary Horan, Our Lady of Mercy Med. Ctr., 600 East 233rd Street, Bronx, NY 10466, 212-920-9000	NJ	05/15/91
Mr. John S.T. Gallagher, North Shore University Hosp., 300 Community Drive, Manhasset, NY 11030, 516-562-0100	NJ	05/15/91
Mr. Gary Horan, Our Lady of Mercy Med. Ctr., Pelham Bay Div., Bronx, NY 10461, 212-430-6000	NJ	05/15/91
Mr. Joseph L. Stile, The Mount Vernon Hosp., 12 North Seventh Ave., Mount Vernon, NY 10550, 914-664-8000	NJ	05/23/91
Mr. George Miller, Center for Nursing and Rehabilitation, Brooklyn, NY 11238, 718-636-1000	NJ	05/23/91
Mr. William Watt, St. Joseph's Hospital Health, 301 Prospect Avenue, Syracuse, NY 13203, 315-448-5836	NJ	05/23/91
Mr. James Cameron, Kateri Residence, 150 Riverside Drive, New York, NY 10024, 212-769-0744	NJ	05/24/91
Mr. Alexander Hartman, Wayne Nursing Home, 3530 Wyne Avenue, Bronx, NY 10467, 212-655-1700	NY	05/30/91
Mr. Alexander Hartman, East Haven Nursing Home, 2323 Eastchester Road, Bronx, NY 10462, 212-655-1700	NY	05/30/91
Mr. Alexander Hartman, Mosholu Parkway Nursing Home, 3356 Perry Avenue, Bronx, NY 10467, 212-655-1700	NY	05/30/91
Mr. Alan Weinstock, Creedmore Pyschiatric Center, 80-45 Winchester Blvd., Queens Village, NY 11427, 718-464-7500	NY	05/30/91
Mr. Melvin J. Spencer, Deaconess Hospital, 5501 North Portland, Oklahoma City, OK 73112, 405-946-5581	OK	05/10/91
Ms. A. Susan Bernini, Albert Einstein Med. Ctr., York and Tabor Roads, Philadelphia, PA 19141, 215-456-7050	PA	05/09/91
Ms. Patricia Shehorn, Presbyterian University Hospital, DeSoto at O'Hara Sts., Pittsburgh, PA 15213, 412-647-3294	PA	05/30/91
Mr. Douglas A. Clark, Latrobe Area Hospital, Inc., West Second Avenue, Latrobe, PA 15650, 412-537-1023	PA	05/30/91
Ms. Patricia Shehorn, Montefiore University Hospital 3459 Fifth Ave., Pittsburgh, PA 15213, 412-647-3294	PA	05/30/91
Mr. William D. Poteet, III, Methodist Hospital, Lubbock, 3615 19th Street, Lubbock, TX 79410, 806-792-1011	TX	05/01/91
Mr. Louis Bremer, Montgomery County Hosp. Dist., Medical Center Hospital, Conroe, TX 77304, 409-539-7485	TX	05/02/91
Mr. Boone Powell, Jr., Baylor University Med. Ctr., 3500 Gaston Ave., Dallas, TX 75246, 214-820-2525	TX	05/03/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[05/01/91 to 05/31/91]

CEO-name/facility name/address	St.	Approval date
Mr. James Schuessler, All Saints Health Care, Inc., 1400 Eighth Avenue, Ft. Worth, TX 76104, 817-926-2544	TX	05/09/91
Mr. Glen Marshall, Doctors Hospital LTD, 1984, 5815 Airline Dr., Houston, TX 77076, 713-695-6041	TX	05/10/91
Mr. Michael O'Keefe, Irving Healthcare System, 1901 N. MacArthur Blvd., Irving, TX 75061, 214-579-8100	TX	05/15/91
Mr. Robert M. Bryant, Memorial City Med. Ctr. Hosp., 920 Frostwood, Houston, TX 77024, 713-932-3470	TX	05/15/91
Mr. Edward M. Cunningham, Scenic Mountain Medical Center, 1601 W. 11th Place, Big Spring, TX 79720, 915-263-1211	TX	05/15/91
Ms. Velinda Stevens, Brownwood Regional Hospital, P.O. Box 760, Brownwood, TX 76804, 915-646-8541	TX	05/15/91
Mr. Earl Whiteley, Alice Physicians and Surgeons Hospital, Alice, TX 78332, 512-664-4376	TX	05/16/91
Total Attestations		103

[FP Doc. 91-14452 Filed 6-17-91; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. DK & D Coal Company

[Docket No. M-91-48-C]

DK & D Coal Company, 715 Mahonoy Street, Trevorton, Pennsylvania 17881 has filed a petition to modify the application of 30 CFR 75.1400 to its No. 1 Slope Mine (I.D. No. 36-08220) located in Northumberland County, Pennsylvania. The petitioner proposes to use a slope conveyance without safety catches to transport persons.

2. Twentymile Coal Company

[Docket No. M-91-49-C]

Twentymile Coal Company, 600 Grant Street, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 75.1002 to its Foidel Creek Mine (I.D. No. 05-03836) located in Routt County, Colorado. The petitioner proposes to use 2400-volt cables and equipment to power permissible longwall mining equipment.

3. Peabody Coal Company

[Docket No. M-91-50-C]

Peabody Coal Company, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.305 to its Montcoal No. 7 Mine (I.D. No. 46-01495) located in Raleigh County, West Virginia. The petitioner proposes to evaluate the ventilation on both sides of a hazardous area in the return aircourse from the longwall face in lieu of traveling.

4. Donaldson Creek Mining Company, Inc.

[Docket No. M-91-51-C]

Donaldson Creek Mining Company, Inc., P.O. Box 502, Dawson Springs, Kentucky 42408 has filed a petition to modify the application of 30 CFR 75.1710-1(a) to its Donaldson Creek Underground No. 1 Mine (I.D. No. 15-13514) located in Hopkins County, Kentucky. The petitioner requests a modification to operate self-propelled electric face equipment without cabs or canopies.

5. Sahara Coal Company, Inc.

[Docket No. M-91-52-C]

The Sahara Coal Company, Inc., P.O. Box 330, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.1105 to its Mine No. 21 (I.D. No. 11-00784) located in Saline County, Illinois. The petitioner proposes to enclose the electrical equipment in a monitored fire proof structure in lieu of ventilating the equipment to the return.

6. Consolidation Coal Company

[Docket No. M-91-53-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.901 to its Rend Lake Mine (I.D. No. 11-00601) located in Jefferson County, Illinois. The petitioner proposes to use a low- and medium-voltage circuit from a portable diesel-driven alternator and transformer to feed underground electrical equipment.

7. Americold Corporation

[Docket No. M-91-04-M]

Americold Corporation, P.O. Box 2926, Kansas City, Kansas 66110-2926 has filed a petition to modify the application of 30 CFR 57.4761 to its Inland Quarries Mine (I.D. No. 14-00159) located in Wyandotte County, Kansas. The petitioner proposes to install a 3-hour rated roll-up fire door at the underground shop.

8. Tenneco Minerals Company

[Docket No. M-91-05-M]

Tenneco Minerals Company, P.O. Box 1167, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.22305 to its Tenneco Soda Ash Project (I.D. No. 48-01295) located in Sweetwater County, Wyoming. The petitioner proposes to use nonpermissible tools in or beyond the last open crosscut.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 18, 1991. Copies of these petition are available for inspection at that address.

Dated: June 12, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-14453 Filed 6-17-91; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Michigan State Standards; Approval

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Approval of Michigan State Standards.

SUMMARY: This notice approves Michigan's occupational safety standards for Fixed Fire Equipment. These State-initiated standards constitute Amendment 2, adopted March 1, 1984, to the Michigan General Industry Safety Standards, part 9, adopted August 17, 1974, and approved by OSHA on December 3, 1976 (41 FR 53078). Where a State standard adopted

pursuant to an OSHA-approved State plan, differs significantly from a comparable Federal standard or is a State-initiated standard, section 18(c)(2) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) requires that the State Standard must be "at least as effective" as the corresponding Federal standard in providing safe and healthful employment and places of employment. (The different state standard encompasses topic material covered by seven OSHA standards (29 CFR 1910.158 through 1910.164).) In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and must not impose any undue burden on interstate commerce.

On November 5, 1990, OSHA published a **Federal Register** notice (55 FR 46589) requesting public comment on both the "at least as effective" criterion as well as the product clause test of section 18(c)(2) of the Act. This notice invited interested persons to submit by December 5, 1990, written comments and views regarding the Michigan standards and whether they should be approved by the Assistant Secretary. In response to this notice, OSHA did not receive any comments

EFFECTIVE DATE: June 18, 1991.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N3647, 200 Constitution Avenue NW., Washington, DC 20210, Telephone 523–8148.

SUPPLEMENTARY INFORMATION:

A. Background

The requirements for the adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act are set forth in section 18(c)(2) of the Act and in 29 CFR Part 1902, 29 CFR 1952.7, and 29 CFR 1953.21, 1953.22, and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register** (29 CFR 1953.23(a)); a 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)(1)). Independent State standards must be submitted for OSHA's review and approval. Newly adopted State standards or revisions to standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR 1953, but are enforceable by the State prior to Federal review and approval. Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the "product clause.")

On October 3, 1973, notice was published in the **Federal Register** (38 FR 27388) of the approval of the Michigan Plan and the adoption of subpart T to part 1952 containing the decision. The Michigan State Plan provides for the adoption of State safety standards in the following manner. In the Michigan Department of Labor, action on a new standard or an amendment to an existing standard is initiated by either the General Industry Safety Standards Commission or the Construction Safety Standards Commission, as is appropriate, in response to a Federal standards change or to the need for a State-initiated standards change recognized after research and consultation with persons knowledgeable in the field for which the standard is being considered. The Michigan Plan provides for the adoption of a standard as an enforceable State standard after due public notice and hearing and administrative review, in accordance with the Michigan Administrative Procedures Act and the Michigan Occupational Safety and Health Act (Act No. 154 of the Public Acts of 1974, as amended).

Michigan has submitted a State-initiated Plan change, which incorporated the subject standards as part of its occupational safety and health Plan. By letter of March 15, 1986, Amendment 2 of the Michigan General Industry Safety Standards, part 9, Fixed Equipment, was submitted by Douglas R. Earle, Director, Bureau of Safety and Regulation, Michigan Department of Labor, to Frank K. Strasheim, then Regional Administrator, OSHA Region V. The standards has been subjected to normal public hearing and review within the State of Michigan, were finalized on February 15, 1984, and became effective on March 1, 1984.

Public Participation

A **Federal Register** notice requesting public comment on both the "at least as effective" criterion as well as the "product clause test" of section 18(c)(2) of the Act was published on November 5, 1990 (55 FR 46590). This notice invited interested persons to submit by December 5, 1990, written comments and views regarding Michigan's standard for Fixed Fire Equipment and whether it should be approved by the Assistant Secretary. In addition, comments were specifically sought on whether the standard is applicable to products which are distributed or used in interstate commerce, is required by compelling local conditions, and unduly burdens interstate commerce. In response to the November 5, 1990 **Federal Register** notice, OSHA received no comments.

Decision:

Having reviewed the State submission and having received no objections to the approval of the standard, OSHA has determined that:

(1) The Michigan standard for Fixed Fire Equipment is at least as effective as the Federal standard.

(2) The record on this standard includes no evidence, developed by or submitted to OSHA, that the standard amendment is not in compliance with the "product clause test" of section 18(c)(2) of the Act. OSHA therefore approves the Michigan standard for fixed fire equipment.

Location of Supplement for Inspection and Copying

A copy of the Michigan Standard applicable to Fixed Fire Equipment, along with approved State provisions for adoption of standards, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor, 230 South Dearborn, room 3244, Chicago, Illinois 60604; Office of the Director, Bureau of Safety and Regulation, Michigan Department of Labor, 7150 Harris Drive, Lansing, Michigan 48909; and Office of the Director, Directorate of Federal-State Operation, 200 Constitution Avenue NW., room N3700, Washington, DC 20210.

Authority: Sections 8, 18, Occupational Safety and Health Act of 1970 (29 U.S.C. 657, 667); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), or 9–83 (48 FR 35736), as applicable; 29 CFR 1953.4.

Signed this tenth day of June 1991, in Washington, DC.

Gerard Scannell,

Assistant Secretary.

[FR Doc. 91–14372 Filed 6–17–91; 8:45 am]

BILLING CODE 4510–26–M

Pension and Welfare Benefits Administration

[Application No. D–8477, et al.]

Proposed Exemptions; AAXI Co., Incorporated Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

AAXICO, Incorporated Profit Sharing Plan (the Plan) Located in Mt. Clemens, Michigan

[Application No. D–8477]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(e) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed sale of right, title and interest in a loan (the Note) made by the Plan to an unrelated third party to Mr. James L. Van Camp, a party-in-interest with respect to the Plan, provided that the Plan receives $68,500 in cash for the Note which is equal to the amount of the loan principal plus accrued interest.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by AAXICO, Incorporated. As of July 31, 1990, the Plan had approximately 90 participants. The value of the Plan's assets, as of June 30, 1990, was $311,460. James L. Van Camp is trustee of the Plan, a 73-percent shareholder, and the Chairman of the Board of Directors of AAXCIO, Incorporated.

2. On January 15, 1988, the Plan extended a demand loan in the amount of $65,000 at a 12-percent annual interest rate to an individual (the Debtor). Mr. Van Camp (the Trustee) represents that the Debtor is not a party in interest with respect to the Plan. The terms of the Note include a security interest in all of the Debtor's assets. The Debtor has not made the required payments. The Trustee has declared the entire outstanding principal amount and accrued interest immediately due and payable, and has made repeated demands for payments in full. The Trustee states that the collateral supporting the Note is not adequate to satisfy payment of the Note.

3. The Trustee wishes to prevent any possible loss to the Plan, and he has proposed to purchase the Note from the Plan. He has represented that he will not benefit in any way from this transaction.[1]

The proposed purchase will prevent the Plan from initiating a default proceeding and from incurring expenses associated in bringing a default proceeding. The Trustee will pay the Plan the full amount of principal plus accrued interest less any amount the Plan should collect from the Debtor. The payment to the Plan will be in cash.

4. Arthur Anderson & Co., as an independent third party, has reviewed the Note and has stated that since the Note was issued, the Debtor has made insufficient payments of principal and interest, and the overall financial position of the Debtor is not of a quality that would support a high level of credit worthiness. Arthur Anderson & Co. represents that it can not justify a purchase price of $68,500 given the history of the payment and overall credit worthiness of the Debtor. Further, Arthur Anderson & Co. represents that the Note would yield a value less than the proposed purchase price of $68,500 (which reflects the outstanding principal amount of the Note plus accrued interest.)

5. In summary, the Trustee represents that the proposed transaction satisfies the criteria of section 408(a): (a) The sale will be a one-time transaction for cash; (b) the sale will prevent the Plan from incurring expenses caused by the Debtor's failure to repay the Note; and (c) the Plan will receive a price in excess

[1] The Department is expressing no opinion as to whether the decision made by the Trustee to make the loan violated any provision of part 4 of title I of the Act.

of the value that Arthur Anderson represents the Note would yield.

FOR FURTHER INFORMATION CONTACT: Allison K. Padams of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

Phoenix Mutual Life Insurance Company (Phoenix Mutual) Located in Hartford, Connecticut

[Exemption Application No. D–8511]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale (the Sale) on September 28, 1990, of four parcels of real property (the Properties) by the pooled Real Estate Separate Account (RESA) to the general account of Phoenix Mutual (the General Account); provided that the terms and conditions of the Sale were at least as favorable to RESA as those obtainable in an arm's-length transaction with an unrelated party.

EFFECTIVE DATE: This exemption, if granted, will be effective September 28, 1990.

Summary of Facts and Representations

1. Phoenix Mutual is a mutual life insurance company organized under the laws of the state of Connecticut and subject to supervision and examination by the insurance commissioner of that state. As of December 31, 1989, Phoenix Mutual had total assets of approximately $6.2 billion. Phoenix Mutual provides funding, asset management and other services for numerous pension and profit-sharing plans subject to title I of ERISA. As of December 31, 1989, more than $1.1 billion in institutional client assets were held in pooled and advisory accounts maintained by Phoenix Mutual.

At the end of 1989, Phoenix Mutual managed approximately $2.2 billion in real estate assets. Phoenix Mutual held in its general account on behalf of policyholders nearly $293.7 million in equity investments in real property and nearly $1.4 billion in mortgage loans. Phoenix Mutual also held more than $356 million in real estate investments on behalf of RESA.

2. RESA is an open-end, pooled real estate separate account. RESA was established on September 1, 1980, to provide an investment vehicle through which pension plans could make debt and equity investments in real estate. Approximately 215 plans which are subject to title I of ERISA and nine governmental plans participate in RESA. As of December 31, 1989, RESA held 48 real estate investments, including investments in 24 office buildings or office/industrial complexes, 18 apartment buildings or complexes, and 6 retail centers.

The applicant represents that the investment objective of RESA is to make equity and debt investments in properties that provide an atttractive cash return and the maximum appreciation in value that may be prudently achieved. Investment opportunities are identified initially through Phoenix Mutual's correspondence system with seventeen unaffiliated mortgage bankers. Phoenix Mutual's real estate analysts select those investment opportunities which appear to meet Phoenix Mutual's investment criteria for presentation to its production department for further market research. Investment opportunities that are determined to be appropriate after the production department's review may be allocated to RESA if they meet RESA's investment objectives and are consistent with the diversification strategy applicable to the portfolio. Following allocation to a specific account, investment opportunities are presented to the Policy Committee for final approval.

Contractholder requests for withdrawal from RESA may be honored as of the first quarterly valuation date which falls on a date at least 90 days from the date of the request. Amounts that may be withdrawn may be limited by the cash available in RESA.

3. The Properties consist of four parcels of commercial real estate described herein in subparagraph (a) through (d). The Properties are "phased development" properties. With respect to each of the Properties, RESA and the General Account each hold investments in different phases of the same development projects.[2]

[2] In this regard, the applicant represents that the respective interests of RESA and the General Account in the different phases of the same development projects relate to entirely separate parcels of property. The Department notes that the applicant has not requested, and the Department is not proposing, any relief with regard to any possible prohibited transactions which may have occurred as a result of RESA and the General Account each holding investments in different phases of the same development projects.

(a) *Northridge Center I*

Northridge Center is a three-phase commercial office development located in Atlanta, Georgia. Phase I (Northridge Center I) of the development is a four-story office building of approximately 64,500 square feet situated on a 3.46 acre tract.

RESA acquired a fee simple interest in Northridge Center I on December 31, 1985, for an initial cost of $4,359,351. As of the date of the Sale, the total cost basis of RESA's interest in Northridge Center I was $5,875,153.

Phase II of Northridge Center is owned by Northridge Center Partners II, a joint venture in which Phoenix Founders, Inc. (Phoenix Founders), a wholly-owned subsidiary of Phoenix Mutual, holds a 90% interest. Douglas R. White, the developer of Northridge Center, holds the remaining 10% interest. Phase III of Northridge Center is owned in its entirety by Phoenix Founders.

(b) *1501–07 Johnson Square Office Park (Johnson Square I)*

Johnson Square is a three-phase commercial office development located in Marietta, Georgia. Phase I of the project is a 2.3 acre site, which is zoned for office and institutional use. Improvements to Phase I were completed in 1984 and consist of four two-story office buildings with net rentable areas of 30,397 square feet.

RESA purchased the underlying land for Phase I of Johnson Square for $191,000 from Marchman Sons Investments (Marchman) on October 28, 1982. Subsequent to its acquisition RESA entered into a 50-year ground lease with Marchman for a fixed rent of $19,100 per year plus 60 percent of net cash flow. RESA provided permanent financing in the amount of $1,545,000, which was secured by Marchman's leasehold interest. In 1985, RESA purchased the leasehold interest in Phase I. As of the date of the Sale, the total cash of RESA's interest in Johnson Square I was $2,112,691.

On December 14, 1984, Phoenix Founders purchased a 10.32 acre parcel from Marchman to complete Phases II and III of the Johnson Square project. Phoenix Founders also obtained an equity interest in the first building constructed in Phase II.

(c) *Turfway Ridge I Office Building (Turfway I)*

Turfway I is the first phase of Turfway Ridge Office Park under a development plan which calls for four office buildings on a building site located in Florence, Kentucky. Turfway I consists of a five-story office building

with a rentable area of 109,552 square feet on an 8.03 acre parcel.

On December 29, 1988, RESA purchased the underlying land of Turfway I for $1,095,000 from Turfway Ridge I Partners. Concurrent with its purchase of the land, RESA entered into a 55-year ground lease with Turfway Ridge I Partners for approximately $104,000 per year plus 50% of net cash flow. RESA also funded a $9,905,000 loan secured by the leasehold interest and improvements on the property (which are owned in fee simple by Turfway Ridge I Partners).

On March 14, 1990, the General Account purchased the underlying land of Phase II of the Turfway development from Turfway Ridge II Partners and concurrently made a leasehold loan to Turfway Ridge II Partners.

(d) *Remington Station-Phase I*

Remington Station is a three-phase partment complex development located in Westerville, Ohio. Phase I of Remington Station is a 100-unit, 12 building complex situated on a 13.115 acre parcel. The construction of Phase I was completed in 1988.

On March 9, 1989, RESA purchased the land underlying Phase I for $600,000 from Paul Isaacs (Mr. Isaacs), the developer. RESA concurrently entered into a 55-year ground lease with Mr. Isaacs fro approximately $54,000 per year, plus 50 percent of net cash flow. RESA also provided a leasehold mortgage of $4,670,000 to Mr. Isaacs. Mr. Isaacs retained a fee simple interest in the improvements, which serve as additional security for the leasehold mortgage.

The General Account acquired similar interests in Phases II and III of Remington Station From Mr. Isaacs on March 30, 1990. Phases II and III comprise 244 apartments and townhomes on approximately 22.5 acres which are adjacent to Phase I. Phases I, II and III share certain tenant recreational facilities.

4. The applicant represents that, consistent with a downturn in the real estate markets in a number of areas in the country, very few new contributions were coming into RESA prior to the Sale. The applicant further represents that several plan contractholders had submitted withdrawal requests. Cash availability was thus, unusually low, making it difficult for RESA to retire its short-term debt incurred in connection with some of its recent acquistions. The low cash availability was also prolonging the waiting period for RESA contractholders with outstanding withdrawal requests to have their interests redeemed.

5. Prior to the Sale, the applicant concluded that selling the properties would enhance RESA's performance by providing cash to retire its outstanding debt and enable RESA to satisfy withdrawal requests at an earlier date. The applicant represents that the selection of properties to sell at a price favorable to RESA was hampered by the relative lack of buyers in the current real estate market. Since the General Account owned interests in the remaining phases of the Properties, the applicant concluded that it was the most logical purchaser of the Properties.

6. On September 28, 1990, RESA's entire interests in the properties were transferred to the General Account, in accordance with the terms and conditions negotiated between Arthur Andersen & Co. (Arthur Andersen), acting as independent fiduciary on behalf of RESA (as discussed below in paragraphs 7 & 8), and Phoenix Mutual. Phoenix Mutual paid a total of $25,240,000 in cash to RESA for its interest in the Properties, broken down as follows:

	Sales price	RESA's cost
Northridge Center I	$5,900,000	$5,875,153
Johnson Square	2,670,000	2,112,691
Turfway Ridge I	11,230,000	11,000,000
Remington Station	5,440,000	5,270,000

The applicant represents that RESA paid no fees or commissions with respect to the Sale.

7. Phoenix Mutual appointed Arthur Andersen to act as independent fiduciary and independent appraiser on behalf of RESA in connection with the Sale. Arthur Andersen has acknowledged that it is a fiduciary with respect to the plans participating in RESA in connection with the Sale. Arthur Andersen in one of the largest accounting and consulting firms in the United States and has extensive experience in real estate transactions. Arthur Andersen receives less than one percent of its gross income from Phoenix Mutual and its affiliates.

8. The responsibilities of Arthur Andersen with respect to the Sale were set forth in a letter agreement (the Agreement) dated August 30, 1990. Under the Agreement, Arthur Andersen assumed responsibility as independent fiduciary on behalf of RESA to negotiate and review the terms and conditions of the Sale, and to determine whether the Sale of each of the Properties would be in the collective interests of the plans participating in RESA and that RESA would receive no less than fair market value for each Property as of the date of the Sale. Arthur Andersen was also authorized under the Agreement to determine not to go forward with the transfer of one or more of the Properties in the event it concluded that the transfers would not be in the collective interests of the plans participating in RESA.

9. As noted above in paragraph 7, Arthur Andersen was also retained by Phoenix Mutual to prepare MAI appraisals of RESA's interest in the Properties. Arthur Andersen prepared such appraisals (the Appraisals) dated July 26, 1990, and supplemented on October 26, 1990, arriving at the following valuations:

(a) Northridge I. Using the sales comparison and the income capitalization approach, the fee simple appraisal of Northridge I was valued at $5,300,000 plus an abutter's premium of $275,000.

(b) Johnson Square I. Using the cost approach, the sales comparison approach and the income capitalization approach, the fee simple interest appraisal of Johnson Square was valued at $2,200,000. The abutters' premium was valued at $100,000.

(c) Turfway Ridge I. Using the cost approach, the sales comparison approach and the income approach, the fee simple interest appraisal of Turfway Ridge I was valued at $10,400,000. The abutter's premium was valued at $307,000, and the land lease premium at $518,000.

(d) Remington Station. Using the cost approach, the sales comparison approach and the income approach, the fee simple appraisal of Remington Station was valued at $4,550,000 with an abutter's premium valued at $150,000. A land lease premium was also valued at $740,000.

10. In addition to reviewing the appraisals of the Properties, Arthur Andersen also conducted the following activities as independent fiduciary:

(a) Reviewed RESA's plan of operation, including its investment fee arrangement with Phoenix Mutual, line of credit agreements, a standard RESA contract, the current withdrawal request listing and other appropriate documents;

(b) Reviewed financial and operating reports and the budgets for each Property;

(c) Evaluated the cash flow projections for each Property;

(d) Reviewed the current rent rolls and summaries, the stability of leases, occupancy rate and tenant turnover, schedule of lease expirations, future lease commitments and the schedule of planned improvements and repairs;

(e) Examined applicable mortgage notes, leasehold agreements and

management contracts for each Property;

(f) Inspected the Properties, viewed the neighborhood surrounding each Property and similar competing properties;

(g) Discussed the proposed transactions, RESA's investment objectives and other matters with RESA officers, property managers/leasing agents and other informed persons;

(h) Considered the current marketability of the Properties;

(i) Evaluated market conditions and trends in the respective local markets; and

(j) Conducted a subsequent events review for activity after the July appraisal dates to assure that the proposed sales price equaled or exceeded the value of RESA's interest in each of the Properties as of September 28, 1990.

11. Based on the independent appraisals and analysis described above, Arthur Andersen concluded that it was in the collective best interest of RESA to sell the Properties to the General Account. Arthur Andersen further concluded that the Sale should take place on September 28, 1990, consistent with RESA's investment objectives and liquidity goals, and that the final sales price for each Property exceeded RESA's total basis in the Property and equaled or exceeded the fair market value of RESA's interest in each Property.

12. In summary, the applicant represents that the statutory criteria of section 408(a) of the Act have been satisfied because:

(a) The Sale was a one-time cash transaction;

(b) The Sale liquidated a portion of RESA's portfolio, allowing it to satisfy outstanding withdrawal requests and retire a portion of its short-term debt;

(c) RESA paid no fees or commissions with respect to the Sale;

(d) The terms of the Sale, including the sales price for the Properties, was negotiated by Arthur Andersen acting as independent fiduciary on behalf of RESA; and

(e) Arthur Andersen, based on its evaluation of the independent appraisals, concluded that the Sale was in the best interest of RESA contract-holders and that the sales price equaled or exceeded RESA's total basis and the fair market value of RESA's interest in each Property.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Madsen of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

State Auto Insurance Companies Employees Retirement Plan (the Plan) Located in Columbus, Ohio

[Application No. D-8559]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan by the Plan of $10 million to the State Automobile Mutual Insurance Company (the Employer), the sponsor of the Plan and as such a party in interest with respect to the Plan, provided that the terms of the transaction are at least as favorable to the Plan as an arm's-length transaction with a unrelated party.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which, as of December 31, 1989, had 1,456 participants and total assets of $65,667,347. The trustees of the Plan (the Trustees) are Theodore R. Magley, Kathleen Vaughn, Terrence Bowshier, Winford Logan, and Mary Lowe, all of whom are officers or employes of the Employer. The applicant states that the decision-makers for the investment of the Plan's assets are the Trustees as well as Urlin G. Harris, Jr., Senior Vice President-Treasurer and Chief Financial Officer of the Employer, and James Duemey, Assistant Vice President and Invetment Officer of the Employer.

The Trustees have appointed the Huntington Trust Company, N.A., of Columbus, Ohio, to act as a special trustee on behalf of the Plan (the Special Trustee) for all matters concerning the proposed transaction. The Special Trustee is unrelated to the Employer and its affiliates, and has acknowledged its duties, responsibilities, and liabilities in action as a fiduciary under the Act for the Plan. The Special Trustee represents that it is a qualified, independent fiduciary for the Plan. In this regard, the Special Trustee states that it is an experienced fiduciary which manages investments for employee benefit trust accounts subject to the Act and currently acts as a trustee for approximately 1500 employee benefit plans. The Special Trustee is a wholly-owned subsidiary of the Huntington National Bank (the Huntington Bank). As of December 31, 1990, the Special Trustee had total assets of approximately $12 billion.

2. The Employer is an Ohio mutual insurance company which issues property and casualty insurance policies in seventeen states. The Employer's home office is located at 518 East Broad Street, Columbus, Ohio. The Employer has recently completed building a 146,848 square foot addition to its home office complex (the Addition). The Employer paid the total costs for construction of the Addition from its own funds, without any construction loans. However, as a source of permanent mortgage financing for the Addition, the Employer proposes to borrow $10 million from the Plan (the Loan). The applicant states that the Loan would constitute less than 20% of the total value of the Plan's assets, as of December 31, 1989. As security for the Loan, the Employer will deliver to the Plan a first mortgage interest on its home office building, including the Addition (together, the Property), at the time the Loan is made.

3. The Loan will have a term of 10 years with a fixed interest rate, which will be the greater of either 11% per annum or a rate which is no less than 200 basis points over the rate offered by the Huntington Bank on comparable mortgage loans in central Ohio as of the date of closing. The interest rate on the Loan will be adjusted by the Special Trustee after five years. The adjusted interest rate will be the greater of either the initial interest rate on the Loan or a rate which is no less than 200 basis points over the rate offered by the Huntington Bank on comparable mortgage loans at the time. The Loan will require regular quarterly payments of principal and interest based on a ten year amortization schedule.

4. The applicant represents that at the time of delivery to the Plan of the first mortgage interest on the Property, there will be no other liens or encumbrances on the Property. The applicant states that a title insurance policy for the Property will be furnished in favor of the Plan, as lender and mortgagee.

In addition, the Plan's first mortgage will be recorded with the appropriate county officials to perfect the Plan's lien. The Property will be insured against loss by fire, casualty or any other hazard, at the expense of the Employer, with the Plan designated as loss payee.

5. The Property was appraised on September 14, 1990 by Mr. Thomas P. Kohr, M.A.I., S.R.E.A., of Kohr, Royer and Griffin, Inc., an independent, qualified real estate appraiser in Columbus, Ohio (the Appraisal). The

Appraisal states that the Property had a fair market value of approximately $25 million, as of August 3, 1990. The Appraisal's valuation of the Property utilized the income value approach, with an analysis of current office rental rates within the central business district of Columbus, Ohio, and the market value approach, with an analysis of recent sales of similar office buildings in the central business district of Columbus, Ohio. The applicant represents that the Appraisal will be updated prior to the proposed transaction.

6. The Special Trustee, as the Plan's independent fiduciary, has reviewed the terms of the Loan and all the documents and relevant information in connection with the Loan, including the Appraisal. The Special Trustee represents that the terms of the Loan would be at least as favorable to the Plan as an arm's-length transaction with a unrelated party and that the Huntington Bank would consider making the same loan on these terms as a commercial lender. In this regard, the Special Trustee notes that the terms of the Loan do not provide the Plan with any pre-paid interest or "points" at the beginning of the transaction as compensation for making the Loan. However, the Special Trustee states that the 11% minimum interest rate on the Loan coupled with the rate escalator provision will more than compensate for the lack of "points" being charged on the Loan. The Special Trustee states that the Loan will offer the Plan an above "market" rate of return that is very attractive relative to other similar investment opportunities.

The Special Trustee believes that the Loan will be well secured by the Plan's first mortgage interest in the Property in the event of default. The Special trustee notes that the Property is located in the center of the central business district of Columbus, Ohio, an area that has experienced consistent growth in development in the past ten years. The Special Trustee will evaluate the information provided to update the Appraisal to confirm that the fair market value of the Property remains approximately $25 million as of the date of the transaction.

The Special Trustee has conducted an independent evaluation of the financial stability of the Employer. The Special Trustee concludes that the Employer is well capitalized and has sufficient cash flow to cover its expenses, including the proposed payments on the Loan. The Special Trustee notes that the Employer received an A+ rating from the AM Best Insurance Report in 1989 with respect to its consolidated financial position and operating performance.

The Special Trustee has reviewed the Plan's current investment portfolio and considered the diversification of the Plan's assets as well as the liquidity needs of the Plan. Based on this analysis, the Special Trustee represents that the Loan would be a prudent and proper investment for the Plan that would be in the best interests of the Plan and its participants and beneficiaries.

The Special Trustee represents that it will monitor the Loan and will take any appropriate action that becomes necessary to protect the interests of the Plan and its participants and beneficiaries, including a foreclosure on the Property in the event of default. The appraised value of the Property currently represents approximately 250% of the amount of the Loan. The Special Trustee states that it will ensure that the value of the Property will remain at least 150% of the outstanding principal on the Loan throughout the duration of the Loan. The Special Trustee states further that additional property will be used to secure the Loan if such property becomes necessary to maintain the appropriate ratio between the value of the collateral and the amount due on the Loan.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The Loan will be secured by a first mortgage interest on the Property, which has an appraised market value that is 250% of the amount of the Loan; (b) the Plan will receive at least a fair market rate of return on the Loan which is commensurate with the prevailing rate for similar loans offered in the area; (c) the Special Trustee, as the independent fiduciary for the Plan, believes that the Loan would be in the best interests of the Plan and its participants and beneficiaries; (d) the Special Trustee will monitor the Loan on behalf of the Plan and will take any appropriate action necessary to safeguard the interests of the Plan; and (e) the amount of the Loan will represent less than 20% of the total assets of the Plan.

For Further Information Contact: Mr. E.F. Williams of the Department at (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of intersted persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of June, 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 91–14426 Filed 6–17–91; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 91–33; Exemption Application No. D–8332, et al.]

Grant of Individual Exemptions; Austin Industries, Inc. Retirement Plan for Hourly Employees, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This doc ument contains exemptions issued by the Department of

Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** for the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based on the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Austin Industries, Inc., Retirement Plan for Hourly Employees (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 91–33; Exemption Application No. D–8332]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed purchase by the Plan of shares of common stock (the Stock) of Austin Industries, Inc. (Austin) from Austin's treasury, provided that the Plan pays no more than the lesser of $7.50 per share or the fair market value of the Stock on the date of the acquisition; (2) the Plan's holding of the Stock; and (3) the acquisition and holding by the Plan of an irrevocable put option (the Put Option) which permits the Plan to sell the Stock to Austin at a price which is the higher of the Plan's acquisition price of the Stock or the appraised fair market value of the Stock at the time of the exercise of the Put Option.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1991 at 56 FR 14545.

Written Comments: The Department received two written comments with respect to the proposed exemption. One was submitted by a retired employee of Austin who is receiving benefits under the Plan. He requested that the proposed exemption not be granted and that the Plan's assets be maintained exclusively in cash.

C&S Sovran Trust Company (C&S; formerly known as the Citizens and Southern Trust Company (Georgia), N.A.), the Plan's independent fiduciary, responded to this comment. C&S stated that the investment portfolio of the Plan will continue to be adequately diversified as the holding of the Stock will constitute 10% or less of the total portfolio after the purchase. In addition, the Put Option will protect the Plan's participants from any possible depreciation in the Stock. C&S commented that the suggestion that Plan assets be held exclusively in cash would not be prudent because the Plan would forego the opportunity for significant appreciation and earnings on its assets. C&S continues to conclude that the purchase by the Plan of Austin Stock is in the best interest of the Plan and its participants and beneficiaries.

The second written comment to the proposed exemption was submitted by the applicant. The applicant pointed out that in the proposed exemption, the third transaction would have exempted the sale of the Stock by the Plan to Austin under the Put Option, which permitted the Plan to sell the Stock at a price which was the higher of $7.50 per share or the appraised fair market value of the Stock at the time of the exercise of the Put Option. The applicant commented that it had represented that the Put Option will permit the Plan to sell the Stock to Austin at a price which is the greater of the Plan's acquisition price of the Stock or the Stock's current appraised fair market value. Since the Plan might pay less than $7.50 per share at its acquisition price (see transaction 1, above), the Put Option sale price should be modified to correctly reflect the applicant's representation.

The Department has considered the entire record, including the comments submitted and C&S's response to the retiree's comment, and has determined to modify the proposed exemption in accordance with the comment submitted by the applicant.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

PJH Investment Company Profit Sharing Plan (the Plan) Located in St. Louis, Missouri

[Prohibited Transaction Exemption 91–34; Exemption Application No. D–8428]

Exemption

The sanctions resulting from the application of section 4975 of the Code by reason of section 4975(1)(1) (A) through (E) of the Code shall not apply to the proposed sale by the Plan of undeveloped real property to PJH Investment Company (the Partnership), a disqualified person with respect to the Plan, provided that the Plan receives no less than the fair market value of the Property at the time of the transaction.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1991 at 56 FR 14547.

For Further Information Contact: Allison Padams of the Department at telephone (202) 523–8971.

[1] Because the three participants of the Plan are the partners of the Partnership and the Partnership has no employees, there is no jurisdiction under title I of the Act pursuant to 29 CFR 2510.3–3(b) and 2510.3–3(c)(2). However, the Plan is under the jurisdiction of Title II of the Act pursuant to section 4975 of the Code.

Individual Retirement Account of Harold L. Campbell (the IRA) Located in La Jolla, California

[Prohibited Transaction Exemption 91–35; Exemption Application No. D–8452]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of 48,600 shares of First National Corporation, by the IRA to Mr. Harold Campbell for a price not less than the fair market value of the common stock of First National Corporation as determined by its market price on the date of the sale.[2]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 18, 1991 at 56 FR 14549.

For Further Information Contact: Allison Padams of the Department of Labor, telephone (202) 523–8971. (This is not a toll-free number.)

Utica Cutlery Company Pension Plan for Bargaining Unit Employees (the BU Plan) and Utica Cutlery Company Pension Plan for Non-Bargaining Unit Employees (the NBU Plan; Together, the Plans) Located in Utica, New York

[Prohibited Transaction Exemption 91–36; Exemption Application Nos. D–8466 and D–8467]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the proposed lending of $30,000 (the Loan) by the NBU Plan to the BU Plan, and the immediate repayment of the Loan by the BU Plan to the NBU Plan, provided that both Plans remain in the same financial position after the consummation of the transactions as they were in prior to their engaging in the transactions.

For a more complete statement of the facts and representation supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 10, 1991 at 56 FR 14547.

Notice to Interested Persons: The applicant represents that it was unable to comply with the notice to interested persons requirements within the time frame stated in its application. However, the applicant has represented that it notified all interested persons, in the manner agreed upon between the applicant and the Department, by May 7, 1991. Interested persons were informed that they had until June 6, 1991 to comment or request a hearing with respect to the proposed exemption. No comments or hearing requests were received by the Department.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 13th day of June 1991.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 91–14427 Filed 6–17–91; 8:45 am]

BILLING CODE 4510–29–M

[2] Because the IRA meets the conditions described in 29 CFR 2510.3–2(d), there is no jurisdiction under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91–55]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S. F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by July 18, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D.A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0010), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer (703) 271–5542.

Reports

Title: Patent License Report.
OMB Number: 2700–0010.
Type of Request: Extension.
Frequency of Report: Annually.
Type of Respondent: Businesses or other for profit, small businesses or organizations.
Number of Respondents: 600.
Hours per Response: 0.5.
Annual Responses: 600.
Annual Burden Hours: 300.

Abstract-Need/Uses: NASA grants patent licenses to businesses for the commercial use of NASA-owned inventions. Each licensee is required to report its progress annually in commercializing our inventions and the amount of royalties due to NASA.

Dated: June 12, 1991.

D.A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 91–14419 Filed 6–17–91; 8:45 am]

BILLING CODE 7510–01–M

[Notice 91–56]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection request to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by July 18, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D.A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0039), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer (703) 271–5542.

Reports

Title: Application for Patent License.
OMB Number: 2700–0039.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Individuals or households, businesses or other for profit, small businesses or organizations.
Number of Respondents: 25.
Responses per Respondent: 1.
Hours per Response: 6.
Annual Responses: 25.
Annual Burden Hours: 150.

Abstract-Need/Uses: Pursuant to 35 U.S.C. 209, applicants for patent license must submit specific information in support of their request for a patent license. The information submitted is used to determine whether the license should be granted.

Dated: June 12, 1991.

D.A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 91–14420 Filed 6–17–91; 8:45 am]

BILLING CODE 7510–01–M

[Notice 91–57]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of agency report forms under OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by July 18, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D.A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (270–0044), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer (703) 271–5542.

Reports

Title: Space Transportation System; Duty Free Entry of Space Articles.
OMB Number: 2700–0044.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Individuals or households, state or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.
Number of Respondents: 10.
Responses per Respondent: 1.
Hours per Response: 2.
Annual Responses: 10.
Annual Burden Hours: 20.

Abstract-Need/Uses: Public Law 97–446 authorized duty-free entry of space materials into the U.S. if NASA certifies that the statutory requirements are met. Information from applicants requesting duty-free entry is necessary to determine whether NASA should certify and if the statutory requirements are met.

Dated: June 12, 1991.

D.A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 91–14421 Filed 6–17–91; 8:45 am]

BILLING CODE 7510–01–M

[Notice 91–53]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC), Life Sciences Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee, Life Sciences Subcommittee.

DATES: July 9, 1991, 8:30 a.m. to 5:30 p.m.; and July 10, 1991, 8:30 a.m. to 12:15 p.m.

ADDRESSES: Holiday Inn-Capitol, Clark Room, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald J. White, Code SB, National Aeronautics and Space Administration, Washington, DC 20546 (202/453–2128).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long-range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Life Sciences Subcommittee provides advice to the Life Sciences Division concerning all of its programs in the space life sciences. The Subcommittee will meet to discuss the status of OSSA, the life sciences presentation to SSAAC, and the status report on Biomedical Monitoring and

Countermeasures & Centrifuge Project. The Subcommittee is chaired by Dr. Francis J. Haddy and is composed of 24 members. The meeting will be closed on Tuesday, July 9, 1991, from 8:45 a.m. to 10:45 a.m. to allow for a discussion on qualifications of individuals being considered for membership to the Subcommittee. Such a discussion would invade the privacy of the individuals involved. Since this session will be concerned with matters listed in 5 U.S.C. 552b (c)(6,, it has been determined that the meeting will be closed to the public for this period of time. The remainder of the meeting will be open to the public up to the seating capacity of the room (approximately 50 people including members of the Subcommittee).

TYPE OF MEETING: Open—except for a closed session as noted in the agenda below.

Agenda

Tuesday, July 9

8:30 a.m.—Introduction and Chairman's Remarks.
8:45 a.m.—Closed Session.
10:45 a.m.—Life Sciences Status.
11:45 a.m.—Report on Other Advisory Committees.
1:15 p.m.—Office of Space Science and Applications Status.
2:15 p.m.—Review of Life Sciences and Issues for SSAAC Workshop.
3:45 p.m.—Review of Short Version of "A Rationale for the Life Sciences."
4:30 p.m.—Gravitational Biology Initiative.
5:30 p.m.—Adjourn.

Wednesday, July 10

8:30 a.m.—NASA Specialized Centers of Research and Training Themes for 1992.
10:15 a.m.—Status Report on Biomedical Monitoring and Countermeasures & Centrifuge Project.
11:15 a.m.—Subcommittee Discussion on Strategy and Actions.
12:15 p.m.—Adjourn.

Dated: June 12, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91–14417 Filed 6–17–91; 8:45 am]

BILLING CODE 7510–01–M

[Notice 91–54]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Advanced Life Support Technology.

DATES: July 8, 1991, 9 a.m. to 5 p.m.; and July 9, 1991, 9 a.m. to 5 p.m.

ADDRESSES: Lockheed Engineering and Sciences Company, suite 600, Maryland Avenue SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Evanich, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2857.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on space systems and technology programs. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on Advanced Life Support Technology, chaired by Mr. Adrain P. O'Neal, is composed of eight members.

The meeting will be open to the public up to the seating capacity of the room (approximately 30 persons including the team members and other participants). It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the participants.

TYPE OF MEETING: Open.

Agenda

July 8, 1991

9 a.m.—Review Team Discussions-Deliberations.
5 p.m.—Adjourn

July 9, 1991

9 a.m.—Review Team Discussions-Deliberations.
5 p.m.—Adjourn

Dated: June 12, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91–14418 Filed 6–17–91; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreements for the Administration of a Director Fellows Project and a Stage Designer Fellows Project

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of two Cooperative Agreements, one for the administration of a Stage Designer Fellows program, the other for the Administration of a Director Fellows program. The recipients of these Cooperative Agreements will be responsible for all aspects of the programs including the solicitation of applications, disbursement of funds to awardees, and the development and coordination of appropriate assignments for the Stage Designers or Directors. Eligibility to apply for the Cooperative Agreements is limited to nonprofit organizations and individuals. Those interested in receiving the Solicitation packages shou1d reference Program Solicitation PS 91–11 and 91–12 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitations PS 91–11 and 91–12 are scheduled for release approximately July 10, 1991 with proposals due August 12, 1991.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 91–14374 Filed 6–17–91; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting this notice of information collection that will affect the public. Interested persons are invited to submit comments by July 19, 1991. Comments may be submitted to:

(1) *NSF Clearance Officer.* Herman G. Fleming, Division of Personnel and

Management, National Science Foundation, Washington, DC 20550, or by telephone, (202) 357–7335. and to:

(2) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, Paperwork Reduction Project. OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Assessment of the Undergraduate Faculty Enhancement Program.

Affected Public: Individuals.

Responses/Burden Hours: 500 respondents at one/half hour and 93 respondents at one and one/half hours for a total of 390 hours.

Abstract: The NSF Undergraduate Faculty Enhancement Program makes grants to colleges and professional societies to conduct short courses/workshops for faculty members in science, mathematics, and engineering to assist undergraduate faculty to learn new ideas and techniques in their fields to improve their undergraduate teaching. This is an assessment of that program.

Dated: June 13, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91–14465 Filed 6–17–91; 8:45 am]

BILLING CODE 7555–01–M

1991 Undergraduate Course and Curriculum Development Program; Addendum

This notice is to publish an addendum to a previous **Federal Register** notice (FR vol 59, No. 91, Friday, May 10, 1991, pp 21692–21697).

The following citation should have been included in the Selected Bibliography section of the 1991 Undergraduate Course and Curriculum Development Program Announcement (NSF 91–50): Report on the National Science Foundation Undergraduate Curriculum Development Workshop in Materials. Division of Materials Research, Directorate for Mathematical and Physical Sciences—(Washington, DC): National Science Foundation, 1989. NSF Publication No. 90–60.

Dated: June 13, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91–14466 Filed 6–17–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to Performance Review Boards for Senior Executive Service.

SUMMARY: The Nuclear Regulatory Commission (NRC) has announced the following appointments to NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives:

New Appointees:

Guy A. Arlotto, Deputy Director, Office of Nuclear Material Safety and Safeguards.
Harold R. Denton, Director, Office of Governmental and Public Affairs.
James Lieberman, Director, Office of Enforcement.
James G. Partlow, Associate Director for Projects, Office of Nuclear Reactor Regulation.

In addition to the above new appointments, the following members are continuing on the PRB:

Frank J. Congel, Director, Division of Radiation Protection and Emergency Preparedness, Office of Nuclear Reactor Regulation.
James A. Fitzgerald, Assistant General Counsel for Adjudications and Opinions, Office of the General Counsel.
Edward L. Jordan, Director, Office for Analysis and Evaluation of Operational Data.
Patricia G. Norry, Director, Office of Administration.
Carl J. Paperiello, Deputy Regional Administrator, Region III.
Dennis K. Rathbun, Director, Congressional Affairs, Office of Governmental and Public Affairs.
Themis P. Speis, Deputy Director for Research, Office of Nuclear Regulatory Research.
William B. Kerr, Director, Office of Small and Disadvantaged Business Utilization and Civil Rights, continues to serve as an ex officio non-voting member.

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

New Appointee:

William C. Parler, General Counsel.

In addition to the above new appointment, the following individuals will continue to serve on the PRB Panel:

James H. Sniezek, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, Office of the Executive Director for Operations.
Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations.

Members of the NRC Recertification PRB and Recertification PRB Panel will be selected from the individuals listed below. The NRC Recertification PRB and Recertification PRB Panel are responsible for recommending to appointing authorities whether Senior Executives should be recertified, conditionally recertified or not recertified.

Eric S. Beckjord, Director, Office of Nuclear Regulatory Research.
Robert M. Bernero, Director, Office of Nuclear Material Safety and Safeguards.
Paul E. Bird, Director, Office of Personnel.
Harold R. Denton, Director, Office of Governmental and Public Affairs.
Stewart D. Ebneter, Regional Administrator, Region II.
Edward L. Jordan, Director, Office for Analysis and Evaluation of Operational Data.
John B. Martin, Regional Administrator, Region V.
Thomas E. Murley, Director, Office of Nuclear Reactor Regulation.
Patricia G. Norry, Director, Office of Administration.
William C. Parler, General Counsel.
James H. Sniezek, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, Office of the Executive Director for Operations.
Hugh L. Thompson, Jr., Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, Office of the Executive Director for Operations.

All appointments are made pursuant to section 4314 of chapter 43 of title 5 of the United States Code.

EFFECTIVE DATE: June 10, 1991.

FOR FURTHER INFORMATION CONTACT: James M. Taylor, Chairman, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301) 492–1700.

Dated at Rockville, MD, this 10th day of June 1991.

For the Nuclear Regulatory Commission.

James M. Taylor,

Chairman, Executive Resources Board.

[FR Doc. 91–14460 Filed 6–17–91; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

June 12, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Ann Taylor Stores Corp.
Common Stock, $0.0068 Par Value (File No. 7–6892)
BankAmerica Corp.
$9⅝% Cum. Pfd. Stock Series F, No Par Value (File No. 7–6893)
Bancorp Hawaii, Inc.
Common Stock, $2.00 Par Value (File No. 7–6894)
Bass Plc
American Depository Shares (1 Ordinary Share 25 p) (File No. 7–6895)
Blackstone Advantage Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7–6896)
Blackstone 1998 Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7–6897)
Brown-Forman Corp.
Class A Common Stock, $0.15 Par Value (File No. 7–6898)
Carlisle Plastics, Inc.
Class A Common Stock, $0.01 Par Value (File No. 7–6899)
Coeur d'Alene Mines Corp.
Common Stock, $1.00 Par Value (File No. 7–6900)
Caldor Corp.
Common Stock, $0.01 Par Value (File No. 7–6901)
Critical Care America, Inc.
Common Stock, $0.10 Par Value (File No. 7–6902)
Duracell International, Inc.
Common Stock, $0.01 Par Value (File No. 7–6903)
Europe Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–6904)
Fingerhut Companies, Inc.
Common Stock, $0.01 Par Value (File No. 7–6905)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–14404 Filed 6–17–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 12, 1991.

The above named national securities exchange has filed applications witht the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

The Vigoro Corporation
Common Stock, $.01 Par Value (File No. 7–6887)
Benton Oil & Gas Co.
Common Stock, $.01 Par Value (File No. 7–6888)
Total Canada Oil & Gas Ltd.
Common Stock, No Par Value (File No. 7–6889)
Universal Health Services, Inc.
Class B Common Stock, $.01 Par Value (File No. 7–6890)
Value City Department Stores, Inc.
Common Stock, No Par Value (File No. 7–6891)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1991, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–14405 Filed 6–17–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 12, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

American-Israeli Paper Mills
American Depositary Receipts (File No. 7–6906)
Austria Fund
Common Stock, $.01 Par Value (File No. 7–6907)
Avalon Corporation
American Depositary Receipts (File No. 7–6908)
B&H Maritime Carries
American Depositary Receipts (File No. 7–6909)
B&H Ocean Carriers
American Depositary Receipts (File No. 7–6910)
Bainster, Inc.
American Depositary Receipts (File No. 7–6911)
Banco Bilbao Vizcaya S.A.
American Depositary Receipts (File No. 7–6912)
Barclays Bank PFD A
American Depositary Receipts (File No. 7–6913)
Barclays Bank PFD B
American Depositary Receipts (File No. 7–6914)
Barclays Bank PFD C
American Depositary Receipts (File No. 7–6915)
Barclays Bank PLC (adr)
American Depositary Receipts (File No. 7–6916)
BCE, Inc.
American Depositary Receipts (File No. 7–6917)
Benneton Group, SPA
American Depositary Receipts (File No. 7–6918)
Bet Public, Ltd.
American Depositary Receipts (File No. 7–6919)
Bond Int'l Gold, Inc.
American Depositary Receipts (File No. 7–6920)
Bow Valley Industries

American Depositary Receipts (File No. 7–6921)
Broken Hill Proprietary
American Depositary Receipts (File No. 7–6922)
Canadian Occidental Petroleum
American Depositary Receipts (File No. 7–6923)
Carmel Container Systems, Ltd.
American Depositary Receipts (File No. 7–6924)
Chieftan International, Inc.
American Depositary Receipts (File No. 7–6925)
Chile Fund
Common Stock, $.01 Par Value (File No. 7–6926)
Clemente Global Growth Fund
Common Stock, $.01 Par Value (File No. 7–6927)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 3, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–14406 Filed 6–17–91; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Investment Policy Advisory Committee; Meeting

June 10, 1991.

ACTION: Notice of meeting and determination of closing of meeting.

SUMMARY: The meeting of the Investment Policy Advisory Committee (INPAC) to be held Tuesday, June 18, 1991 in Washington, DC, from 10 a.m. to 12 p.m., will include the development, review and discussion of current issues which influence the trade policy of the United States. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

ADDRESSES: 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mollie Van Heuven, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 91–14469 Filed 6–17–91; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Artisan Liens on Aircraft; Recordability

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice of legal opinion is issued by the Assistant Chief Counsel for the Aeronautical Center to provide legal advice to the Aircraft Registration Branch, Mike Monroney Aeronautical Center, Oklahoma City, Oklahoma, also identified as the FAA Aircraft Registry. Since December 17, 1981, the Assistant Chief Counsel for the Aeronautical Center has issued opinions in the **Federal Register** of those states from which artisan liens will be accepted for recordation by the FAA Aircraft Registry. This opinion is to advise interested parties of the addition of the State of Arizona to that list.

ADDRESSES: Copies of prior opinions on the recordability of artisan liens from states which have statutes authorizing their recording may be obtained from: Assistant Chief Counsel for the Aeronautical Center, AAC–7, P.O. Box 25082, Oklahoma City, OK 73125–4904.

FOR FURTHER INFORMATION CONTACT: R. Bruce Carter, Office of Assistant Chief Counsel, address above, or by calling (405) 680–3296; (FTS 747–3296).

SUPPLEMENTARY INFORMATION: In the December 17, 1981, **Federal Register** Vol. 46, No. 242, page 61528, the Federal Aviation Administration, Mike Monroney Aeronautical Center, published its legal opinion on the recordability of artisan liens, with the identification of those states from which artisan liens would be accepted. In the April 23, 1984, **Federal Register**, Vol. 49, No. 79, page 17112, we advised that Florida, Nevada, and New Jersey had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 10, 1986, **Federal Register**, Vol. 51, No. 111, page 21046, we advised that Minnesota and New Mexico had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from those states. In the June 23, 1988, **Federal Register**, Vol. 53, No. 121, page 23716, we advised that Missouri had passed legislation which, in our opinion, allows the Aircraft Registry to accept artisan liens from that state. In the September 19, 1989, **Federal Register**, Vol. 54, No. 180, page 38584, we advised that Texas was identified as a state from which artisan liens will be accepted.

In the October 17, 1989, **Federal Register**, Vol. 54, No. 242, page 51965, we advised that North Dakota was identified as a state from which artisan liens will be accepted.

In the August 6, 1990, **Federal Register**, Vol. 55, No. 151 page 31938, we advised that Michigan and Tennessee were identified as states from which artisan liens will be accepted.

The purpose of this opinion is to advise interested parties that in addition to those states identified previously, Arizona is identified as a state from which artisan liens will be accepted.

The complete list of states from which artisan liens on aircraft will be accepted as of this date are:

Alaska
Arizona
Arkansas
Florida
Georgia
Illinois
Indiana
Kansas
Kentucky
Maine
Michigan
Minnesota
Missouri
Nebraska
Nevada
New Jersey
New Mexico
North Dakota
Oklahoma
Oregon
South Carolina
South Dakota
Tennessee
Texas
Virgin Islands
Washington
Wyoming

Issued in Oklahoma City, on June 2, 1991.

Joseph R. Standell,

Assistant Chief Counsel for the Aeronautical Center

[FR Doc. 91–14428 Filed 6–17–91; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE-91-23]

Petitions for Exemption: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before July 8, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9683.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on June 10, 1991.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 26552
Petitioner: United Parcel Service
Sections of the FAR Affected: 14 CFR part 121, appendix H, phase III, item 1
Description of Relief Sought: To allow petitioner to substitute alternate criteria to qualify three simulators to Phase III subject to certain conditions and limitations.

Docket No.: 26554
Petitioner: Bannock Regional Medical Center
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow petitioner's pilots to reverse the copilot seat from facing astern to facing forward.

Docket No.: 26557
Petitioner: United States Ultralight Association, Inc.
Sections of the FAR Affected: 14 CFR 103.1
Description of Relief Sought: To allow operation of powered ultralight vehicles up to 360 pounds empty weight, with a maximum fuel capacity of 10 gallons, a maximum power-off stall speed of 32 knots, and a maximum airspeed at full power in full flight of 72 knots.

Docket No.: 26560
Petitioner: Stanley Air Taxi, Inc.
Sections of the FAR Affected: 14 CFR 43.3(g)
Description of Relief Sought: To allow properly trained pilots employed by petitioner to perform the task of converting the cabins of certain aircraft from passenger to cargo configurations, and the reverse.

Dispositions of Petitions

Docket No: 23921
Petitioner: FlightSafety International
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (d)(3); 61.67(d)(2); 61.157(d)(1), (d)(2), (e)(1), and (e)(2); part 61, appendix A; part 121, appendix H
Description of Relief Sought/ Disposition: To allow petitioner to use FAA-approved simulators to meet certain training and testing and testing requirements.
Grant, May 31, 1991, Exemption No. 5317

Docket No: 25091
Petitioner: Allied-Signal Aerospace, Garrett Engine Division
Sections of the FAR Affected: 14 CFR 21.325(b)(1) and (b)(3)
Description of Relief Sought/ Disposition: To extend Exemption No. 4830A, which allows class I, II, and III products that are assembled and tested by Rolls-Royce Limited in East Kilbridge, Scotland, to be eligible for issuance of export airworthiness approvals.
Grant, May 31, 1991, Exemption No., 4830B

Docket No: 25173
Petitioner: Airlift International, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378
Description of Relief Sought/ Disposition: To allow the original equipment manufacturers and foreign repair stations certificated by the civil air authorities of their respective countries to perform maintenance, preventive maintenance, and alterations outside the United States on engines, components, and spare parts of petitioner's F-27/FH-227 aircraft.
Grant, June 4, 1991, Exemption No. 4798B

Docket No: 25405
Petitioner: Peninsula Airways, Inc.
Sections of the FAR Affected: 14 CFR 43.3(a) and (g)
Description of Relief Sought/ Disposition: To extend Exemption No. 4949, as amended, which allows petitioner's pilots to remove and/or replace aircraft cabin seats and seat belts.
Grant, May 30, 1991, Exemption No. 4949B

Docket No: 25863
Petitioner: Department of Defense
Sections of the FAR Affected: 14 CFR 91.117(a) and (b), 91.127(c), 91.159(a), and 91.209(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 5100, which allows petitioner to conduct air operations in support of drug law enforcement and drug traffic interdiction, subject to conditions and limitations.
Grant, October 19, 1990 Exemption No. 5100B

Docket No: 25974
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 91.203 and 47.49
Description of Relief Sought/ Disposition: To allow temporary operation of certain registered airline aircraft without the registration and airworthiness certificates on board.
Grant, June 4, 1991, Exemption No. 5318

Petitions for Reconsideration

Docket No: 23653
Petitioner: University of North Dakota
Sections of the FAR Affected: 14 CFR part 141, appendix D
Description of Relief Sought/ Disposition: Reconsideration of Denial of Exemption No. 5295 to allow

students enrolled in certain curricula to be credited more than 50 hours of pilot-in-command time while accompanied by persons who are pilots assigned by the school to specific flight crew duties.

Docket No: 26105
Petitioner: Sundstrand Corporation
Sections of the FAR Affected: 14 CFR 91.319(a)(1), (c) and (e)
Description of Relief Sought/ Disposition: Reconsideration of Denial of Exemption No. 5291 to allow petitioner to carry on its experimental aircraft company personnel and occasionally some company equipment for company business purposes.

[FR Doc. 91–14425 Filed 6–17–91; 8:45 am]
BILLING CODE 4910–13–M

Radio Technical Commission for Aeronautics (RTCA), Special Committee 172; Meeting

Future Air-Ground Communications in the VHF Aeronautical Data Band (188–131 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for the meeting of Special Committee 172 to be held July 10–11, 1991, in the RTCA Conference Room, One McPherson Square, 1425 K Street NW., suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) Review and approve terms of reference, RTCA Paper No. 54–91/SC172–1; (3) Background briefings; (4) Develop initial work program and plan for accomplishment; (5) Assignment of tasks; (6) Other business; (7) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contract the RTCA Secretariat, One McPherson Square, 1425 K Street NW., suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 7, 1991.
Clyde Miller,
Designated Officer.

[FR Doc. 91–14429 Filed 6–17–91; 8:45 am]
BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to NHTSA under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

In February 1991, Robert I. Elms, P.E., petitioned the National Highway Traffic Safety Administration to open a defect investigation to determine whether 1983 Coachmen President motorhomes contain the following alleged safety-related defects: (1) *Overloading*—Actual operating weight of the vehicle unavoidably exceeds the Gross Vehicle Weight Rating (GVMR) assigned by the chassis manufacturer; (2) *Crankshaft Pulley*—The crankshaft pulley detached from the crankshaft of the 7.4 liter Chevrolet engine, resulting in a loss of power steering and power brakes; (3) *Suspension Air Bags*—A suspension air bag suddenly deflated while traveling at 60 mph, resulting in unexpected vehicle swaying; (4) *Exhaust Manifold Leaks*—An exhaust manifold gasket failed four times on the 7.4 liter Chevrolet engine, resulting in an exhaust gas leakage; (5) *Cruise Control*—The cruise control system turned itself off and on again intermittently, almost causing an accident on two occasions due to sudden vehicle deceleration; (6) *Rear Brake Calipers*—A rear brake caliper seized and damaged the brake rotor, causing the motorhome to swerve to the right without warning; (7) *Sidewall Attachment*—The bottom of the motorhome sidewall was not properly attached to the floor or chassis, resulting in gasoline fumes penetrating into the passenger compartment and also making it possible for an occupant to be thrown out of the vehicle if the driver had to suddenly swerve; (8) *Roof*—The roof partially delaminated and leaked, causing a risk of water damage and structural collapse; and (9) *Sidewall Construction*—The laminated sidewall construction results in inadequate sidewall strength, which may not be sufficient to protect an occupant from being thrown out of the vehicle during an accident.

A total of 462 1983 President motorhomes were built by Coachmen Industries, Incorporated (Coachmen), which manufactured the vehicles by adding the motorhome body to a GMC "P" Series chassis manufactured by General Motors Corporation (GM). A total of 852 1983 GMC "P" Series Motorhome chassis were sold by GM, 536 of which had the same weight rating and engine as the subject Coachmen motorhome.

A search of the agency's consumer complaint file produced not other relevant complaints, except for theone concerning exhaust manifold leakage (Item 4). Moreover, Coachmen and GM stated that they have no records of complaints in the subject vehicles similar to those made by the petitioner. Additionally, no relevant accidents for injuries involving these motorhomes have been reported. Because 49 CFR part 576 requires that manufacturers retain complaints and warranty records for only 5 years and the subject 1983 model year motorhomes were sold almost 8 years ago, some early complaints may have been discarded.

With respect to the alleged overloading problem (Item 1): Coachmen did not change the GVWR of 14,500 pounds, which was established by GM. Based on information provided by Coachmen, the subject motorhomes are not overloaded and have adequate load capacity for seven people, corresponding to the number of sleeping accommodations that are provided, and for a reasonable amount of luggage. The motorhome would only be overloaded if each of the 11 seats equipped with seat belts were to be occupied, and additional luggage and/or supplies were present. The petitioner alleges that his motorhome is overloaded with only the driver aboard if both fuel tanks and the water tanks are full. If this is true, it may be because additional equipment has been added to the vehicle. Owners who weigh their vehicle before leaving on a trip, as instructed by the owner's manual, should be able to use the motorhome for its intended purpose without overloading. Owners can reduce weight by traveling with less water and not filling the auxiliary fuel tank, if necessary. The braking system is rated for 1,500 pounds above the GVWR and no evidence of any overloading related safety problems was found.

With respect to the alleged crankshaft pulley problem (Item 2): The engine and pulley system in the GMC chassis was not changed by Coachmen. If the crankshaft pulley on the 7.4 liter engine detaches, the power steering reverts to manual steering immediately and the power brakes normally revert to manual brakes after three or four brake applications. A noise would also be heard and at least one warning light on the dash would illuminate. Drivers of small cars can normally cope with such failures, but drivers with limited strength could have difficulty steering a large, heavy motorhome without power assist. However, no evidence was found

that such failures have occurred at an abnormal rate. The warranty rate for pulley replacement due to any reason was only 0.5 percent. Also, the entire engine had been replaced in the petitioner's vehicle under warranty prior to the failure, indicating that the pulley that detached had not been installed at the factory, but by a mechanic who might have made an error.

With respect to suspension air bags (Item 3): The front suspension of the subject GMC chassis has an air bag on each side which supplements the steel coil spring. The suspension was not modified by Coachmen. If the air bag fails, the vehicle will dip and lean slightly, but not to the extend that the wheel is prevented from rotating or that it interferes with steering or braking. However, the driver may have to make a steering correction. An airbag failure could startle some drivers, but it is reasonable to assume that drivers would be able to cope with this situation, since drivers frequently make steering corrections in response to wind, road irregularities, or traffic.

The failure in the petitioner's vehicle occurred after it had accumulated approximately 50,000 miles during 6 years of use. Less than 1.0 percent of air bags were replaced under warranty by GM. These facts indicate that failures of the airbag are not occurring at an abnormally high rate.

With respect to engine exhaust manifold leaks (Item 4): A sufficient number of such failures occurred in 1981 through 1986 model year 7.4 liter engines to prompt GM to redesign the exhaust manifold and issue a service bulletin in 1987, which was not limited to Coachmen vehicles. A Preliminary Evaluation, PE88–016, had been conducted by NHTSA, but that investigation was closed on the basis that no safety-related defect trend was found. In most cases, the loud noise which resulted from exhaust manifold leakage resulted in owners having repairs made before any safety-related incident occurred. The petition does not provide a basis to change the conclusion reached during the previously completed investigation.

With respect to cruise control malfunction (Item 5): The cruise control system was manufactured by the Dana Company and installed by Coachmen. The petitioner claims that accidents nearly occurred due to the unexpected vehicle deceleration which occurred when the unit turned itself off on several occasions, but the unit did not cause unwanted engine power or acceleration. The resulting sudden deceleration would be less severe than if the brake was applied lightly or if the engine stalled. Also, the loss of power would be of a short duration, because the driver can restore power simply by depressing the accelerator pedal. Drivers of other vehicles do not normally follow so closely or are so inattentive that they would run into the rear of a vehicle merely because it coasts for a few seconds. The petitioner's theory that the use of electrically non-conductive body materials was causing the problem cannot be substantiated, as Coachmen installs separate ground wires for each electrical item.

With respect to rear disc brake calipers (Item 6): The braking system on the GMC chassis was not modified by Coachmen. Uneven braking results if the disc brake caliper piston becomes stuck or if the caliper cannot slide on the slider pins. Such problems are not uncommon on many makes of vehicles after several years of use, and most vehicles eventually require some type of braking system maintenance work. Warranty data provided by GM indicate that the applicable warranty rate was substantially less than 1 percent, and the consumer complaint record does not indicate any abnormality.

With respect to sidewall attachment, sidewall construction, and roof construction (Items 7, 8, and 9): The only Federal Motor Vehicle Safety Standard (FMVSS) currently in effect that applies to motorhome sidewall or roof construction is FMVSS No. 302—Flammability of Interior Materials. Coachmen stated that their motorhome meets the requirements of FMVSS No. 302, and no evidence to the contrary was obtained from any source. No evidence was obtained to support the petitioner's speculation that someone could be thrown through the wall as a result of vehicle swerving or an accident, or that the roof could collapse or detach. Coachmen utilized construction methods which are common throughout the motorhome industry.

In consideration of the available information, there appears to be no reasonable possibility that an order concerning the notification and remedy of a safety-related defect in relation to any of the petitioner's allegations would be issued at the conclusion of a new investigation. Since no evidence of a safety-related defect trend was discovered, further commitment of resources to determine whether such a trend may exist does not appear to be warranted. Therefore, the petition is denied.

Authority: Sec. 124, Pub. L. 93–492; 88 Stat. 1470 (15 U.S.C. 1410a); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: June 11, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91–14462 Filed 6–17–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Computer Matching Programs

AGENCY: Internal Revenue Service; Treasury Department.

ACTION: Notice.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, October 18, 1988, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of Internal Revenue Service's computer matching programs. In accordance with various provisions of section 6103 of the Internal Revenue Code (IRC) of 1986, the computer matching programs provide Federal, State, and local agencies with tax information from IRS records to assist them in administering the programs and activities described hereafter. The purpose of these programs is to prevent or reduce fraud and abuse in certain government programs and facilitate the settlement of government claims while protecting the privacy interest of the subjects of the match.

EFFECTIVE DATE: July 18, 1991.

ADDRESSES: Inquiries may be mailed to Director, Office of Disclosure, Internal Revenue Service, P.O. Box 388, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Eric Banks, Tax Law Specialist, FOI/Privacy Section, Internal Revenue Service, (202) 566–3359.

SUPPLEMENTARY INFORMATION: The nature, purposes, and authorities for IRS computer matching programs are as follows:

Matches Conducted Pursuant to IRC 6103(l)(3)

Upon written request, the Service may disclose to the head of a Federal agency, which makes, guarantees, or insures certain Federal loans, whether an applicant for such a loan has a tax delinquent account.

The disclosure of a Tax Delinquent Account Status Indicator under IRC 6103(l)(3) is made only for the purpose of, and to the extent necessary in, determining the creditworthiness of the applicant for the loan in question. The

information provided is extracted monthly from the Internal Revenue Service Individual Master File (Treas./IRS System 24.030 (IMF)) located at the Internal Revenue Service, Martinsburg Computing Center (MCC), in Martinsburg, West Virginia. The IMF contains tax accounts of individuals.

There are currently no (l)(3) matching agreements in effect.

Matches Conducted Pursuant to IRC 6103(l)(7)

The Service is required, upon written request, to disclose current information from returns with respect to unearned income to any Federal, State, or local agency administering certain federally approved programs to provide:

(a) Aid to Families with Dependent Children;

(b) medical assistance;

(c) Supplemental Security Income benefits;

(d) social security benefits;

(e) unemployment compensation;

(f) Food Stamps;

(g) State administered supplementary payments; or

(h) veterans' benefits.

Information is disclosed by the Service only for the purpose of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under the aforementioned programs.

The return information is extracted on a monthly basis from the Internal Revenue Service Wage and Information Returns Processing File (Treas./IRS System 22.061 (IRP)) for the latest processing year. This file contains information returns filed by payers of income such as interest and dividends reported on Forms 1099–INT and 1099–DIV.

Federal agencies participating in (1)(7) matches, and the Privacy Act systems of records involved, are the Social Security Administration (Supplemental Security Record (SSR), HHS/SSA/OSR 90–60–0103); the Health Care Financing Administration (Income and Eligibility Verification for Medicaid Eligibility Quality Control Reviews System. HHS/HCFA/MB 09–07–2006); and the Department of Veterans Affairs (Compensation, Pension, Education and Rehabilitation Records, 58 VA 21/22; and Loan Guaranty Home, Condominium, and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records, 55VA26). Other agencies expected to participate in (1)(7) matches are:

AL Department of Human Resources Medicaid Agency.
AK Department of Health/Social Services.
AZ Department of Economic Security.
AR Department of Human Services.
CA Department of Social Services.
CA Department of Health Services.
CO Department of Social Services.
CT Department of Income Maintenance.
DE Department of Health/Social Services.
DC Department of Human Services.
FL Department of Health/Rehabilitation Services.
GA Department of Human Services.
GU Department of Public Health/Social Services.
HI Department of Social Services/Housing.
ID Department of Health/Welfare.
IL Department of Public Aid.
IN Department of Public Welfare.
IA Department of Human Services.
KS Department of Social/Rehabilitation Services.
KY Department of Social Insurance.
LA Department of Social Services.
ME Department of Human Services.
MD Department of Human Resources.
MA Department of Public Assistance.
MI Department of Social Services.
MN Department of Human Services.
MS Department of Human Services.
MS Division of Medicaid.
MO Department of Social Services.
MT Department of Social/Rehabilitation Services.
NE Department of Social Services.
NV State Welfare Division.
NH Division of Human Services.
NJ Department of Human Services.
NM Department of Human Services.
NY Department of Social Services.
NC Department of Human Resources.
ND Department of Human Services.
OH Department of Human Services.
OK Department of Human Services.
OR Department of Human Services.
PA Department of Public Welfare.
PR Department of Social Services.
PR Department of Health.
RI Department of Human Services.
SC Department of Social Services.
SD Department of Social Services.
TN Department of Human Services.
TX Department of Human Services.
UT Department of Social Services.
VT Agency for Human Services.
VI Department of Social Welfare.
VI Department of Health.
VA Department of Social Services.
WA Department of Social/Health Services.
WV Department of Human Services.
WI Department of Health/Social Services.
WY Department of Health/Social Services.

Matches conducted pursuant to IRC 6103(1)(12)

The Service shall, upon written request from the Commissioner of Social Security (SSA), disclose to SSA available filing status and taxpayer identity information from the IMF (Treas./IRS System 24.030) relating to whether any medicare beneficiary identified by SSA was a married individual for any specified year after 1986, and, if so, the name of the spouse of such individual and such spouse's taxpayer identity number (TIN), but only for purposes of, and to the extent necessary in, determining the extent to which any medicare beneficiary is covered under any group health plan. This section provides further for the redisclosure of certain taxpayer identity information by SSA to Health Care Financing Administration (HCFA) upon the written request of the Administrator of HCFA. With respect to the information redisclosed by the Commissioner of SSA, the Administrator of HCFA may further disclose said information to certain qualified employers and group health plans.

The IRS information provided is extracted monthly from the IMF (Treas./IRS System 24.030).

The Federal agencies participating in (1)(12) computer matches, and the Privacy Act systems of records involved, are the Social Security Administration (Master Beneficiary Record (HHS/SSA/OSR 09–60–0090); Master Files of Social Security Number Holders (HHS/SSA/OSR 09–60–0058); and the Earnings Recording and Self-Employment System (HHS/SSA/OSR 09–60–0059)) and the Health Care Financing Administration (Carrier Medicare Claims Records (DHHS/HCFA/BPO 09–70–0501) and Intermediary Claims Records (DHHS/HCFA/BPO 09–70–0503)).

Matches conducted pursuant to IRC 6103 (m)(2)

The Service may, upon written request, disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with sections 3711, 3717, and 3718 of title 31 of the United States Code. This section also provides for the redisclosure of a taxpayer's mailing address to a consumer reporting agency, but only to allow for the preparation of a commercial credit report on the taxpayer for use by the requesting Federal agency in accordance with the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982.

The IRS information provided is extracted monthly from the IMF (Treas./IRS System 24.030).

Federal agencies participating in (m)(2) matches and the Privacy Act systems of records involved, are:

Army & Air Force Exchange Service (Dishonored Check File (AAFESO 702.23) and Individual Accounts Receivable File (AAFESO 702.34)).

Army Community and Family Support Center (Nonappropriated Fund Account (A0314.09DACA)).
Army Finance & Accounting Center (Debt Collection System/FINCP–FF (AO 319.01 DACA)).
Equal Employment Opportunity Commission (Claim Collection Record (EEOC–10)).
Health Resources & Services Administration (Loan Repayment/ Debt Management Records System (HHS/HRSA/OA 09–15–0045)).
Health Care Financing Administration (Non-Provider Overpayment Recovery File (HHS/HCFA/BPO 09–70–0504)).
Housing & Urban Development (Accounting Records (HUD/DEPT–2)).
Marine Corps Finance Center (Debt Management and Collection System (N 07430–1)).
National Institutes of Health (IRS Address Request System (116841)).
Navy Finance Center (Debt Management and Collection System (N 07430–1)).
Navy Resale & Services Support Office (Bad Check and Indebtedness List (N 04066–1)).
Railroad Retirement Board (Railroad Unemployment and Sickness Insurance Benefit System (RRB–21); Railroad Retirement Survivor and Pensioner Benefit System (RRB–22); and Uncollectible Benefit Overpayment Accounts (RRB–42)).
Social Security Administration (Supplemental Security Record (HHS/ SSA/OSR 09–60–0103)).
U.S. Coast Guard (Military Pay and Personnel System (DOT/CG 623)).
U.S. Department of Education (Guaranteed Student Loan Program Pre-Claims Assistance System (ED 18–40–0031); Financial Management Information System (18–40–0033); Payroll, Attendance and Leave Records (18–11–0008); National Defense Student Loan File System (18–10–0025); Guaranteed Student Loan Paid Claim Files System (18–40–0026)).
U.S. Department of Health & Human Services (Administrative Claims System (HHS/OS/OGC 09–90–0062)).
U.S. Department of State (Records of the Inspector General and Automated Individual Cross-reference System (STATE 53)).
U.S. Department of Veterans Affairs (Compensation, Pension, Education and Rehabilitation Records (58 VA 21/22) and Loan Guarantee Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records, and Vendee Loan Applicant Records (55VA26)).

Matches conducted pursuant to IRC 6103(m)(4)

Upon written request from the Secretary of Education, the Service may disclose the mailing address of any taxpayer who has defaulted on certain loans extended under the Higher Education Act or Migration and Refugee Assistance Act for purposes of locating such taxpayer to collect the loan. This section further provides for the redisclosure by the Secretary of Education of a taxpayer's mailing address to any lender, or any State or nonprofit guarantee agency, participating under the Higher Education Act, or any educational institution with which the Secretary of Education has an agreement under that Act.

Redisclosure is made by the Secretary of Education for use only by officers, employees, or agents of such lender, guarantee agency, or institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such loan programs for purposes of collecting such loans.

The IRS information provided is extracted monthly from the IMF (Treas./ IRS System 24.030).

Under IRC 6103(m)(4), the U.S. Department of Education matches the Guaranteed Student Loan Program Pre-Claims Assistance System (ED 18–40–0031) with the IMF.

Matches conducted under IRC 6103(m)(5)

Upon written request from the Secretary of Health and Human Services (HHS), the Service may disclose the mailing address of any taxpayer who has defaulted on certain loans extended under the Public Health Service Act for purposes of locating such taxpayer to collect the loan. This section also provides for the redisclosure by the Secretary of HHS of a taxpayer's mailing address to any school with which the Secretary has an agreement under the Public Health Service Act, or any eligible lender participating under such Act.

Redisclosure is made by the Secretary of HHS for use only by officers, employees, or agents of such school or eligible lender whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under the Public Health Service Act for the purposes of collecting such loans.

The IRS information provided is extracted monthly from the IMF (Treas./ IRS System 24.030).

Under IRC 6103(m)(5), the Department of Health and Human Services matches the Public Health Service and National Health Service Corps Provider Records System (HHS/HRSA/BHCDA 09–15–0037) with the IMF.

Approval of the IRS computer matching programs was granted by the Treasury Data Integrity Board on June 7, 1989.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved:

David M. Nummy,

Acting Assistant Secretary of the Treasury (Management).

[FR Doc. 91–14381 Filed 6–17–91; 8:45 am]

BILLING CODE 4830–01

Office of Thrift Supervision

Far West Federal Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2)(B) and (H) of the Home Owners' Loan Act, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Far West Federal Savings Bank, Portland, Oregon, on June 7, 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–14392 Filed 6–17–91; 8:45 am]

BILLING CODE 6720–01–M

American Savings Association, F.A. Mt. Carmel, Illinois; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of Section 5(d)(2)of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for American Savings Association, F.A., Mt. Carmel, Illinois ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–14393 Filed 6–17–91; 8:45 am]

BILLING CODE 6720–01–M

Broken Arrow Savings Association, F.A.; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d) (2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Broken Arrow Savings Association, F.A., Broken Arrow, Oklahoma ("Association") with the Resolution Trust Corporation as sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–14394 Filed 6–17–91; 8:45 am]

BILLING CODE 6720–01–M

Citizens Homestead Federal Savings Association et al.; Replacement of Conservator with a Receiver

Notice is hereby given that, on June 7, 1991 pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator with the Resolution Trust Corporation as sole Receiver for each of the following savings associations:

Name	Location	Docket No.
1. Citizens Homestead Federal Savings Association.	New Orleans, LA	8601
2. First Federal Savings and Loan Association of Wichita Falls.	Wichita Falls, TX	8791
3. First Federal Savings, FSA.	New Braunfels, TX	8830
4. Surety Federal Savings Association.	El Paso, TX	8681

Dated: June 12, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–14395 Filed 6–17–91; 8:45 am]

BILLING CODE 6720–01–M

Far West Federal Bank, S.B.; Replacement of Conservator with Receiver

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as sole conservator with the Resolution Trust Corporation as sole Receiver for Far West Federal Bank, S.B., Portland, Oregon [OTS No. 3091], on June 7, 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–14396 Filed 6–17–91; 8:45 am]

BILLING CODE 6720–01–M

First Federal Savings Association of Tuscola; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings Association of Tuscola, Tuscola, Illinois OTS No. 8910 ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–14397 Filed 6–17–91; 8:45 am]

BILLING CODE 6720–01–M

Investors Federal Savings Bank; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Investors Federal Savings Bank, Deerfield Beach, Florida ("Association"), with the Resolution Trust Corporation a sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–14398 Filed 6–17–91; 8:45 am]

BILLING CODE 6720–01–M

Investors Savings Bank, F.S.B. Nashville, TN; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Investors Savings Bank, F.S.B., Nashville, Tennessee ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–14399 Filed 6–17–91; 8:45 am]

BILLING CODE 6720–01–M

Liberty Federal Savings Bank; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Liberty Federal Savings Bank, Montebello, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91–14400 Filed 6–17–91; 8:45 am]

BILLING CODE 6720–01–M

North Jersey Federal Savings Association; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for North Jersey Federal Savings Association, Passaic, New Jersey ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 7 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-14401 Filed 6-17-91; 8:45 am]

BILLING CODE 6720-01-M

Rancho Bernardo Federal Savings Bank, San Diego, CA; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Rancho Bernardo Federal Savings Bank, San Diego, California ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on June 7, 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision:

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-14402 Filed 6-17-91; 8:45 am]

BILLING CODE 6720-01-M

Remington Federal Savings Association; Replacement of Conservator with a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Remington Federal Savings Association, Elgin, Texas ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on May 30, 1991.

Dated: June 12, 1991.

By the Office of Thrift Supervision:

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 91-14403 Filed 6-17-91; 8:45 am]

BILLING CODE 6720-01-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 117
Tuesday, June 18, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, June 21, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed 1992 Federal Reserve Bank budget objective.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 14, 1991.

William W.Wiles,

Secretary of the Board

[FR Doc. 91-14579 Filed 6-14-91; 1:14 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND PLACE: Approximately 10:30 a.m., Friday, June 21, 1991, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 14, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91-14580 Filed ?-??-??; 1:14 pm]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, June 18, 1991.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: Open.

MATTER TO BE CONSIDERED: Joint Presentation by the American Association of Advertising Agencies, the Association of National Advertisers, and the American Advertising Federalion on the topic of Self-regulation.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Jansen, Office of Public Affairs: (202) 326-2178; Recorded Message: (202) 326-2711.

Donald S. Clark,

Secretary.

[FR Doc. 91-14651 Filed 6-15-91; 3:17 pm]

BILLING CODE 6750-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE-91-18

TIME AND DATE: Tuesday, July 2, 1991 at 10:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints
5. Inv. 303-TA-21 and 731-TA-519 (Preliminary) (Gray portland cement and cement clinker from Venezeula)—briefing and vote.
6. Inv. 731-TA-520-521 (Preliminary) (Carbon steel butt-weld pipe fittings from the People's Republic of China and Thailand)—briefing and vote.
7. Any items left over from previous agenda

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 252-1000.

Dated: June 11, 1991.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-14626 Filed 6-14-91; 1:16 pm]

BILLING CODE 7020-02-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 17, 24, July 1, and 8, 1991.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Week of June 17

Wednesday, June 19

1:30 p.m.
Briefing on Shutdown Risk Status (Public Meeting)

Thursday, June 20

9:30 a.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Policy Statement on Economic Performance Incentive Regulation (Tentative)
b. Revision of 10 CFR Part 55 to Require Compliance with Fitness-for-Duty Programs and of the Commission's Enforcement Policy (Tentative)
c. 100 Percent Fee Recovery—Final License and Annual Fee Rule (Tentative)

Week of June 24—Tentative

Friday, June 28

8:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 1—Tentative

Wednesday, July 3

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of July 8—Tentative

Thursday, July 11

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION:

By a vote of 4-0 on June 11, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rule that "Discussion of Management-Organization and Internal Personnel Matters" (Closed—Ex. 2 and 6), be held on June 11, and on less than one week's notice to the public.

By a vote of 4–0 on June 12, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation on Joint Motion to Stay or Vacate License Issuance by Petitioners in Shoreham Proceeding; and Final Amendments to 10 CFR Parts 2 and 35 on Quality Management Program and Reportable Events" (Public Meeting), be held on June 12, and on less than one week's notice to the public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492–0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492–1661.

Dated: June 13, 1991.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 91–14629 Filed 6–14–91; 1:17 pm]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:36 p.m. on Tuesday, June 11, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to (1) the resolution of failed thrift institutions, and (2) the sale of assets.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Vice Chairman Andrew C. Hove, Jr., and concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, NW., Washington, DC.

Dated: June 13, 1991.

RESOLUTION TRUST CORPORATION.

William J. Tricarico,

Assistant Executive Secretary.

[FR Doc. 91–14545 Filed 6–13–91; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following open meeting during the week of June 17, 1991.

An open meeting will be held on Thursday, June 20, 1991, at 10:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Thursday, June 20, 1991, at 10:00 a.m., will be:

The Commission will hear oral arguments on appeals by Swartwood, Hesse, Inc., a registered broker-dealer, T. Marshall Swartwood, the firm's president, and Richard E. Moyer, a senior vice-president, from an administrative law judge's initial decision. For further information, please contact Richard E. Connor at (202) 272–3981.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Edward Pittman at (202) 272–2400.

Dated: June 13, 1991.

Jonathan G. Katz,

Secretary.

By:

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–14625 Filed 6–14–91; 1:15 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 56, No. 117
Tuesday, June 18, 1991

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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN-91-006]

Revisions of User Fees for Cotton Classification, Testing and Standards

Correction

In proposed rule document 91-10082 beginning on page 19815 in the issue of Tuesday, April 30, 1991, make the following corrections:

1. On page 19815, in the second column, under **Fees for Classification Under the Cotton Statistics and Estimates Act of 1927**, in the fifth line from the bottom, "5" should read "15".

2. On page 19817, in the second column, in the table, the Current and Proposed Fee entries fifth from the bottom should read respectively "28.2" and "6.00".

3. On the same page, in the third column, in the table, the fourth Current and Proposed Fee entries should respectively remain blank and read "6.00".

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 910235-1035]

RIN No. 0693-AA89

Proposed Family of Federal Information Processing Standards on Modems for Data Communications Use on Telephone-Type Circuits

Correction

In notice document 91-9025 beginning on page 15583, in the issue of Wednesday, April 17, 1991 make the following corrections:

On pages 15584, 15585, and 15586, in the first column; on pages 15587, 15588, and 15589, in the third column; and on page 15591 in the second column in paragraph 12, in the fifth line "October 17, 1991," should read "_____ (six (6) months after date of publication of final document in the **Federal Register**)".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 3

[Docket No. 910246-1046]

RIN 0651-AA43

Changes in Patent and Trademark Assignment Practice

Correction

In proposed rule document 91-10841 beginning on page 21641 in the issue of Friday, May 10, 1991, make the following corrections:

1. On page 21642:

a. In the second column, in the last line at the bottom of the page, "or" should read "of".

b. In the third column, in the first paragraph, in the eighth line, insert a comma after "paper".

c. In the same column, in the second paragraph, in the second line from the bottom, "return" should read "returned".

2. On page 21644, in the 1st column, in the 2d paragraph, in the 16th line from the bottom, "office" should read "Office".

§ 1.12 [Corrected]

3. On page 21645, in the first column, in § 1.12(d), in the sixth line, "real" should read "reel".

§ 3.73 [Corrected]

4. On page 21647, in the 3rd column, in § 3.73(b), in the 13th line, insert a period after "Office".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Department of the Army

Availability; Pueblo Depot Activity, CO

Correction

In notice document 91-12798 appearing on page 24792 in the issue of Friday, May 31, 1991, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 206, 207, and 314

[Docket Nos.88P-0380 and 89P-0163]

Imprinting of Oral Solid Dosage Form Drug Products

Correction

In proposed rule document 91-11481 beginning on page 22370 in the issue of Wednesday, May 15, 1991, make the following corrections:

On page 22371, in the third column, under *E. Submission of the NDMA Petition*, in the fifth line from the end of the paragraph, "FDS" should read "FDA"; and in the fourth line from the end, insert "OTC" after "dosage".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 701

[T.D.8349]

RIN 1545-AP21

Financing of Presidential Election Campaigns

Correction

In rule document 91-11206 beginning on page 21596, in the issue of Friday, May 10, 1991, make the following correction:

§ 701.9006-1 [Corrected]

On page 21599, in the first column, the number in the section heading, "**§ 701.906-1**" should read "**§ 701.9006-1**".

BILLING CODE 1505-01-D

Federal Register

Tuesday
June 18, 1991

Part II

Federal Policy for the Protection of Human Subjects; Notices and Rules

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Federal Policy for the Protection of Human Subjects

AGENCY: Office of Science and Technology Policy, Executive Office of the President.

ACTION: Notice of Federal Policy for Protection of Human Subjects.

SUMMARY: The Office of Science and Technology Policy has accepted the Final Federal Policy for the Protection of Human Subjects in the form of the common rule promulgated in this issue of the **Federal Register**. The common rule was developed by the Interagency Human Subjects Coordinating Committee of the Federal Coordinating Council for Science, Engineering and Technology, in response to public comment on the notice of proposed policy for Department and Agency Implementation published in the **Federal Register** on November 10, 1988 (53 FR 45660).

Note that the Central Intelligence Agency is required by Executive Order 12333 to conform to the guidelines issued by the Department of Health and Human Services (HHS).

ADDRESSES: Requests for additional information should be addressed to Dr. Joan P. Porter, Interagency Human Subjects Coordinating Committee, Building 31, room 5B59, Bethesda, Maryland 20892, Telephone: (301) 496–7005.

D. Allan Bromley,

Director, Office of Science and Technology Policy, Executive Office of the President.

[FR Doc. 91–14257 Filed 6–17–91; 8:45 am]

BILLING CODE 3170–01–M

DEPARTMENT OF AGRICULTURE

7 CFR Part 1c

DEPARTMENT OF ENERGY

10 CFR Part 745

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1230

DEPARTMENT OF COMMERCE

15 CFR Part 27

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1028

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 225

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 60

DEPARTMENT OF JUSTICE

28 CFR Part 46

DEPARTMENT OF DEFENSE

32 CFR Part 219

DEPARTMENT OF EDUCATION

34 CFR Part 97

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 16

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 26

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

NATIONAL SCIENCE FOUNDATION

45 CFR Part 690

DEPARTMENT OF TRANSPORTATION

49 CFR Part 11

Federal Policy for the Protection of Human Subjects

AGENCIES: United States Department of Agriculture; Department of Energy; National Aeronautics and Space Administration; Department of Commerce; Consumer Product Safety Commission; International Development Cooperation Agency, Agency for International Development; Department of Housing and Urban Development; Department of Justice; Department of Defense; Department of Education; Department of Veterans Affairs; Environmental Protection Agency; Department of Health and Human Services; National Science Foundation; Department of Transportation.

ACTION: Final rule.

SUMMARY: This document sets forth a common Federal Policy for the Protection of Human Subjects (Model Policy) accepted by the Office of Science and Technology Policy and promulgated in regulation by each of the listed Departments and Agencies. A Proposed Federal Policy for the Protection of Human Subjects published November 10, 1988 (53 FR 45661) has been revised in response to public comments. The Policy as revised is now set forth as a common final rule. For related documents, see other sections of this **Federal Register** part.

EFFECTIVE DATE: These regulations shall become effective on August 19, 1991. The Department of Education regulations (34 CFR part 97) take effect either August 19, 1991, or later if Congress takes certain adjournments. If you want to know the effective date of the Department of Education regulations in 34 CFR part 97, call or write Mr. Edward Glassman, Office of Planning, Budget and Evaluation, U.S. Department of Education, room 3127, 400 Maryland Avenue SW., Washington, DC 20202–4132. A document announcing the effective date of the Department of Education regulations will be published in the **Federal Register**. Institutions currently conducting or supporting research in accord with Multiple Project Assurances of Compliance (MPAs) approved by and on file in the Office for Protection from Research Risks (OPRR) in the Department of Health and Human Services may continue to do so in accord with the terms and conditions of their MPAs. See Supplementary Information for further details.

FOR FURTHER INFORMATION CONTACT: Dr. Joan P. Porter, (301) 496–7005. Office for Protection from Research Risks, National Institutes of Health, Building 31, room 5B59, Bethesda, MD 20892.

SUPPLEMENTARY INFORMATION: Paperwork Reduction Act Requirements: Sections _____.103(a); _____.103(b); _____.103(b)(4)(i); _____.103(b)(4)(iii); _____.103(b)(5); _____.103(f); _____.109(d); _____.113; _____.115(a); _____.116; and _____.117 contain information collection requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. HHS has submitted the request for approval to OMB on behalf of all Departments and Agencies governed by this final rule and has published elsewhere in this issue of the **Federal Register** a request for OMB expedited review and approval of the information collection requirements. OMB has assigned OMB control number 9999–0020; however, the information collection requirements will not become effective until OMB has approved them. Unless a notice is published to the contrary, the public may assume that OMB has approved the information collection requirements during the 60-day period before the final rule becomes effective.

For further information regarding OMB approval of the information collection, contact Ms. Shannah Koss-McCallum, OMB, (202) 395–7316.

Compliance Dates: Institutions that hold MPAs are permitted and encouraged to apply all provisions of this final rule as soon as it is feasible to do so. They are urged not to wait for the negotiation and approval of a revised MPA to begin to function in accord with this rule. The OPRR, acting on behalf of the Secretary, Department of Health and Human Services (HHS), will continue to renegotiate and approve MPAs in the normal periodic cycle of renewal.

Institutions that are not operating under an MPA approved by OPRR will be required to negotiate an Assurance of Compliance with the supporting Department or Agency, prior to initiating research involving human subjects.

Institutions with MPAs approved by and on file with HHS will be allowed a "grace period" of sixty days after the

submission date for an application seeking HHS support, to provide certification of Institutional Review Board (IRB) review and approval. Exceptions may occur for reasons of Congressional mandate or special program or review requirements. In such cases, institutions will be advised that certification must be sent at an earlier time.

Background

This notice sets forth as a common rule requirements for the protection of human subjects involved in research conducted or funded by the following Federal Departments and Agencies: United States Department of Agriculture; Department of Energy; National Aeronautics and Space Administration; Department of Commerce; Consumer Product Safety Commission; International Development Cooperation Agency, Agency for International Development; Department of Housing and Urban Development; Department of Justice; Department of Defense; Department of Education; Department of Veterans Affairs; Environmental Protection Agency; National Science Foundation; Department of Health and Human Services and the Department of Transportation. Each of these Departments and Agencies have adopted the common rule as regulations to be codified as listed above.

The Food and Drug Administration (FDA) Final Rule to modify current regulations to conform to the Federal Policy are presented elsewhere in this issue of the **Federal Register.** Existing FDA regulations governing the protection of human subjects share a common core with the Federal Policy and implement the fundamental principles embodied in that policy. The agency is committed to being as consistent with the final Federal Policy as it can be, given the unique requirements of the Federal Food, Drug, and Cosmetic Act under which FDA operates; and the fact that FDA is a regulatory agency that rarely supports or conducts research under its regulations.

Adoption of the common Policy by Federal Departments and Agencies in regulatory form will implement a recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research which was established on November 9, 1978, by Public Law 95–622. One of the charges to the President's Commission was to report biennially to the President, the Congress, and appropriate Federal Departments and Agencies on the protection of human subjects of biomedical and behavioral research. In carrying out that charge, the President's Commission was directed to conduct a review of the adequacy and uniformity (1) of the rules, policies, guidelines, and regulations of all Federal Departments and Agencies regarding the protection of human subjects of biomedical or behavioral research which such Departments and Agencies conduct or support, and (2) of the implementation of such rules, policies, guidelines, and regulations by such Departments and Agencies, such review to include appropriate recommendations for legislation and administrative action.

In December 1981 the President's Commission issued its First Biennial Report on the Adequacy and Uniformity of Federal Rules and Policies, and their Implementation, for the Protection of Human Subjects in Biomedical and Behavioral Research, Protecting Human Subjects.

In accord with Public Law 95–622, each Federal Department or Agency which receives recommendations from the President's Commission with respect to its rules, policies, guidelines or regulations, must publish the recommendations in the **Federal Register** and provide an opportunity for interested persons to submit written data, views and arguments with respect to adoption of the recommendations. On March 29, 1982 (47 FR 13262–13305), the Secretary, HHS, published the recommendation on behalf of all affected Departments and Agencies.

In May 1982 the Chairman of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET) appointed an *Ad Hoc* Committee for the Protection of Human Research Subjects under the auspices of the FCCSET. The Committee, chaired by Dr. Edward N. Brandt, Jr., Assistant Secretary for Health, Health and Human Services (HHS), was composed of representatives and ex-officio members of the affected Departments and Agencies. In consultation with the Office of Science and Technology Policy (OSTP) and the Office of Management and Budget, the *Ad Hoc* Committee, after considering all public comments, developed responses to the recommendations of the President's Commission. After further review and refinement, OSTP responded on behalf of all the affected Department and Agency Heads to the recommendations of the President's Commission, including the recommendation that:

> The President should, through appropriate action, require that all federal departments and agencies adopt as a common core the regulations governing research with human subjects issued by the Department of Health and Human Services (codified at 45 CFR Part 46), as periodically amended or revised, while permitting additions needed by any department or agency that are not inconsistent with these core provisions.

The *Ad Hoc* Committee agreed that uniformity is desirable among Departments and Agencies to eliminate unnecessary regulation and to promote increased understanding and ease of compliance by institutions that conduct federally supported or regulated research involving human subjects. Therefore, the *Ad Hoc* Committee developed a Model Federal Policy, which applies to research involving human subjects conducted, supported or regulated by Federal Departments and Agencies. In accordance with the Commission's recommendation, the Model Federal Policy is based on subpart A of the regulations of HHS for the protection of human research subjects (45 CFR part 46). The Proposed Model federal Policy developed by the *Ad Hoc* Committee was modified by OSTP to enhance uniformity of implementation among the affected Federal Departments and Agencies and to provide consistency with other related policies. The revised Model Federal Policy was concurred in by all affected Federal Departments and Agencies in March 1985.

An Interagency Human Subjects Coordinating Committee was chartered in October 1983 under the auspices of FCCSET to provide continued interagency cooperation in human subject research once the *Ad Hoc* Committee had completed its assignment. It is chaired by the Director of the Office for Protection from Research Risks, HHS, and composed of representatives of all Federal Departments and Agencies that conduct, support or regulate research involving human subjects. The Committee is advisory to Department and Agency Heads and, among other responsibilities, will evaluate the implementation of the Federal Policy and recommend modification as necessary.

On June 3, 1986, OSTP published for public comment in the **Federal Register** (51 FR 20204) a Proposed Model Federal Policy for Protection of Human Subjects and Response to the First Biennial Report of the President's Commission. Over 200 written comments were received concerning the publication. The Interagency Human Subjects Coordinating Committee considered these comments in the revision of a common Federal Policy proposed as a common rule on November 10, 1988, for

adoption by each of the Departments and Agencies listed. Response to the more than 60 public comments, discussion of revisions made to that publication and the final common rule follow.

Summary of Public Comments Received in Response to the November 10, 1988, **Federal Register** publication (53 FR 45661) of the Notice of Proposed Common Rulemaking, Federal Policy for the Protection of Human Subjects for 16 Federal Departments and Agencies.

In response to the November 10, 1988, publication, 66 commentators responded within the comment period, which was extended to February 8, 1989. The source of comments included institutional offices of sponsored research, departmental deans and chairs and other staff of academic institutions, institutional review board members and staff, principal investigators, and drug company representatives. Although there were 66 separate commentators, several responses were prepared by organizations each representing a consortium of institutions which had been polled concerning the notice of proposed common rulemaking. For example, the Council on Governmental Relations, the Association of American Medical Colleges, Public Responsibility for Medicine and Research, Association of American Universities, the American Medical Association and the Consortium of Social Science Associations offered comment on behalf of their member institutions.

In general, commentators endorsed the efforts of the Office of Science and Technology Policy and the Federal Departments and Agencies to develop a Common Rule for the protection of human subjects.

The majority of the comments dealt with three points in the proposed common rule, as follows:

Section _____.103(b)(5) concerns those procedures set forth in Assurances of Compliance for research conducted or supported by a federal Department or Agency. As proposed, this section required that an Assurance should include:

> Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head (i) any unanticipated problems or scientific misconduct involving risks to human subjects or others (ii) any instance of serious or continuous noncompliance with this policy or the requirements of determinations of the IRB and (iii) any suspension or termination of IRB approval.

Some commentators indicated that they believed the proposed policy would inappropriately require IRBs to notify Department and Agency heads of scientific misconduct involving risks to human subjects and others and that the scientific fraud and misconduct regulations [September 19, 1988, Responsibilities of PHS Awardee and Applicant Institutions for Dealing with and Reporting Possible Misconduct in Science (53 FR 36344)] create duplicate and potentially conflicting requirements. Several suggested that the proposed rules on misconduct should leave undisturbed other existing regulatory schemes such as human subjects regulations of the Department of Health and Human Services at 45 CFR part 46. Other commentators indicated that the IRB should not have a "police" role and that its members are potentially legally liable if they did or did not report certain misconduct activities. Concern was also noted about additional responsibility and work placed on the IRB.

Several commentators requested clarification of § _____.103(b)(5)(i) in the terms "misconduct" and "unanticipated" problems. Respondents suggested that scientific misconduct implies falsification of data, plagiarism, abuse of confidentiality, dishonesty in presenting publications, legal violations and a range of other activities which should be addressed in a separate policy involving broader institutional considerations than those appropriate for an IRB. In addition, some respondents suggested that actual "harm" rather than "possible risk" to human subjects be reported to Departments and Agencies.

Concerning § _____.103(b)(5)(iii) two commentators suggested that IRBs would be reluctant to suspend IRB-approved research for administrative infractions (such as tardiness of response to an IRB) if such suspension must be reported to an Agency. One commentator requested that revisions be made so that only suspensions or terminations for serious or continuing noncompliance with the policy or determination of the IRB need be reported to the Department or Agency head. In that way, IRBs would use suspension or termination as a administrative tool and continue to keep Departments and Agencies informed of serious problems.

One specific set of comments addressed all aspects of this section by suggesting deletion of reporting requirements to Department and Agency Heads altogether. Rather, reports to IRBs and institutional officials would be required concerning unanticipated problems involving risks to human subjects which are substantial; proven scientific fraud; instances of substantial or continuing noncompliance with the policy or the requirements or determination of the IRB; or any suspension or termination which is more more than minor or temporary.

Response

In view of the comments and the policy concerning fraud and misconduct that is now under deliberation, the Interagency Human Subjects Coordinating Committee revised § _____.103(b)(5) as follows:

> Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB and (ii) any suspension or termination of IRB approval.

The President's Commission recommended in its 1981 *First Biennial Report* that institutional assurances should specify how "misconduct" should be reported and investigated (pp. 77–82, Recommendations 7 and 8). Since the time of the publication of the 1981 report, however, the issue of identification and reporting of misconduct has been deliberated in many other contexts and has included consideration of more than "misconduct involving risks to human subjects." In August 1989 the Department of Health and Human Services published a final rule announcing responsibilities of awardee and applicant institutions for dealing with and reporting possible misconduct in science [53 CFR 32446]. The Committee agrees that in the current context the inclusion of the term "misconduct" in the Federal Policy is confusing and misleading because other policy development efforts giving specific meaning to scientific misconduct are ongoing. Therefore, the term is deleted from this document.

The revised language is closer to that of the original provision in the Department of Health and Human Services regulations. The Interagency Committee wishes to clarify that it was never the intention of the Policy to require IRBs to report directly to Department and Agency Heads. Assurances of Compliance are negotiated between Departments or Agencies and awardee institutions. Assurances allow institutions to specify how reporting to Department and Agency Heads will take place. Reporting is the responsibility of the institutional official identified in each Assurance.

Further, the Committee wishes to clarify that "unanticipated problems" in this context includes serious and unexpected reactions to biologicals,

drugs, or medical devices. Institutions have flexibility to establish channels of reporting to meet reporting requirements of Departments and Agencies. In addition, the Committee believes it is important that suspension or termination, for whatever reason, be reported to the Department and Agency Heads.

The Sixty Day "Grace" Period

Comment

The section of the proposed Policy and Final Rule eliciting the most comments was 103(f) regarding submission of certification. That section is as follows:

> Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under §§ _____.101 (b) or (i). An institution with an approved assurance shall certify research covered by the assurance and by § _____.103 of this policy has been reviewed and approved by the IRB. Such certification must be submitted with the application or proposal or by such later date as may be prescribed by the department or agency to which the application or proposal is submitted. Under no condition shall research covered by § _____.103 of the policy be supported prior to receipt of the certification that the research has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution.

Most of the commentators (50) addressed the need for a grace period between the time of submission of an application for support to a Department and Agency and submission of certification by the IRB of review and approval of the proposal. A 60-day grace period was allowed in the previous Department of Health and Human Services Regulations for the Protection of Human Subjects. Under this provision, institutions with Multiple Project Assurances on file with HHS had sixty days to complete IRB review and approval and to notify HHS. This period of time roughly corresponded to the time between receipt of the application and initial scientific merit review. The groups evaluating the application for scientific merit need certification of the fact that an appropriate IRB has determined that human subject protections are adequate.

The commentators cited many reasons why a grace period is important for orderly institutional review and for protection of human subjects. Many of the comments on this section requested that the grace period be reinstated in the regulations. In brief, respondents noted that if the grace period is not allowed, investigators would be required to submit proposals to IRBs about two months earlier than at present. IRBs would be convened into emergency sessions or required to meet more frequently. Pressure to grant approval would increase.

Some commentators noted that institutions that have no Multiple Project Assurance on file with HHS are given 30 days to review and certify upon HHS request. If Multiple Project Assurance holders have no grace period, they may be at a disadvantage in time permitted for preparation and institutional review of their applications as compared to the time permitted institutions without a Multiple Project Assurance. Also, data for competitive renewals is often added just before submission to HHS so that the most current progress under the original award can be reported. If a grace period is not offered, applications may not contain information vital for appropriate peer review.

Another concern raised was that some researchers are required to modify their proposals several times before submission. The current 60-day period allows the IRB to review the final submission carefully.

One commentator indicated that the proposed provision was acceptable to the institution.

Response

Many Federal Departments and Agencies do not have application review schedules that correspond to those of HHS. A 60 day grace period is without relevance to their review systems. At the time of publication of the proposed common rule, the Interagency Committee noted that HHS intended to retain a "grace period" for institutions that have Multiple Project Assurances and announce the period through advisories that are routinely received by institutions. HHS has carefully considered the public comments and will ordinarily retain the 60-day grace period in its administrative procedures. In some programs, such as AIDS-related research, HHS has modified the receipt and review schedules in accordance with a Congressional mandate.

The Departments and Agencies, other than HHS, adopting the common rule are aware of the concerns of the institutions and will provide as much flexibility to IRBs as possible in the orderly processing of applications for support. To require a 60-day grace period or any standard grace period for all Departments and Agencies would require far-reaching changes in the review and processing systems of these organizations. Institutions will be advised of Department and Agency procedures through routine publications. Consequently, the language in the final rule remains unchanged.

Composition of the IRB

Comments

Section _____.107 of the Policy deals with composition of the IRB. Several points made by commentators are as follows:

In § _____.107(a) there is the requirement that if an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects. The HHS regulations at 45 CFR part 46 promulgated in 1981 utilized a different standard, i.e., "if an IRB regularly reviews research that involves a vulnerable category of subjects, including but not limited to subjects covered by other subparts of [45 CFR part 46], the IRB shall include one or more individuals who are primarily concerned with the welfare of these subjects." The commentator indicated that his institution would retain previous standards, because advocates for special populations have been of great benefit in the IRB's decision-making process.

Another commentator wrote that in her institution, full committee review is required when a vulnerable population is involved; all committee members are advocates for subjects whether or not they themselves are involved in a vulnerable population. Adding new members would make the committee too large to be workable, she wrote.

The majority of the comments on this section were directed to the departure proposed by the Department of Education at 34 CFR part 97.107(a). The proposed departure was based on a concern for protection of mentally disabled persons and handicapped children. The departure would have provided that, for research conducted or supported by the Department of Education," when an IRB reviews research that deals with handicapped children or mentally disabled persons, the IRB shall include at least one person primarily concerned with the welfare of the research subject." The remainder of the departure reiterated the common

rule's provision which required institutions to consider representation on the IRB of persons who are knowledgeable about and experienced in working with certain vulnerable subjects if the IRB regularly reviews research involving those vulnerable subjects. Twenty-one institutions commented on this proposed departure. The majority of these comments were opposed to the proposed departure.

Some commentators, while supporting the proposed language in § _____.107, stated their belief that the departure was not necessary because the policy in § _____.107 already addresses representation of the special concerns of vulnerable subjects on the IRB. Thus, the rights of handicapped children and mentally disabled persons should be represented on any IRB that regularly reviews proposals involving those individuals, and there is no constructive advantage to emphasizing these two categories of subjects. Such an emphasis was seen as a precedent with the potential for discrimination against other categories of vulnerable subjects. When special expertise is required, IRBs already have the option and the obligation to seek informed consultants, respondents noted. One commentator stated, however, "If in future staffing of our IRB, someone with expertise in this area is available and willing to serve, we would be happy to encourage such participation."

Some commentators objected to the lack of consistency among Federal Departments and Agencies and cited the Department of Education's proposed departure as being inconsistent with the purpose of the common rule.

One commentator suggested that only when the IRB regularly reviews research that deals with handicapped children or mentally disabled persons should the IRB include at least one person primarily concerned with the welfare of the research subjects. Otherwise, consultation should take place when appropriate. Another suggestion was that handicapped children and mentally disabled persons be added to the list of examples of vulnerable subjects for which an IRB that regularly reviews research might want to consider inclusion of one or more members who are knowledgeable about and experienced in working with these subjects.

Response

The Department of Education has considered these comments carefully and has decided to withdraw the departure to the common rule and to adopt the common rule as promulgated in this document. The Secretary, however, continues to believe that there is a special need to protect handicapped children and mentally disabled persons. Thus, the Secretary strongly urges institutions to included at least one person who is primarily concerned with the welfare of the research subjects whenever the research involved handicapped children or mentally disabled persons. While the Secretary agrees to the common rule provision regarding IRB representation as a general matter, the Secretary has decided to address the concerns underlined by the proposed departure on a programmatic basis under the Department of Education's programs of the National Institute on Disability and Rehabilitation Research (34 CFR parts 350 and 356). Accordingly, the Secretary amends the program regulations for these programs in a document published in another section of this **Federal Register** part.

In light of the concern of the Department of Education that these groups were not clearly identified as vulnerable populations, "handicapped" has been added to the illustrative list in § _____.107.

Comments on Other Sections

Section _____.101 explains the application of the Policy. Section _____.101(b) describes categories of research that are exempt from the Policy.

Comment

Several commentators indicated that the language and intent of this section was helpful. One commentator indicated that he believes the section was written primarily for medical and health research and should not apply to involvement of human subjects for general business interviews or surveys. The commentators recommended the exemption of information gathering related to business. Further comment suggested that all minimal risk research be exempt from the regulations.

Response

The Committee believes that the exemptions are sufficiently clear so that all types of research, not just biomedical or health research, may be reviewed using the specified criteria. In addition, the Committee has indicated that the exemptions of § _____.101(b) of the Policy provides for the exemption of certain research including much of the research used by business (e.g., survey research) in which there is little or no risk.

Section _____.101(b)(2)

Comment

Section _____.101(b)(2) is an exemption for research involving the use of educational tests, survey procedures or observation of public behavior. To paraphrase, this type of research is exempt unless information is recorded in a manner such that subjects can be identified and disclosure of the responses outside the research could place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. Three commentators expressed concern that the additional subparts B, C, and D of the HHS regulations for the protection of human subjects are not part of the Federal policy. They noted that institutions with assurances with HHS will be required to apply provisions of those subparts in research they support or conduct, while other Federally-supported research would not be subject to the subpart requirements.

Others commenting on § _____.101(b)(2) indicated that research that could involve sensitive data could place the subjects at risk, even if information is not recorded in such a manner that human subjects can be identified and should not be exempt from provisions of the Policy. One respondent noted that one IRB reviews this type of research even if an exemption is permitted by the regulations. Another indicated that this section will exclude from normally exempt educational, survey, interview or observational research any instances wherein disclosure of subjects responses could be damaging to the subject's reputation. Because reputation is a subjective term that is difficult to define operationally, the commentator suggested that the wording be changed to limit exceptions to specific risks of "professional and sociological damage."

Response

The Interagency Committee may at a later date wish to consider incorporation or provisions of the other subparts of the HHS regulations into federal policy. However, such considerations should not delay publication of basic protections for all human subjects. At this time, institutions sponsoring research under HHS-approved assurances will adhere to provisions of all the subparts of 45 CFR part 46. A footnote has been added to § _____.101(b) indicating that

Institutions with HHS-approved assurances on file will abide by provisions of 45 CFR 46 subparts A–D. Some of the other

Departments and Agencies have incorporated all provisions of 45 CFR 46.101(b) into their policies and procedures as well. However, the exemptions at 45 CFR 46.101(b) do not apply to research involving prisoners, fetuses, pregnant women, or human in vitro fertilization, subparts B and C. The exemption at 45 CFR 46.101(b)(2) for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, subpart D, except for research involving observation of public behavior when the investigator(s) do not participate in the activities being observed.

A Notice to amend subpart D, 45 CFR 46.401(a)(2)(b) to renumber exemptions to permitted and not permitted to conform the subpart D reference to the renumbered exemptions in the Common Rule is published elsewhere in this issue of the **Federal Register**.

Under this footnote, for research involving children, institutions that have multiple project assurances on file with OPRR will not be able to use all provisions in the exemption in § _____.101(b)(2). However, the educational tests basis for the exemption contained in § _____.101(b)(2) will still be available to institutions conducting research involving children. In developing the common rule, a number of HHS exemptions were consolidated, including the HHS educational tests exemption. The educational tests exemption has been available for use under subpart D of the HHS regulations, Additional Protections Involving Children. Thus, the footnote to the common rule continues the provision that existed under the previous regulations.

Some institutions do not choose to permit exemptions even if they are permitted by the policy. This is their prerogative, and assurances of compliance incorporate provisions for utilizing exemptions.

Section _____.101(b)(3)

Comment

Section _____.101(b)(3) described an exemption for research involving the use of educational tests, survey procedures, interview procedures, or observation of public behavior that is not exempt under the exemption in § _____.101(b)(2) if human subjects are elected or appointed public officials or candidates for public office or if Federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter. Two commentators recommended deletion of this exemption because confidentiality considerations are not the only purpose of IRB review. Other human subjects protections issues might need to be considered in research that is not exempt by the criteria described in § _____.101(b)(2). Furthermore, the commentators explained that IRBs and institutions will not know that Federal statutes afford these protections, and inconsistency and confusion is likely.

Response

At present the only statutes that meet the criteria in § _____.101(b)(3)(ii) of which the Committee is aware are those for research conducted or supported by the Department of Justice under 42 U.S.C. 3789g. and certain research conducted or supported by the National Center for Education Statistics of the Department of Education under 20 U.S.C. 1221e–1. The Department of Justice's Office of Justice Programs (OJP) has several constituent offices that conduct research that would fall under § _____.101(b)(3). The law governing OJP research activities, 42 U.S.C. 3789g(a), provides that

> Except as provided by Federal law other than this chapter, no officer or employee of the Federal Government, and no recipient of assistance under the provisions of this chapter shall use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this chapter. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

The law governing research conducted by the National Center for Education Statistics under 20 U.S.C. 1221e–1 provides that data collected by the National Center for Education Statistics may not be used for any purpose other than the statistical purpose for which the data were collected and establishes further protections regarding that data, including a provision that they

> shall be immune from legal process, and shall not, without the consent of the individual concerned, be admitted as evidence or used for any purpose in any action, suit, or other judicial or administrative proceeding. 20 U.S.C. 1221e–1(d)(4)(B).

It is the responsibility of a Federal Department or Agency to assist the institutions proposing to conduct a research project which it supports in determining if the research is subject to the provisions of the Federal statutes meeting the criteria in § _____.101(b)(3)(ii).

Section _____.101(h)

Comment

Section _____.101(h) discusses research that takes place in foreign countries covered by the policy. One respondent endorsed this section. Another found the provision somewhat ambiguous and suggested that it be made clear that a researcher may either comply with the policy provision or may substitute the foreign procedure in lieu of the policy only following a determination by the Department or Agency Head that the foreign procedures are at least equivalent to those required in the policy. Another comment reflected that it may be difficult at the time of submitting a research proposal to a supporting Department or Agency to know if a foreign country's guidelines provide protections which are at least equivalent to the policy; the Interagency Committee or Department or Agency Heads should publish regulations or advisories indicating which are considered "equivalent."

Response

The Interagency Committee concurs that evaluation of other country's protection requirements in comparison with the policy will be an important Committee initiative and it will consider publication of notices that reflect the decisions of Department and Agency Heads.

Also in § _____.101(h), reference to Helsinki as amended in 1983 is now changed to Helsinki as amended in 1989.

Section _____.102 Definitions

Comment

Section _____.102 includes the definition section in the Federal Policy. In this section, one commentator asked for a definition of "principal investigator," since that individual bears responsibility for human subject protection. Another commentator suggested adding a definition of "scientific fraud."

Another suggestion was to take into account First Amendment concerns involving freedom of speech in situations where social scientists interview foreign and domestic government and private individuals to obtain information. Another commentator suggested that the definition of human subject in § _____.102(f) should make clear that with, respect to interview research, a distinction should be made between

information provided by a person which relates to past or present events or the actions of others, as opposed to the attitudes or actions of the interviewees themselves; only in the latter case should the interviewee constitute a human subject. Also, another letter explained that in some cultures, ancestral research would not come under the definition of "human subject" because individuals were deceased. However, this type of research might be distressing to living family members.

Section _____.102(b) includes the definition of "institution." One commentator proposed that the definition of "private entity" should also be included.

Section _____.102(h) includes the definition of "IRB approval." Three commentators suggested that the term "at the institution" was not appropriate in the definition of approval as "* * * determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements." Much of the research of an institution is off-site and thus seemed to be in technical violation under the proposed language.

Response

The Interagency Committee agrees that the principal investigator is a key person for protection of human subjects and bears a broad responsibility for implementation of the requirements. The term "investigator" is used in the policy, but not "principal investigator" and no definition is provided because the responsibility for protecting human subjects is shared by the entire research team. No definition of scientific fraud has been included, and the term has been deleted from § _____.103(b)(5), as described previously.

The Committee believes that the comment on § _____.102(f), definition of "human subject," about interview content is addressed through application of exemption criteria in § _____.101(b)(2) as well as in the precise wording of the definition itself.

In response to the comments about the phrase "at the institution" in the definition of IRB approval in § _____.102(h), the Interagency Committee responds that there are instances in which the IRB has approval authority where the research is not conducted at the institutional site. The policy at § _____.114, Cooperative Research, is an important cross-reference.

Establishment and approval of other off-site IRBs may be required in some circumstances in which another institution is involved in research. The Department or Agency Heads reserve the authority to approve cooperative arrangements. The phrase "at the institution" in the definition of IRB approval should be interpreted to mean field sites and other off-site facilities over which an institution has jurisdiction.

Section _____.103 Assurances

Comment

Section _____.103 explains how compliance is assured under this Policy in research conducted or supported by a federal Department or Agency. Most of the comments on this section concerned reporting and misconduct issues in § _____.103(b)(5) or the "grace period" or timing of certification in § _____.103(f), discussed previously. Several other comments are as follows: Three respondents asked for clarification of the rationale for reporting requirements in § _____.103(a). This section requires that when the existence of an HHS-approved assurance is accepted in lieu of requiring submission of a new assurance, reports required by the Policy are to be made to the Department and Agency Heads. Reports (with the exception of certification) are also to be made to OPRR.

Another comment was prompted by review of § _____.103(b)(1) which requires inclusion in the assurance of principles governing the institution in protection of human subjects, such as a statement of ethical principles or existing codes. The commentator suggested that a statement as to the purpose of having regulations which create an IRB structure should be explicitly included in the regulations.

A comment concerning § _____.103(f) requests clarification on what type of certification documentation will be acceptable.

Response

In consideration of these comments, the Interagency Committee offers the following information. In § _____.103(a) the only reports required to be made to both the head of the Department or Agency supporting the research and the OPRR when the HHS assurance is utilized are those required under § _____.103(b)(5). The head of the Department or Agency supporting a research project must have information concerning conduct of that research including instances of unanticipated problems or serious or continuing noncompliance with the Policy or the requirements or determinations of the IRB and any suspension or termination of IRB approval. OPRR requires this information to ensure that human subjects protections under the Policy and under the HHS-approved Assurance are being properly implemented and that institutions have fulfilled their requirements in an appropriate and timely manner.

With regard to the comment concerning certification requirements in § _____.103(f), standardized language for the certification will be developed. Certification now used by HHS has been suggested as a basis for development of the language.

Section _____.107 IRB Membership

Comment

Most of the commentators on § _____.107 address the proposed departure on IRB membership for the Department of Education that has been discussed above [§ _____.107(a)]. Other comments received were as follows: Reference is made in the Policy in several places to vulnerable subject populations. One commentator indicated that all subject populations are vulnerable and that the term "exceptionally vulnerable" would be better phraseology for those instances for which additional safeguards are urged or required.

Section _____.107(b) requires that every reasonable nondiscriminatory effort be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes. One respondent indicated that the HHS standard in the regulations published in 1981 requiring that no IRB shall be constituted entirely of men or entirely of women should be retained. A further requirement of § _____.107(b) is that no IRB may consist entirely of members of one profession. Another respondent suggested that the word "discipline" be substituted for "profession."

Response

The Committee did not believe that the suggested language changes would significantly improve the understanding or implementation of the sections. It expects that institutions will use good judgment and diligence in selecting persons as IRB members who can fulfill the requirements of § _____.107 (a) and (b) so that persons of both genders and persons with varying backgrounds will promote responsible review of the research activities. In approving Assurances, the Federal Departments and Agencies that conduct, support or regulate research will review IRB

composition to ensure that the membership is appropriate for the research, and may request that membership be supplemented if complete and adequate review of the research does not appear possible.

As regards the gender consideration in IRB composition the Committee notes that in seeking diverse membership on the IRB, the institution must consider both men and women who can contribute to the role of the IRB.

Section _____.110 Expedited Review Procedures

Comment

This section sets forth expedited review procedures for certain kinds of research involving no more than minimal risk and for minor changes in approved research. Section _____.110(b) indicates that an IRB may use the expedited review procedure under certain specified circumstances with the approval of Department or Agency heads. Four respondents noted that confusion may result in institutions if Departments or Agencies have different requirements. Furthermore, it may be burdensome to IRBs and institutions to seek Department and Agency approval for use of expedited review. One respondent recommended that the phrase "with the approval of department or agency heads" in § _____.110(b) be deleted because it will result in bureaucratic delays in approval to use the authority. Furthermore, the authority to restrict use of expedited review is found in § _____.110(d) whereby the Department or Agency head may restrict, suspend, terminate or choose not to authorize the use of the expedited review procedure.

Response

The Committee agreed that the phrase in § _____.110(b) "with the approval of department or agency heads," should be deleted because § _____.110(d) accomplished the intention of the Committee. As an example of Department and Agency use of this authority, note that HHS does not permit expedited review for institutions that do not hold Multiple Project Assurances of Compliance. Note also that some institutions which have authority to use expedited procedures choose to use full IRB review instead.

Note that parentheses have been added to the word "reviewer(s)" in § _____.110(b)(1) to clarify that one or more reviewers may carry out the expedited review procedures in accordance with § _____.110(b).

Section _____.111 Criteria for IRB Approval of Research

Comment

Three commentators requested deletion of the term "economically or educationally disadvantaged" in the examples of those who are vulnerable subjects because of lack of clarity of the term, difficulty in determining if some subjects were in this category and possible exclusion from beneficial research protocols of those deemed to be included in this category.

Response

The Committee believes that the criteria for participation and the potential vulnerability of some research subjects are still a very important consideration for IRBs. In exercising their responsibilities, IRBs are charged with evaluating the benefits and the burdens of the research so that unjust social patterns do not appear in the overall distribution of the burdens and benefits of research. The 1979 Belmont Report outlining ethical principles and guidelines for the protection of human subjects of research written by the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research makes special note that some populations are burdened in many ways by their social circumstances and environments.

> * * * when research is proposed that involves risks and does not include a therapeutic component, other less burdened classes of persons should be called on first to accept these risks of research, except where research is directly related to the specific conditions of the class involved.
>
> * * * certain groups, such as racial minorities, the economically disadvantaged, the very sick, and the institutionalized may continually be sought as research subjects, owing to their ready availability in settings where research is conducted. Given their dependent status and their frequently compromised capacity for free consent, they should be protected against the danger of being involved in research solely for administrative convenience, or because they are easy to manipulate as a result of their illness or socioeconomic condition.

The Committee expects that in its review of equitable treatment and review of benefits and burdens, the educationally or economically disadvantaged will not be excluded from potentially beneficial research to individuals or to those persons as a class.

Section _____.113 Suspension or Termination of IRB Approval of Research

Comment

One comment was offered suggesting that institutions, not IRBs, should report to Department and Agency Heads. Another response recommended that OPRR be designated as the central coordinating office to which such notification should be sent. Designation of OPRR as the single reporting channel would ensure prompt requisite reporting to the Government, the commentator noted.

Response

This section does not require that the IRB report to the Department or Agency head. The responsibility for reporting is specified in the institution's assurance.

OPRR will receive reports if institutions have an assurance on file with the HHS which covers the research in question and will be notified in accordance with § _____.103(b)(3). OPRR cannot act as a central information office for other Departments and Agencies in receiving reports of this nature because of insufficient resources and regulatory jurisdictional considerations.

Section _____.114 Cooperative Research

Comment

Confusion may result for institutions if Departments and Agencies have differing requirements.

Response

The Committee will attempt to advise Departments and Agencies so that procedural requirements will be consistent.

Section _____.115 IRB Records

Comment

Modified language for this section was suggested to assure that confidentiality will be maintained to the greatest extent possible.

Response

The Committee agreed that confidentiality considerations are most important for IRB records. While it rejected the detailed language suggested by the commentator, it acknowledged the importance of maintaining confidentiality. It believes that the proposed language is adequate.

Section _____.116 General Requirements for Informed Consent; and

Section _____.117 Documentation of Informed Consent

Comment

One respondent wrote that the differences between §_____.116 (c) and (d) and §_____.117(c) were confusing.

Response

Section _____.116(c) specifies that an IRB may approve a consent procedure which alters some or all of the required elements of informed consent or waives the requirement to obtain informed consent in research or demonstration projects which are subject to approval of state and local authorities and which meet certain other requirements. Section _____.116(d) specifies that an IRB may, under limited circumstances [other than those of §_____.116(c)] approve a consent procedure which alters some or all of the elements of informed consent or waive the requirements to obtain informed consent for certain types of research. Section _____.117(c) specifies conditions under which an IRB may waive the requirement for the investigator to obtain a signed consent document for some or all subjects in the research.

Section _____.123 Early Termination of Research

Comment

Two commentators expressed concern the establishment of this section implies that a "blacklist" composed of individuals and institutions that, in the judgment of Department and Agency Heads, have failed to discharge properly their responsibilities for the protection of human subjects. Serious breaches of confidentiality and due process could be implied. The inclusion of the parenthetical phrase "(whether or not the research was subject to federal regulations)" was also of concern because it implies that information gathering may lead to violations of confidentiality.

Response

The Committee is aware of concerns about the need for confidentiality and due process considerations. The Committee notes that other federal regulations deal with the suspension and termination of funding. These regulations provide the requisite due process. Sources of information and criteria to be used by Department and Agency Heads for making decisions are addressed with more specificity in those regulations. The federal government does maintain information that is pertinent to the exercise of the discretionary authority to award funding. Appropriate confidentiality protections apply to that information.

Section _____.124 Conditions

Comment

A suggestion was made that additional considerations of the Department or Agency head noted in this section should be limited to those required by statute.

Response

The Committee, in its ongoing deliberations, will attempt to maintain consistency and minimize burdens to institutions.

Department and Agency—Specific Comments

Department of Education

The 34 CFR 97.107(a) departure on composition of the IRB was discussed earlier in this preamble.

The Department of Education proposed to amend §_____.101(b)(3), To what does this policy apply, by revising paragraph (b)(3)(ii) to exempt educational tests and surveys, interviews, or certain observations from coverage of the regulations if the research is conducted under a program subject to the protections of the General Education Provisions Act (GEPA). This departure would have expanded upon an exception contained in the common rule that exempted research conducted under a statute that requires that the confidentiality of the personally identifiable information be maintained, without exception, throughout the research and thereafter.

Much of the research that would have been covered by the GEPA exception is conducted by the National Center for Education Statistics (NCES). Since publication of the NPRM for the common rule, the Department has developed procedures implementing new authority under GEPA that establish absolute confidentiality for individuals who are the subjects of the NCES research which is subject to the confidentiality requirements of section 406(d)(4) of GEPA. Thus, NCES research covered by the GEPA confidentiality requirements now falls within the exception in the common rule that excludes from coverage of the regulations research under a statute that provides for absolute confidentiality [§_____.101(b)(3)(ii)] and an expanded exception for that research is unnecessary.

The Secretary has decided to withdraw the GEPA departure as being inconsistent with the Department's overall objective of ensuring that research conducted or sponsored by the Department contain the greatest possible protections consistent with the common rule. Research of the Department other than that conducted under the NCES statute will be covered by the common rule.

Comment

Four comments were received regarding the exception from the common rule requirements for programs covered by GEPA. Three of the commentators were concerned that the proposed departure removed safeguards or did not provide additional safeguards for the protection of research subjects, while possibly increasing administrative burden on IRBs. One of these three commentators was concerned that the proposed departure might prohibit certain research procedures as applied to educational practices or programs. One commentator indicated that the proposed departure would not pose any problems.

Response

The departure to §_____.101(b)(3)(ii) was based on statutes applicable to the Department that provide protection for subjects of the Department's education-related tests and surveys, interview procedures, and observation of public behavior. The protections are found in the GEPA at section 400A (control of paperwork) (20 U.S.C. 1221–3); section 406(d)(4) (confidentiality of National Center for Education Statistics data) (20 U.S.C. 1221e–1); section 438 (Family Educational Rights and Privacy Act) (20 U.S.C. 1232g); and section 439 (Protection of Pupil Rights Amendment) (20 U.S.C. 1232h). The departure was not intended to create additional burdens for IRBs but to eliminate the need for IRB approval of research in those cases where the research was subject to the GEPA. The Secretary has withdrawn the proposed departure because it is inconsistent with ensuring the greatest protection under the programs administered by the Department.

Because the departure is being withdrawn, there is no need to explain how the proposed departure would have affected research practices.

Department of Veterans Affairs (VA)

Concern was expressed that §_____.111(a)(4) and §_____.116 of

the Federal Policy would supersede the Veterans Administration Department of Medicine and Surgery (VA DM&S) Circular 10–88–50 which allows next of kin to grant consent for incompetent relatives under specific conditions.

The VA responded, however, that Federal Policy mandates informed consent by the subject, or the subject's "legally authorized representative." "Legally authorized representative" is defined to include "individual(s) * * * authorized under applicable law * * * to consent on behalf of a prospective subject * * *." Thus, the proposed consent does not preclude next of kin consent so long as such consent is "authorized under applicable law."

38 U.S.C. 4131, and VA policies promulgated thereunder, do authorize next of kin consent. Accordingly, the Common Federal Policy and current VA policies are consistent.

Department of Justice

The Department of Justice intends to retain special protections for prison populations in research it supports or conducts in accordance with 28 CFR parts 22 and 512.

Department of Defense

Comment

One response requested clarification of how the Federal Policy will extend to DOD research. Numerous questions concerning applicability to military and non-military personnel, voluntary versus mandated participation situations, identifiable data and the broad range of DOD-sponsored research were posed. The respondent indicated that formulating guidelines for informed consent is particularly important in the military context.

Response

Questions raised regarding application of the proposed regulations to DOD-supported research are reasonable and appropriate but are regarded as agency specific. DOD plans to address these particular issues through revision of DOD Directive 32–16.2, Protection of Human Subjects in DOD-supported Research.

The text of the common rule is adopted by the following Department and Agencies as set forth below:

Text of the Common Rule

The text of the Common Rule as adopted by the Department and Agencies in this document appears below:

_____CFR Part _____—Protection of Human Subjects

Sec.

§ ____.101 To what does this policy apply?

(a) Except as provided in paragraph (b) of this section, this policy applies to all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency which takes appropriate administrative action to make the policy applicable to such research. This includes research conducted by federal civilian employees or military personnel, except that each department or agency head may adopt such procedural modifications as may be appropriate from an administrative standpoint. It also includes research conducted, supported, or otherwise subject to regulation by the federal government outside the United States.

(1) Research that is conducted or supported by a federal department or agency, whether or not it is regulated as defined in § ____.102(e), must comply with all sections of this policy.

(2) Research that is neither conducted nor supported by a federal department or agency but is subject to regulation as defined in § ____.102(e) must be reviewed and approved, in compliance with § ____.101, § ____.102, and § ____.107 through § ____.117 of this policy, by an institutional review board (IRB) that operates in accordance with the pertinent requirements of this policy.

(b) Unless otherwise required by department or agency heads, research activities in which the only involvement of human subjects will be in one or more of the following categories are exempt from this policy:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (i) research on regular and special education instructional strategies, or (ii) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

(i) Information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures, or observation of public behavior that is not exempt under paragraph (b)(2) of this section, if:

(i) The human subjects are elected or appointed public officials or candidates for public office; or (ii) federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research, involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in such a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department of agency heads, and which are designed to study, evaluate, or otherwise examine:

(i) Public benefit or service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (i) if wholesome foods without additives are consumed or (ii) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

(c) Department or agency heads retain final judgment as to whether a particular activity is covered by this policy.

(d) Department or agency heads may require that specific research activities or classes of research activities conducted, supported, or otherwise subject to regulation by the department or agency but not otherwise covered by this policy, comply with some or all of the requirements of this policy.

(e) Compliance with this policy requires compliance with pertinent federal laws or regulations which provide additional protections for human subjects.

(f) This policy does not affect any state or local laws or regulations which may otherwise be applicable and which provide additional protections for human subjects.

(g) This policy does not affect any foreign laws or regulations which may otherwise be applicable and which provide additional protections to human subjects of research.

(h) When research covered by this policy takes place in foreign countries, procedures normally followed in the foreign countries to protect human subjects may differ from those set forth in this policy. [An example is a foreign institution which complies with guidelines consistent with the World Medical Assembly Declaration (Declaration of Helsinki amended 1989) issued either by sovereign states or by an organization whose function for the protection of human research subjects is internationally recognized.] In these circumstances, if a department or agency head determines that the procedures prescribed by the institution afford protections that are at least equivalent to those provided in this policy, the department or agency head may approve the substitution of the foreign procedures in lieu of the procedural requirements provided in this policy. Except when otherwise required by statute, Executive Order, or the department or agency head, notices of these actions as they occur will be published in the **Federal Register** or will be otherwise published as provided in department or agency procedures.

(i) Unless otherwise required by law, department or agency heads may waive the applicability of some or all of the provisions of this policy to specific research activities or classes of research activities otherwise covered by this policy. Except when otherwise required by statute or Executive Order, the department or agency head shall forward advance notices of these actions to the Office for Protection from Research Risks, Department of Health and Human Services (HHS), and shall also publish them in the **Federal Register** or in such other manner as provided in department or agency procedures.[1]

§ ___.102 Definitions.

(a) *Department or agency head* means the head of any federal department or agency and any other officer or employee of any department or agency to whom authority has been delegated.

(b) *Institution* means any public or private entity or agency (including federal, state, and other agencies).

(c) *Legally authorized representative* means an individual or judicial or other body authorized under applicable law to consent on behalf of a prospective subject to the subject's participation in the procedure(s) involved in the research.

(d) *Research* means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. Activities which meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

(e) *Research subject to regulation*, and similar terms are intended to encompass those research activities for which a federal department or agency has specific responsibility for regulating as a research activity, (for example, Investigational New Drug requirements administered by the Food and Drug Administration). It does not include research activities which are incidentally regulated by a federal department or agency solely as part of the department's or agency's broader responsibility to regulate certain types of activities whether research or non-research in nature (for example, Wage and Hour requirements administered by the Department of Labor).

(f) *Human subject* means a living individual about whom an investigator (whether professional or student) conducting research obtains

(1) data through intervention or interaction with the individual, or

(2) identifiable private information.

Intervention includes both physical procedures by which data are gathered (for example, venipuncture) and manipulations of the subject or the subject's environment that are performed for research purposes. Interaction includes communication or interpersonal contact between investigator and subject. "Private information" includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a medical record). Private information must be individually identifiable (i.e., the identity of the subject is or may readily be ascertained by the investigator or associated with the information) in order for obtaining the information to constitute research involving human subjects.

(g) *IRB* means an institutional review board established in accord with and for the purposes expressed in this policy.

(h) *IRB approval* means the determination of the IRB that the research has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and federal requirements.

(i) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of

[1] Institutions with HHS-approved assurances on file will abide by provisions of title 45 CFR part 46 subparts A–D. Some of the other Departments and Agencies have incorporated all provisions of title 45 CFR part 46 into their policies and procedures as well. However, the exemptions at 45 CFR part 46.101(b) do not apply to research involving prisoners, fetuses, pregnant women, or human in vitro fertilization, subparts B and C. The exemption at 45 CFR part 46.101(b)(2), for research involving survey or interview procedures or observation of public behavior, does not apply to research with children, subpart D, except for research involving observations of public behavior when the investigator(s) do not participate in the activities being observed.

routine physical or psychological examinations or tests.

(j) *Certification* means the official notification by the institution to the supporting department or agency, in accordance with the requirements of this policy, that a research project or activity involving human subjects has been reviewed and approved by an IRB in accordance with an approved assurance.

§ ____.103 Assuring compliance with this policy—research conducted or supported by any federal department or agency.

(a) Each institution engaged in research which is covered by this policy and which is conducted or supported by a federal department or agency shall provide written assurance satisfactory to the department or agency head that it will comply with the requirements set forth in this policy. In lieu of requiring submission of an assurance, individual department or agency heads shall accept the existence of a current assurance, appropriate for the research in question, on file with the Office for Protection from Research Risks, HHS, and approved for federalwide use by that office. When the existence of an HHS-approved assurance is accepted in lieu of requiring submission of an assurance, reports (except certification) required by this policy to be made to department and agency heads shall also be made to the Office for Protection from Research Risks, HHS.

(b) Departments and agencies will conduct or support research covered by this policy only if the institution has an assurance approved as provided in this section, and only if the institution has certified to the department or agency head that the research has been reviewed and approved by an IRB provided for in the assurance, and will be subject to continuing review by the IRB. Assurances applicable to federally supported or conducted research shall at a minimum include:

(1) A statement of principles governing the institution in the discharge of its responsibilities for protecting the rights and welfare of human subjects of research conducted at or sponsored by the institution, regardless of whether the research is subject to federal regulation. This may include an appropriate existing code, declaration, or statement of ethical principles, or a statement formulated by the institution itself. This requirement does not preempt provisions of this policy applicable to department- or agency-supported or regulated research and need not be applicable to any research exempted or waived under § ____.101 (b) or (i)

(2) Designation of one or more IRBs established in accordance with the requirements of this policy, and for which provisions are made for meeting space and sufficient staff to support the IRB's review and recordkeeping duties.

(3) A list of IRB members identified by name; earned degrees; representative capacity; indications of experience such as board certifications, licenses, etc., sufficient to describe each member's chief anticipated contributions to IRB deliberations; and any employment or other relationship between each member and the institution; for example: full-time employee, part-time employee, member of governing panel or board, stockholder, paid or unpaid consultant. Changes in IRB membership shall be reported to the department or agency head, unless in accord with § ____.103(a) of this policy, the existence of an HHS-approved assurance is accepted. In this case, change in IRB membership shall be reported to the Office for Protection from Research Risks, HHS.

(4) Written procedures which the IRB will follow (i) for conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (ii) for determining which projects require review more often than annually and which projects need verification from sources other than the investigators that no material changes have occurred since previous IRB review; and (iii) for ensuring prompt reporting to the IRB of proposed changes in a research activity, and for ensuring that such changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except when necessary to eliminate apparent immediate hazards to the subject.

(5) Written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the department or agency head of (i) any unanticipated problems involving risks to subjects or others or any serious or continuing noncompliance with this policy or the requirements or determinations of the IRB and (ii) any suspension or termination of IRB approval.

(c) The assurance shall be executed by an individual authorized to act for the institution and to assume on behalf of the institution the obligations imposed by this policy and shall be filed in such form and manner as the department or agency head prescribes.

(d) The department or agency head will evaluate all assurances submitted in accordance with this policy through such officers and employees of the department or agency and such experts or consultants engaged for this purpose as the department or agency head determines to be appropriate. The department or agency head's evaluation will take into consideration the adequacy of the proposed IRB in light of the anticipated scope of the institution's research activities and the types of subject populations likely to be involved, the appropriateness of the proposed initial and continuing review procedures in light of the probable risks, and the size and complexity of the institution.

(e) On the basis of this evaluation, the department or agency head may approve or disapprove the assurance, or enter into negotiations to develop an approvable one. The department or agency head may limit the period during which any particular approved assurance or class of approved assurances shall remain effective or otherwise condition or restrict approval.

(f) Certification is required when the research is supported by a federal department or agency and not otherwise exempted or waived under § ____.101 (b) or (i). An institution with an approved assurance shall certify that each application or proposal for research covered by the assurance and by § ____.03 of this Policy has been reviewed and approved by the IRB. Such certification must be submitted with the application or proposal or by such later date as may be prescribed by the department or agency to which the application or proposal is submitted. Under no condition shall research covered by § ____.103 of the Policy be supported prior to receipt of the certification that the research has been reviewed and approved by the IRB. Institutions without an approved assurance covering the research shall certify within 30 days after receipt of a request for such a certification from the department or agency, that the application or proposal has been approved by the IRB. If the certification is not submitted within these time limits, the application or proposal may be returned to the institution. (Approved by the Office of Management and Budget under Control Number 9999–0020.)

§ ____.104 [Reserved]

§ ____.105 [Reserved]

§ ____.106 [Reserved]

§ ____.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly

conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable category of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the institution's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in scientific areas and at least one member whose primary concerns are in nonscientific areas.

(d) Each IRB shall include at least one member who is not otherwise affiliated with the institution and who is not part of the immediate family of a person who is affiliated with the institution.

(e) No IRB may have a member participate in the IRB's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the IRB.

(f) An IRB may, in its discretion, invite individuals with competence in special areas to assist in the review of issues which require expertise beyond or in addition to that available on the IRB. These individuals may not vote with the IRB.

§ ____ 108 IRB functions and operations.

In order to fulfill the requirements of this policy each IRB shall:

(a) Follow written procedures in the same detail as described in § ____.103(b)(4) and, to the extent required by, § ____.103(b)(5).

(b) Except when an expedited review procedure is used (see § ____.110), review proposed research at convened meetings at which a majority of the members of the IRB are present, including at least one member whose primary concerns are in nonscientific areas. In order for the research to be approved, it shall receive the approval of a majority of those members present at the meeting.

§ ____.109 IRB Review of Research.

(a) An IRB shall review and have authority to approve, require modifications in (to secure approval), or disapprove all research activities covered by this policy.

(b) An IRB shall require that information given to subjects as part of informed consent is in accordance with § ____.116. The IRB may require that information, in addition to that specifically mentioned in § ____.116, be given to the subjects when in the IRB's judgment the information would meaningfully add to the protection of the rights and welfare of subjects.

(c) An IRB shall require documentation of informed consent or may waive documentation in accordance with § ____.117.

(d) An IRB shall notify investigators and the institution in writing of its decision to approve or disapprove the proposed research activity, or of modifications required to secure IRB approval of the research activity. If the IRB decides to disapprove a research activity, it shall include in its written notification a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

(e) An IRB shall conduct continuing review of research covered by this policy at intervals appropriate to the degree of risk, but not less than once per year, and shall have authority to observe or have a third party observe the consent process and the research.

(Approved by the Office of Management and Budget under Control Number 9999–0020.)

§ ____.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

(a) The Secretary, HHS, has established, and published as a Notice in the **Federal Register**, a list of categories of research that may be reviewed by the IRB through an expedited review procedure. The list will be amended, as appropriate after consultation with other departments and agencies, through periodic republication by the Secretary, HHS, in the **Federal Register**. A copy of the list is available from the Office for Protection from Research Risks, National Institutes of Health, HHS, Bethesda, Maryland 20892.

(b) An IRB may use the expedited review procedure to review either or both of the following:

(1) Some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk,

(2) Minor changes in previously approved research during the period (of one year or less) for which approval is authorized.

Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the chairperson from among members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the non-expedited procedure set forth in § ____.108(b).

(c) Each IRB which uses an expedited review procedure shall adopt a method for keeping all members advised of research proposals which have been approved under the procedure.

(d) The department or agency head may restrict, suspend, terminate, or choose not to authorize an institution's or IRB's use of the expedited review procedure.

§ ____.111 Criteria for IRB approval of research.

(a) In order to approve research covered by this policy the IRB shall determine that all of the following requirements are satisfied:

(1) Risks to subjects are minimized: (i) By using procedures which are consistent with sound research design and which do not unnecessarily expose subjects to risk, and (ii) whenever appropriate, by using procedures already being performed on the subjects for diagnostic or treatment purposes.

(2) Risks to subjects are reasonable in relation to anticipated benefits, if any, to subjects, and the importance of the knowledge that may reasonably be expected to result. In evaluating risks and benefits, the IRB should consider only those risks and benefits that may result from the research (as distinguished from risks and benefits of therapies subjects would receive even if not participating in the research). The IRB should not consider possible long-range effects of applying knowledge gained in the research (for example, the

possible effects of the research on public policy) as among those research risks that fall within the purview of its responsibility.

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons.

(4) Informed consent will be sought from each prospective subject or the subject's legally authorized representative, in accordance with, and to the extent required by § ____.116.

(5) Informed consent will be appropriately documented, in accordance with, and to the extent required by § ____.117.

(6) When appropriate, the research plan makes adequate provision for monitoring the data collected to ensure the safety of subjects.

(7) When appropriate, there are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

(b) When some or all of the subjects are likely to be vulnerable to coercion or undue influence, such as children, prisoners, pregnant women, mentally disabled persons, or economically or educationally disadvantaged persons, additional safeguards have been included in the study to protect the rights and welfare of these subjects.

§ ____.112 Review by institution.

Research covered by this policy that has been approved by an IRB may be subject to further appropriate review and approval or disapproval by officials of the institution. However, those officials may not approve the research if it has not been approved by an IRB.

§ ____.113 Suspension or termination of IRB approval of research.

An IRB shall have authority to suspend or terminate approval of research that is not being conducted in accordance with the IRB's requirements or that has been associated with unexpected serious harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the IRB's action and shall be reported promptly to the investigator, appropriate institutional officials, and the department or agency head.

(Approved by the Office of Management and Budget under Control Number 9999–0020.)

§ ____.114 Cooperative research.

Cooperative research projects are those projects covered by this policy which involve more than one institution. In the conduct of cooperative research projects, each institution is responsible for safeguarding the rights and welfare of human subjects and for complying with this policy. With the approval of the department or agency head, an institution participating in a cooperative project may enter into a joint review arrangement, rely upon the review of another qualified IRB, or make similar arrangements for avoiding duplication of effort.

§ ____.115 IRB records.

(a) An institution, or when appropriate an IRB, shall prepare and maintain adequate documentation of IRB activities, including the following:

(1) Copies of all research proposals reviewed, scientific evaluations, if any, that accompany the proposals, approved sample consent documents, progress reports submitted by investigators, and reports of injuries to subjects.

(2) Minutes of IRB meetings which shall be in sufficient detail to show attendance at the meetings; actions taken by the IRB; the vote on these actions including the number of members voting for, against, and abstaining; the basis for requiring changes in or disapproving research; and a written summary of the discussion of controverted issues and their resolution.

(3) Records of continuing review activities.

(4) Copies of all correspondence between the IRB and the investigators.

(5) A list of IRB members in the same detail as described is § ____.103(b)(3).

(6) Written procedures for the IRB in the same detail as described in § ____.103(b)(4) and § ____.103(b)(5).

(7) Statements of significant new findings provided to subjects, as required by § ____.116(b)(5).

(b) The records required by this policy shall be retained for at least 3 years, and records relating to research which is conducted shall be retained for at least 3 years after completion of the research. All records shall be accessible for inspection and copying by authorized representatives of the department or agency at reasonable times and in a reasonable manner. (Approved by the Office of Management and Budget under Control Number 9999–0020.)

§ ____.116 General requirements for informed consent.

Except as provided elsewhere in this policy, no investigator may involve a human being as a subject in research covered by this policy unless the investigator has obtained the legally effective informed consent of the subject or the subject's legally authorized representative. An investigator shall seek such consent only under circumstances that provide the prospective subject or the representative sufficient opportunity to consider whether or not to participate and that minimize the possibility of coercion or undue influence. The information that is given to the subject or the representative shall be in language understandable to the subject or the representative. No informed consent, whether oral or written, may include any exculpatory language through which the subject or the representative is made to waive or appear to waive any of the subject's legal rights, or releases or appears to release the investigator, the sponsor, the institution or its agents from liability for negligence.

(a) Basic elements of informed consent. Except as provided in paragraph (c) or (d) of this section, in seeking informed consent the following information shall be provided to each subject:

(1) A statement that the study involves research, an explanation of the purposes of the research and the expected duration of the subject's participation, a description of the procedures to be followed, and identification of any procedures which are experimental;

(2) A description of any reasonably foreseeable risks or discomforts to the subject;

(3) A description of any benefits to the subject or to others which may reasonably be expected from the research;

(4) A disclosure of appropriate alternative procedures or courses of treatment, if any, that might be advantageous to the subject;

(5) A statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained;

(6) For research involving more than minimal risk, an explanation as to whether any compensation and an explanation as to whether any medical treatments are available if injury occurs and, if so, what they consist of, or where further information may be obtained;

(7) An explanation of whom to contact for answers to pertinent questions about the research and research subjects' rights, and whom to contact in the event of a research-related injury to the subject; and

(8) A statement that participation is voluntary, refusal to participate will

involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled.

(b) Additional elements of informed consent. When appropriate, one or more of the following elements of information shall also be provided to each subject:

(1) A statement that the particular treatment or procedure may involve risks to the subject (or to the embryo or fetus, if the subject is or may become pregnant) which are currently unforeseeable;

(2) Anticipated circumstances under which the subject's participation may be terminated by the investigator without regard to the subject's consent;

(3) Any additional costs to the subject that may result from participation in the research;

(4)The consequences of a subject's decision to withdraw from the research and procedures for orderly termination of participation by the subject;

(5) A statement that significant new findings developed during the course of the research which may relate to the subject's willingness to continue participation will be provided to the subject; and

(6) The approximate number of subjects involved in the study.

(c) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth above, or waive the requirement to obtain informed consent provided the IRB finds and documents that:

(1) The research or demonstration project is to be conducted by or subject to the approval of state or local government officials and is designed to study, evaluate, or otherwise examine: (i) Public benefit of service programs; (ii) procedures for obtaining benefits or services under those programs; (iii) possible changes in or alternatives to those programs or procedures; or (iv) possible changes in methods or levels of payment for benefits or services under those programs; and

(2) The research could not practicably be carried out without the waiver or alteration.

(d) An IRB may approve a consent procedure which does not include, or which alters, some or all of the elements of informed consent set forth in this section, or waive the requirements to obtain informed consent provided the IRB finds and documents that:

(1) The research involves no more than minimal risk to the subjects;

(2) The waiver or alteration will not adversely affect the rights and welfare of the subjects;

(3) The research could not practicably be carried out without the waiver or alteration; and

(4) Whenever appropriate, the subjects will be provided with additional pertinent information after participation.

(e) The informed consent requirements in this policy are not intended to preempt any applicable federal, state, or local laws which require additional information to be disclosed in order for informed consent to be legally effective.

(f) Nothing in this policy is intended to limit the authority of a physician to provide emergency medical care, to the extent the physician is permitted to do so under applicable federal, state, or local law. (Approved by the Office of Management and Budget under Control Number 9999–0020.)

§ ____.117 Documentation of informed consent.

(a) Except as provided in paragraph (c) of this section, informed consent shall be documented by the use of a written consent form approved by the IRB and signed by the subject or the subject's legally authorized representative. A copy shall be given to the person signing the form.

(b) Except as provided in paragraph (c) of this section, the consent form may be either of the following:

(1) A written consent document that embodies the elements of informed consent required by § ____.116. This form may be read to the subject or the subject's legally authorized representative, but in any event, the investigator shall give either the subject or the representative adequate opportunity to read it before it is signed; or

(2) A short form written consent document stating that the elements of informed consent required by § ____.116 have been presented orally to the subject or the subject's legally authorized representative. When this method is used, there shall be a witness to the oral presentation. Also, the IRB shall approve a written summary of what is to be said to the subject or the representative. Only the short form itself is to be signed by the subject or the representative. However, the witness shall sign both the short form and a copy of the summary, and the person actually obtaining consent shall sign a copy of the summary. A copy of the summary shall be given to the subject or the representative, in addition to a copy of the short form.

(c) An IRB may waive the requirement for the investigator to obtain a signed consent form for some or all subjects if it finds either:

(1) That the only record linking the subject and the research would be the consent document and the principal risk would be potential harm resulting from a breach of confidentiality. Each subject will be asked whether the subject wants documentation linking the subject with the research, and the subject's wishes will govern; or

(2) That the research presents no more than minimal risk of harm to subjects and involves no procedures for which written consent is normally required outside of the research context.

In cases in which the documentation requirement is waived, the IRB may require the investigator to provide subjects with a written statement regarding the research. (Approved by the Office of Management and Budget under Control Number 9999–0020.)

§ ____.118 Applications and proposals lacking definite plans for involvement of human subjects.

Certain types of applications for grants, cooperative agreements, or contracts are submitted to departments or agencies with the knowledge that subjects may be involved within the period of support, but definite plans would not normally be set forth in the application or proposal. These include activities such as institutional type grants when selection of specific projects is the institution's responsibility; research training grants in which the activities involving subjects remain to be selected; and projects in which human subject's involvement will depend upon completion of instruments, prior animal studies, or purification of compounds. These applications need not be reviewed by an IRB before an award may be made. However, except for research exempted or waived under § ____.101 (b) or (i), no human subjects may be involved in any project supported by these awards until the project has been reviewed and approved by the IRB, as provided in this policy, and certification submitted, by the institution, to the department or agency.

§ ____.119 Research undertaken without the intention of involving human subjects.

In the event research is undertaken without the intention of involving human subjects, but it is later proposed to involve human subjects in the research, the research shall first be reviewed and approved by an IRB, as provided in this policy, a certification submitted, by the institution, to the department or agency,

and final approval given to the proposed change by the department or agency.

§ ____.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a federal department or agency.

The department or agency head will evaluate all applications and proposals involving human subjects submitted to the department or agency through such officers and employees of the department or agency and such experts and consultants as the department or agency head determines to be appropriate. This evaluation will take into consideration the risks to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained.

(b) On the basis of this evaluation, the department or agency head may approve or disapprove the application or proposal, or enter into negotiations to develop an approvable one.

§ ____.121 [Reserved]

§ ____.122 Use of federal funds.

Federal funds administered by a department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied.

§ ____.123 Early termination of research support; evaluation of applications and proposals.

(a) The department or agency head may require that department or agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the department or agency head finds an institution has materially failed to comply with the terms of this policy.

(b) In making decisions about supporting or approving applications or proposals covered by this policy the department or agency head may take into account, in addition to all other eligibility requirements and program criteria, factors such as whether the applicant has been subject to a termination or suspension under paragarph (a) of this section and whether the applicant or the person or persons who would direct or has have directed the scientific and technical aspects of an activity has have, in the judgment of the department or agency head, materially failed to discharge responsibility for the protection of the rights and welfare of human subjects (whether or not the research was subject to federal regulation).

§ ____.124 Conditions.

With respect to any research project or any class of research projects the department or agency head may impose additional conditions prior to or at the time of approval when in the judgment of the department or agency head additional conditions are necessary for the protection of human subjects.

DEPARTMENT OF AGRICULTURE

7 CFR Part 1c

RIN 0518-AA00

List of Subjects in 7 CFR Part 1c

Human subjects, Research, Reporting and record keeping requirements. Title 7 of the Code of Federal Regulations is amended by adding part 1c as set forth at the end of this document.

PART 1c PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: December 13, 1990.

Charles E. Hess,

Assistant Secretary, Science & Education.

DEPARTMENT OF ENERGY

10 CFR Part 745

RIN 1901-AA13

List of Subjects in 10 CFR Part 745

Human subjects, Research, reporting, and Record-keeping requirements. Title 10 of the Code of Federal Regulations is amended by revising part 745 as set forth at the end of this document.

PART 745 PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 5 U.S.C. 301; 42 U.S.C. 7254; 42 U.S.C. 300v–1(b).

Dated: December 21, 1990.

James D. Watkins,

Secretary of Energy.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1230

RIN 2700-AA76

List of Subjects in 14 CFR Part 1230

Human subjects, Research, Reporting and Record-keeping requirements. Title 14 of the Code of Federal Regulations is amended by adding part 1230 as set forth at the end of this document.

PART 1230 PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: January 21, 1991.

Richard H. Truly

Administrator.

DEPARTMENT OF COMMERCE

15 CFR Part 27

RIN 0690-AA17

List of Subjects in 15 CFR Part 27

Human subjects, Research, Reporting and recordkeeping requirements. Title 15 of the Code of Federal Regulations is amended by adding part 27 as set forth at the end of this document.

PART 27 PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: December 21, 1990.

Robert Mosbacher,

Secretary of Commerce.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1028

RIN 3041-AA95

List of Subjects in 16 CFR Part 1028

Human subjects, Research, Reporting and recordkeeping requirements. Title 16 of the Code of Federal Regulations is amended by revising part 1028 as set forth at the end of this document.

PART 1028 PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: January 11, 1991.

Sheldon D. Butts,

Acting Secretary.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY, AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 225

RIN 0412-AA17

List of Subjects in 22 CFR Part 225

Human subjects, Research, Reporting and record-keeping requirements. Title 22 of the Code of Federal Regulations is amended by adding part 225 at set forth at the end of this document.

PART 225 PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: December 13, 1990.

Richard E. Bissell,

Assistant Administrator for Science and Technology.

Department of Housing and Urban Development

24 CFR Part 60

RIN 2501-AA15

List of Subjects in 24 CFR Part 60

Human subjects, Research, Reporting and record-keeping requirements. Title 24 of the Code of Federal Regulations is amended by adding part 60 as set forth at the end of this document.

PART 60 PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: January 16, 1991.

Jack Kemp,

Secretary, U.S. Department of Housing and Urban Development.

DEPARTMENT OF JUSTICE

28 CFR Part 46

RIN 1105-AA13

List of Subjects in 28 CFR Part 46

Human subjects, Research, Reporting and record-keeping requirements.

Title 28 of the Code of Federal Regulations is amended by adding part 46 as set forth at the end of this document.

PART 46—PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 5 U.S.C. 301; 28 U.S.C. 509–510; 42 U.S.C. 300v–1(b).

Dated: December 24, 1990.

Dick Thornburgh,

Attorney General.

DEPARTMENT OF DEFENSE

32 CFR Part 219

RIN 0790-AC80

List of Subjects in 32 CFR Part 219

Human subjects, Research, Reporting and record-keeping requirements.

Title 32 of the Code of Federal Regulations is amended by revising part 219 as set forth at the end of this document.

PART 219—PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v-1(b).-

Dated: January 9, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEPARTMENT OF EDUCATION

34 CFR Part 97

RIN 1875-AA07

List of Subjects in 34 CFR Part 97

Human subjects, Research, Reporting and record-keeping requirements.

Title 34 of the Code of Federal Regulations is amended by adding part 97 as set forth at the end of this document.

PART 97—PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v-1(b).

Dated: June 6, 1991.

Lamar Alexander,

U.S. Secretary of Education.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 16

RIN 2900-AE29

List of Subjects in 38 CFR Part 16

Human subjects, Research, Reporting and record-keeping requirements.

Title 38 of the Code of Federal Regulations is amended by adding part 16 as set forth at the end of this document

PART 16—PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 5 U.S.C. 301; 38 U.S.C. 210(c)(1), 4131, 4134; 42 U.S.C. 300v–1(b).

Dated: February 19, 1991.

Edward J. Derwinski

Secretary of Veterans Affairs.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 26

RIN 2080–AA04

List of Subjects in 40 CFR Part 26

Human subjects, Research, Reporting and record-keeping requirements.

Title 40 of the Code of Federal Regulations is amended by adding part 26 as set forth at the end of this document.

PART 26—PROTECTION OF HUMAN SUBJECTS

Sec.

26.101 To what does this policy apply?
26.102 Definitions.
26.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
26.104 [Reserved]
26.105 [Reserved]
26.106 [Reserved]
26.107 IRB Membership.
26.108 IRB functions and operations.
26.109 IRB review of research.
26.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
26.111 Criteria for IRB approval of research.
26.112 Review by institution.
26.113 Suspension or termination of IRB approval of research.
26.114 Cooperative research.
26.115 IRB records.
26.116 General requirements for informed consent.
26.117 Documentation of informed consent.
26.118 Applications and proposals lacking definite plans for involvement of human subjects.
26.119 Research undertaken without the intention of involving human subjects.
26.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
26.121 [Reserved]
26.122 Use of Federal funds.
26.123 Early termination of research support: Evaluation of applications and proposals.
26.124 Conditions.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v-1(b).

Dated: January 28, 1991.

William K. Reilly,

Administrator.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

RIN 0991–AA71

List of Subjects in 45 CFR Part 46

Human subjects, Research, Reporting and record-keeping requirements.

Title 45 of the Code of Federal Regulations part 46 is amended, as follows:

1. An authority citation for subpart A is added to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 289, 42 U.S.C. 300v-1(b).

2. Subpart A is revised to read as set forth at the end of this document.

PART 46—PROTECTION OF HUMAN SUBJECTS

Subpart A—Basic HHS Policy for Protection of Human Research Subjects

Sec.

46.101 To what does this policy apply?
46.102 Definitions.
46.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
46.104 [Reserved]
46.105 [Reserved]
46.106 [Reserved]
46.107 IRB Membership.
46.108 IRB functions and operations.
46.109 IRB review of research.
46.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
46.111 Criteria for IRB approval of research.
46.112 Review by institution.
46.113 Suspension or termination of IRB approval of research.
46.114 Cooperative research.
46.115 IRB records.
46.116 General requirements for informed consent.
46.117 Documentation of informed consent.
46.118 Applications and proposals lacking definite plans for involvement of human subjects.
46.119 Research undertaken without the intention of involving human subjects.
46.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
46.121 [Reserved]
46.122 Use of Federal funds.
46.123 Early termination of research support: Evaluation of applications and proposals.
46.124 Conditions.

Dated: March 29, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

NATIONAL SCIENCE FOUNDATION

45 CFR Part 690

RIN 3145–AA18

List of Subjects in 45 CFR Part 690

Human subjects, Research, Reporting and record-keeping requirements.

Title 45 of the Code of Federal Regulations is amended by adding part 690 as set forth at the end of this document.

PART 690—PROTECTION OF HUMAN SUBJECTS

Sec.

690.101 To what does this policy apply?
690.102 Definitions.
690.103 Assuring compliance with this policy—research conducted or supported by any Federal Department or Agency.
690.104 [Reserved]
690.105 [Reserved]
690.106 [Reserved]
690.107 IRB Membership.
690.108 IRB functions and operations.
690.109 IRB review of research.
690.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.
690.111 Criteria for IRB approval of research.
690.112 Review by institution.
690.113 Suspension or termination of IRB approval of research.
690.114 Cooperative research.
690.115 IRB records.
690.116 General requirements for informed consent.
690.117 Documentation of informed consent
690.118 Applications and proposals lacking definite plans for involvement of human subjects.
690.119 Research undertaken without the intention of involving human subjects.
690.120 Evaluation and disposition of applications and proposals for research to be conducted or supported by a Federal Department or Agency.
690.121 [Reserved]
690.122 Use of Federal funds.
690.123 Early termination of research support: Evaluation of applications and proposals.
690.124 Conditions.

Dated: December 17, 1990.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Frederick M. Bernthal,

Acting Director.

DEPARTMENT OF TRANSPORTATION

49 CFR Part 11

RIN 2105–AB74

List of Subjects in 49 CFR Part 11

Human subjects, Research, Reporting and record-keeping requirements.

Title 49 of the Code of Federal Regulations is amended by adding part 11 as set forth at the need of this document.

PART 11—PROTECTION OF HUMAN SUBJECTS

Sec.

Authority: 5 U.S.C. 301; 42 U.S.C. 300v–1(b).

Dated: February 4, 1991.

Samuel K. Skinner,

Secretary of Transportation.

[FR Doc. 91–14258 Filed 6–17–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following request has been submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Expedited review by OMB has been requested as described below.

(Call PHS Reports Clearance Officer on 202–245–2100 for copies of submission)

Federal Policy for the Protection of Human Subjects—New—This submission is for approval of the information requirements associated with the common rule for the protection of human subjects of research conducted, supported or regulated by the following Federal departments and agencies: Department of Agriculture, Department of Energy, National Aeronautics and Space Administration, Department of Commerce, Consumer Product Safety Commission, Agency for International Development, Department of Housing and Urban Development, Department of Justice, Department of Defense, Department of Education, Department of Veterans' Affairs, Environmental Protection Agency, Department of Transportation, Central Intelligence Agency, and Department of Health and Human Services.

Adoption of the common Federal policy by these departments and agencies will implement a recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. The Office of Science and Technology Policy established an Interagency Human Subjects Coordinating Committee under the Federal Coordinating Council for Science Engineering and Technology. This group prepared a proposed Model Federal Policy for the Protection of Human Subjects that was published as a proposed policy in 1986 and again as a proposed common rule on November 10, 1988. After revision of the proposed common rule in response to public comments, the final common rule is being published elsewhere in this issue of the **Federal Register.** The common rule is based on Department of Health and Human Services (DHHS) regulations (45 CFR part 46, subpart A), the basic HHS Policy for the Protection of Human Subjects.

Respondents: Individuals or households, State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

The total number of respondents affected by these information requirements is estimated at 3,831. The total annual response burden for these requirements including all Federal departments and agencies subject to the common rule, is estimated at 187,408 hours divided as follows: 22,982 hours for recordkeeping requirements and 164,426 hours for reporting and disclosure requirements.

Additional Information:

DHHS has submitted this request for approval to OMB on behalf of all Departments and Agencies governed by this final rule. It is critical to receive OMB review and approval for the information requirements so that the common rule for the Protection of Human Subjects may be effective 60 days after publication. Federal Departments and Agencies have ongoing research programs to which the common rule will apply, and they are seeking the most expeditious time frame in which to begin protection of human subject policies and procedures. In addition, institutions supported or regulated by the involved Departments and Agencies have requested implementation of the final rule as soon as possible to lessen burden of compliance with numerous, sometimes inconsistent, procedures for the protection of human subjects required by the various Federal Departments and Agencies.

OMB has been requested to review and approve the information requirements in the common rule on an expedited basis no later than August 2, 1991. In keeping with the requirements for expedited review, we are publishing this announcement in the same issue as the proposed final rule. The information requirements are separately identified in the preamble to the rule, printed elsewhere in this issue. There are no separate forms or instructions for which approval is being sought.

OMB Desk Officer: Shannah Koss-McCallum.

Because of the time frame in which OMB has been asked to act on this request, any comments and recommendations for the proposed information collection should be provided directly to the OMB Desk Officer designated above by telephone at (202) 395–7316 or by express mail at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: May 31, 1991.

Sandra K. Mahkorn,

1Deputy Assistant Secretary for Public Health Policy.

[FR Doc. 91–14259 Filed 6–17–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 50 and 56

[Docket No. 87N-0032]

RIN 0905-AC52

Protection of Human Subjects; Informed Consent; Standards for Institutional Review Boards for Clinical Investigations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on institutional review boards (IRB's) and on informed consent to conform them to the "Federal Policy for the Protection of Human Research Subjects" (Federal Policy) published elsewhere in this issue of the **Federal Register**. Existing FDA regulations governing the protection of human subjects share a common core with the Federal Policy and implement the fundamental principles embodied in that policy.

EFFECTIVE DATE: August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Richard M. Klein, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is charged by statute with ensuring the protection of the rights, safety, and welfare of human subjects who participate in clinical investigations involving articles subject to section 505(i), 507(d), or 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i), 357(d), or 360j(g)), as well as clinical investigations that support applications for research or marketing permits for products regulated by FDA, including food and color additives, drugs for human use, medical devices for human use, biological products for human use, and electronic products.

In the **Federal Register** of January 27, 1981, FDA adopted regulations governing informed consent of human subjects (21 CFR part 50; 46 FR 8942) and regulations establishing standards for the composition, operation, and responsibilities of IRB's that review clinical investigations involving human subjects (21 CFR part 56; 46 FR 8958). At the same time, the Department of Health and Human Services (HHS) adopted regulations on the protection of human research subjects (45 CFR part 46; 46 FR 8366). The FDA and HHS regulations share a common framework.

In December 1981, the President's Commission for the study of Ethical Problems in Medicine and Biomedical and Behavioral Research (the commission) issued its "First Biennial Report on the Adequacy and Uniformity of Federal Rules and Policies, and their Implementation, for the Protection of Human Subjects in Biomedical and Behavioral Research, Protecting Human Subjects." The commission recommended that all Federal departments and agencies adopt the HHS regulations (45 CFR part 46).

In May 1982, the President's Science Advisor, Office of Science and Technology Policy (OSTP), appointed an ad hoc Committee for the Protection of Human Research Subjects (the committee), under the auspices of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET), to respond to the recommendations of the commission. The committee, composed of representatives and ex officio members from departments and agencies that conduct, support, or regulate research involving human subjects, developed responses to the commission in consultation with OSTP and the Office of Management and Budget (OMB).

The committee agreed that uniformity of Federal regulations on human subject protection is desirable to eliminate unnecessary regulations and to promote increased understanding by institutions that conduct federally-supported or regulated research. The committee developed a model policy which OSTP later modified and, with the concurrence of all affected Federal departments and agencies, published as a proposal in the **Federal Register** of June 3, 1986 (51 FR 20204). More than 200 comments were submitted in response to the proposal. Published elsewhere in this issue of the **Federal Register** is the final rule on the Federal Policy.

FDA concurs in that final rule. In the **Federal Register** of November 10, 1988 (53 FR 45678), the agency proposed to amend its regulations in 21 CFR parts 50 and 56 to conform them to the Federal Policy to the extent permitted by the act. The agency is committed to being as consistent with the final Federal Policy as it can be, given the unique requirements of the act and the fact that FDA is a regulatory agency that rarely supports or conducts research under its regulations. However, as explained in the proposed rule, FDA must diverge from §§ _____.101(h) and _____.116(d) of the Federal Policy.

FDA received 22 comments on the proposed rule from sponsors of regulated research, institutional review board members and staff, academic institutions, medical societies, and lawyers. Several comments were prepared by organizations, each representing a consortia of institutions that had been polled concerning the proposed rule.

A. General Comments

1. The majority of comments supported the agency's efforts to conform to the Federal Policy.

2. The majority of comments received concerned the proposal to amend § 56.108(b) to require that IRB's follow written guidelines for ensuring the reporting of scientific misconduct and of unanticipated problems to the IRB, institutional officials, and FDA. Two comments noted that this provision would make the IRB the institutional body that investigates alleged fraud severely damaging the IRB/investigator relationship and possibly diminishing the effectiveness of the IRB in protecting human subjects. Several comments noted that the proposed additional reporting requirements would duplicate investigator and sponsor reporting requirements and would be difficult for the IRB to enforce. One comment said that this section may adversely affect the IRB/institution relationship and asked how FDA intended to ensure that reporting occurred. One comment interpreted the provision as applicable to animal studies and wondered whether IRB's would be responsible for contacting sponsors. One comment expressed concern that the workload of the IRB would increase and adversely affect the recruitment of new members. One comment sought to exclude Adverse Drug Reaction reports. One comment argued that the reporting requirement was unauthorized by law.

Two comments from sponsors requested that sponsor notification be added under proposed § 56.108(b), noting that an investigator engaged in misconduct is unlikely to report that misconduct to the IRB, and that the sponsor is the entity that frequently detects misconduct through its extensive monitoring practices. In addition, these comments requested clarification of the office in FDA to which scientific misconduct should be reported. Several comments requested that FDA define or clarify "scientific misconduct" and "unanticipated problems."

Since the proposed model policy was published, the Public Health Service published a final rule concerning fraud and misconduct in science (54 FR 32446,

August 8, 1989). Because that rule directs institutions to establish provisions for the investigation of alleged scientific fraud and misconduct, the mention of "scientific misconduct" has been deleted, as unnecessary, from the model policy. Because FDA only proposed to require that IRB's report scientific misconduct to be consistent with the model policy, it has deleted this requirement from its final rule. This action should allay many of the concerns expressed in the comments.

Moreover, FDA believes that the comments misconstrued the intent of § 56.108(b). This section requires simply that an IRB have procedures by which it checks to ensure in reviewing each study presented, that provision has been made in the study to notify the IRB, appropriate institutional officials, and FDA in the specified circumstances. Section 56.108(b) does not require that the IRB itself provide the notification to either the institution or to FDA, unless such reporting would not otherwise occur. Although FDA's regulations include reporting requirements for certain types of investigational articles (see, e.g., 21 CFR parts 312 (investigational drugs) and 812 (investigational devices)), there are no such provisions for other articles that may be the subject of an investigation (e.g. food additives). Because all regulated research to be conducted at an institution will come before the IRB, FDA finds that the IRB is the appropriate entity to charge with the responsibility for ensuring that reporting of the specified problems to the IRB, the institution, and the agency will occur.

3. One comment urged FDA to move toward the adoption of an assurance system as established for the other agencies within HHS to guarantee compliance with regulations for the protection of human subjects.

FDA continues to believe that it would be inappropriate for it to adopt this mechanism. As stated in the final rule in the **Federal Register** of January 27, 1981 (46 FR 8959, comment 2), the benefits of assurance from IRB's that are subject to FDA jurisdiction, but not otherwise to HHS jurisdiction, do not justify the increased administrative burdens that would result from an assurance system. FDA relies on its Bioresearch Monitoring Program, along with its educational efforts, to assure compliance with these regulations.

4. One comment expressed concern over FDA's proposed divergences from sections 101(h) and 116(d) of the Federal Policy. The comment contended that it is sometimes impossible to obtain informed consent, as defined by FDA's regulations, in foreign clinical trials.

As stated in the proposed rule (53 FR 45679), FDA does not have the authority to accept the procedures followed in a foreign country in lieu of informed consent as required by the act for studies that are conducted under a research permit that it grants. The comment did not provide any information that would compel a different conclusion.

B. Comments on Definitions

5. One comment suggested that the word "discomfort" used in proposed §§ 50.3(i) and 56.102(i) is difficult to define and is subjective.

FDA believes that the meaning of "discomfort" is sufficiently clear. FDA interprets this term to have its ordinary meaning; that is, to mean the extent to which a subject may be made uncomfortable by the article that is the subject of the research.

6. One comment asserted that proposed § 56.102(m), the definition of "IRB approval," suggests an intent to change the procedural requirements of IRB approval.

FDA proposed to add this definition to make the regulations conform to the Federal Policy and to clarify the meaning of the phrase "IRB approval" under this rule. The addition of this definition is not intended to effect a substantive change in part 56. In the preamble to its August 8, 1978 proposal of the IRB regulation (43 FR 35186 at 35197), FDA presented a thorough discussion of its authority to require IRB review.

7. One comment stated that the reference to "other institutional and Federal requirements" in proposed § 56.102(m) goes beyond FDA's ability to determine other institutional requirements and may be counterproductive where there is conflict between the institutional requirements and FDA or HHS requirements. The suggestion is made to delete "and other institutional * * * requirements."

This definition is intended to make clear that IRB approval is to be based on a determination that the proposed research is acceptable under any applicable institutional requirements, applicable law, and standards of professional conduct and practice. If there are conflicts between the institutional requirements and Federal law, those conflicts obviously must be resolved in favor of the Federal law. However, institutional requirements often address matters not addressed by Federal law. Therefore, FDA finds it appropriate to mention both institutional and Federal requirements in this definition.

8. One comment suggested substituting "clinical investigation" for the word "research" in § 56.102(m).

FDA rejects the suggestion. FDA has defined "clinical investigation" in § 56.102(c) to be synonymous with "research" (46 FR 8976). Because FDA desires to conform to the Federal Policy and in the absence of a compelling argument to diverge from it, FDA is using the word used in the Federal Policy.

9. Several comments suggested deleting "at an institution" from § 56.102(m), contending that this phrase may confuse the original intent of the meaning of IRB approval. Another comment noted that much research today is conducted outside the institutional setting.

FDA rejects the comments. In 1981, when FDA adopted the IRB regulations, FDA intentionally defined "institution" broadly to include "any public or private entity or agency" (§ 56.102(f); 46 FR 8963, comment 27). Thus, § 56.102(m) is consistent with the original intent of the IRB regulations.

10. One comment suggested revising § 56.102(m) to read "IRB approval means * * * that the research has been reviewed for undue risk to the subject and may be conducted * * *."

FDA rejects the suggestion. The suggested change does not adequately describe the role of the IRB. The IRB's review of studies and informed consent documents includes numerous considerations in addition to whether the study presents undue risks to the human subjects involved.

C. Comments on Exemptions From IRB Requirements

11. One comment requested that no exemptions from IRB requirements be granted for those populations already identified as vulnerable.

FDA did not propose that studies involving vulnerable populations be exempt from IRB review. The only exemptions from the IRB review requirements were established in the 1981 final rule (46 FR 8942; 21 CFR 56.104). The use of an investigational article is exempt from IRB review if the investigation started before July 27, 1981, before the requirement of IRB review was in effect, or if it involves an emergency use of the test article, in which case there is not time for IRB review before the article is used. The agency found that in these circumstances, the considerations that support granting an exemption outweigh those that would support denying it (46 FR 8965, comment 48). The comment did not provide any basis for reconsidering

or revising this judgment. The agency points out that the latter consideration (emergency use), which is the only basis on which a new study would be exempt, applies only to particular uses of an article and would not provide the basis for an exemption for the use of an article in a particular population. Therefore, FDA finds that this comment provides no basis for modifying its regulations.

12. One comment suggested that FDA completely exempt "minimal risk" studies from IRB review.

FDA rejects the comment. The determination of minimal risk can be made only by members of the IRB, not the investigator or the sponsor. The burden of an expedited review of a protocol to determine if it presents minimal risk is not so great as to justify the requested exemption.

D. Comments on IRB Membership

13. Three comments suggested that FDA define in § 56.107 the specific members to be included on an IRB. Several comments suggested that FDA define, in new § 56.107(c), "non-scientific" and "scientific." Two comments suggested that the IRB include "one member who has an understanding of the medical risks involved." Another comment suggested that § 56.107(c) be clarified to include a statement requiring that at least one member of the IRB have an understanding of the scientific method.

FDA rejects these comments. FDA has chosen not to prescribe professional membership requirements for IRB members. The regulations allow for flexibility in the makeup of the IRB (see 46 FR 8966, comment 55). They require, however, that there be at least one member whose concerns are in nonscience areas and one member who has the professional competency to review the proposed research, such as a physician. FDA interprets "competency" in this context to include the ability to understand the scientific method. The agency believes that the membership requirements that it has adopted are adequate to ensure that an IRB will be able to fully consider the issues presented by a study.

14. One comment suggested that the proposed change in § 56.107(a), allowing IRB's that regularly review studies that involve vulnerable categories of subjects to consider including as a member an individual knowledgeable about, and experienced in, working with vulnerable populations, will afford less human subject protection than the current regulation.

The current regulation states that an IRB that regularly reviews research involving vulnerable populations should include as members individuals who are primarily concerned with the welfare of vulnerable subjects. Revised § 56.107(a) lists categories of subjects who are considered vulnerable and requires that the institution, or other authority, consider including individuals knowledgeable and experienced in working with these types of subjects as voting members on the IRB. This revision is not intended to lessen in any way the protections for vulnerable populations under FDA's regulations. As explained in the proposal (53 FR 45679), FDA is making this change only to conform to the language of the Federal Policy.

FDA on its own initiative is adding parenthesis to the word "reviewers" in § 56.110(b)(1) to permit a continuance of existing IRB review procedures.

E. Comments on IRB Functions and Operations

15. Several comments sought clarification of new § 56.108(b)(1) with regard to the definition and interpretation of "any unanticipated problems involving risks to human subjects and others" and the level of risk to be reported.

FDA interprets this phrase to mean an unexpected adverse experience that is not listed in the labeling for the test article. Such experience includes an event that may be symptomatically and pathophysiologically related to an event listed in the labeling but that differs from the event because of greater specificity or severity. The word "others" has previously been defined as persons who are participating in clinical trials under the same or similar protocols or who may be affected by products or procedures developed in those trials (see 53 FR 45661, 45665; November 10, 1988).

F. Comments on Expedited Review Procedures

16. One comment read the parenthetical change in § 56.110(b), "of one year or less," as affecting a change from the current regulations.

FDA disagrees with the comment. Under current regulations, the IRB may approve a study that will continue beyond 1 year, such as a longitudinal followup study. The IRB is obligated, however, under § 56.109(e) (21 CFR 56.109(e)), to conduct continuing review of the research at intervals appropriate to the degree of risk that it presents but not less than once a year.

17. One comment stated that expedited review procedures should never be used in research that involves vulnerable populations.

FDA disagrees with the comment. Expedited review procedures may only be used to review research that involves minimal risk as defined in § 56.102(i) or to review minor changes in previously approved research (§ 56.110(b)). The determination that such conditions apply must be made by the chairperson of the IRB, or by one or more experienced members of the IRB designated by the chairperson. Thus, research involving vulnerable populations will not be subject to expedited review unless a member of the IRB has affirmatively determined that the subjects will not be exposed to any greater risk of harm than they encounter in daily life or during routine physical or psychological examinations or tests, or that a change in research that has been reviewed by the whole IRB is minor. Obviously, in making these determinations, the IRB member must consider the nature of the subject population. Moreover, if expedited review is undertaken, the reviewer may exercise all the authority of the IRB, including the authority under § 56.111(a)(3) to ensure that any special problems of vulnerable populations have been addressed. Thus, FDA believes that vulnerable populations will not be involved in research that has been subject to expedited review procedures without full consideration of whether such research should be subject to expedited review at all and, if so, of their interests. Therefore, FDA does not agree with the comment.

G. Comments on Criteria for IRB Approval of Research

18. One comment suggested deleting "* * * economically or educationally disadvantaged persons * * *" from new § 56.111(a)(3), stating that it would be impossible for the IRB or the clinical investigator to make that determination.

FDA disagrees with the comment. As stated in § 56.111(b), FDA expects the IRB to make sure that adequate protections are included in those clinical investigations in which vulnerable subjects will be participating. There is no requirement for the IRB to make a determination that individual subjects are disadvantaged. However, the IRB is required to determine whether it is likely that vulnerable individuals will be involved in the study, and, if so, whether adequate safeguards have been included to protect the study subjects or whether additional safeguards are necessary.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or

cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Economic and Regulatory Assessments

FDA has examined the economic consequences of the final amendments to its regulations pertaining to IRB's and to informed consent in accordance with the criteria in section 1(b) of Executive Order 12291 and found that these amendments would not be a major rule under the Executive Order. The agency also has considered the effect that the final rule would have on small entities including small businesses in accordance with the Regulatory Flexibility Act (Pub. L. 96–354). The agency certifies that there will not be a significant economic impact on a substantial number of small entities. FDA explained the basis for these conclusions in the proposal (53 FR 45681). The agency did not receive any comments that suggest contrary conclusions. This final rule contains information collections subject to the Paperwork Reduction Act of 1980. These information collections have been approved under OMB control number 0910–0130.

List of Subjects in

21 CFR Part 50

Prisoners, Reporting and recordkeeping requirements, Research, Safety.

21 CFR Part 56

Reporting and Recordkeeping requirements, Research, Safety.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act, 21 CFR parts 50 and 56 are amended as follows:

PART 50—PROTECTION OF HUMAN SUBJECTS

1. The authority citation for 21 CFR part 50 continues to read as follows:

Authority: Secs. 201, 406, 408, 409, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 346, 346a, 348, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 376, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

2. Section 50.3 is amended by revising paragraph (l) to read as follows:

§ 50.3 Definitions.

* * * * *

(l) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

* * * * *

PART 56—INSTITUTIONAL REVIEW BOARDS

3. The authority citation for 21 CFR part 56 continues to read as follows:

Authority: Secs. 201, 406, 408, 409, 501, 502, 503, 505, 506, 507, 510, 513–516, 518–520, 701, 706, 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 346, 346a, 348, 351, 352, 353, 355, 356, 357, 360, 360c–360f, 360h–360j, 371, 376, 381); secs. 215, 301, 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 262, 263b–263n).

4. Section 56.102 is amended by revising paragraph (i) and by adding new paragraph (m) to read as follows:

§ 56.102 Definitions.

* * * * *

(i) *Minimal risk* means that the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

* * * * *

(m) *IRB approval* means the determination of the IRB that the clinical investigation has been reviewed and may be conducted at an institution within the constraints set forth by the IRB and by other institutional and Federal requirements.

5. Section 56.104 is amended by adding new paragraph (d) to read as follows:

§ 56.104 Exemptions from IRB requirement.

* * * * *

(d) Taste and food quality evaluations and consumer acceptance studies, if wholesome foods without additives are consumed or if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural, chemical, or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

6. Section 56.107 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 56.107 IRB membership.

(a) Each IRB shall have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB shall be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, cultural backgrounds, and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review the specific research activities, the IRB shall be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards or professional conduct and practice. The IRB shall therefore include persons knowledgeable in these areas. If an IRB regularly reviews research that involves a vulnerable catgory of subjects, such as children, prisoners, pregnant women, or handicapped or mentally disabled persons, consideration shall be given to the inclusion of one or more individuals who are knowledgeable about the experienced in working with those subjects.

(b) Every nondiscriminatory effort will be made to ensure that no IRB consists entirely of men or entirely of women, including the instituton's consideration of qualified persons of both sexes, so long as no selection is made to the IRB on the basis of gender. No IRB may consist entirely of members of one profession.

(c) Each IRB shall include at least one member whose primary concerns are in the scientific area and at least one member whose primary concerns are in nonscientific areas.

* * * * *

7. Section 56.108 is amended by revising paragraph (a), by removing paragraph (c), by redesignating paragraph (b) as paragraph (c), by adding a new paragraph (b), and by adding a parenthetical statement to the end of the section to read as follows:

§ 56.108 IRB functions and operations.

(a) Follow written procedures: (1) For conducting its initial and continuing review of research and for reporting its findings and actions to the investigator and the institution; (2) for determining which projects require review more often than annually and which projects need verification from sources other than the investigator that no material changes have occurred since previous IRB review; (3) for ensuring prompt reporting to the IRB of changes in

research activity; and (4) for ensuring that changes in approved research, during the period for which IRB approval has already been given, may not be initiated without IRB review and approval except where necessary to eliminate apparent immediate hazards to the human subjects.

(b) Follow written procedures for ensuring prompt reporting to the IRB, appropriate institutional officials, and the Food and Drug Administration of: (1) Any unanticipated problems involving risks to human subjects or others; (2) any instance of serious or continuing noncompliance with these regulations or the requirements or determinations of the IRB; or (3) any suspension or termination of IRB approval.

* * * * *

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910–0130)

8. Section 56.110 is amended by revising paragraph (b) to read as follows:

§ 56.110 Expedited review procedures for certain kinds of research involving no more than minimal risk, and for minor changes in approved research.

* * * * *

(b) An IRB may use the expedited review procedure to review either or both of the following: (1) Some or all of the research appearing on the list and found by the reviewer(s) to involve no more than minimal risk, (2) minor changes in previously approved research during the period (of 1 year or less) for which approval is authorized. Under an expedited review procedure, the review may be carried out by the IRB chairperson or by one or more experienced reviewers designated by the IRB chairperson from among the members of the IRB. In reviewing the research, the reviewers may exercise all of the authorities of the IRB except that the reviewers may not disapprove the research. A research activity may be disapproved only after review in accordance with the nonexpedited review procedure set forth in § 56.108(c).

* * * * *

9. Section 56.111 is amended by revising paragraphs (a)(3) and (b) to read as follows:

§ 56.111 Criteria for IRB approval of research.

(a) * * *

(3) Selection of subjects is equitable. In making this assessment the IRB should take into account the purposes of the research and the setting in which the research will be conducted and should be particularly cognizant of the special problems of research involving vulnerable populations, such as children, prisoners, pregnant women, handicapped, or mentally disabled persons, or economically or educationally disadvantaged persons.

* * * * *

(b) When some or all of the subjects, such as children, prisoners, pregnant women, handicapped, or mentally disabled persons, or economically or educationally disadvantaged persons, are likely to be vulnerable to coercion or undue influence additional safeguards have been included in the study to protect the rights and welfare of these subjects.

10. Section 56.115 is amended by revising paragraph (a)(6) and by adding a parenthetical statement to the end of the section to read as follows:

§ 56.115 IRB records.

(a) * * *

(6) Written procedures for the IRB as required by § 56.108 (a) and (b).

* * * * *

(Information collection requirements in this section were approved by the Office of Management and Budget (OMB) and assigned OMB control number 0910–0130)

Dated: March 29, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 91–14260 Filed 6–17–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF EDUCATION

34 CFR Parts 350 and 356

Protection Of Human Subjects—Disability and Rehabilitation Research: General Provisions, Disability and Rehabilitation Research: Research Fellowships

AGENCY: Department of Education.

ACTION: Interim final regulations with an opportunity to comment.

SUMMARY: The Secretary amends program regulations for the National Institute on Disability and Rehabilitation Research to add certain protections for handicapped children and mentally disabled persons who are the subjects of research conducted or sponsored by those programs. Specifically, the program regulations would require that when an institutional review board (IRB) reviews research involving these research subjects, the IRB must include at least one person who is primarily concerned with the welfare of the research subjects. The regulations are necessary as the result of the Department of Education's (Department) withdrawal of a departure from the common regulations for the protection of human research subjects.

DATES: Comments must be received on or before August 2, 1991. These regulations take effect either August 19, 1991, or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

ADDRESSES: All comments concerning these interim final regulations should be addressed to Mr. Edward Glassman; Office of Planning, Budget and Evaluation; U.S. Department of Education, Federal Building #6, room 3127, 400 Maryland Avenue SW., Washington, DC 20202–4132.

FOR FURTHER INFORMATION CONTACT: Edward B. Glassman, Telephone: (202) 401–3132. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (In the Washington DC area, 202 708–9300) between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION: The Office of Science and Technology Policy, Executive Office of the President (OSTP), published a "Proposed Model Policy for the Protection of Human Subjects" in the **Federal Register** on June 3, 1986 (51 FR 20204). OSTP adopted a final policy for the protection of human research subjects on November 10, 1988 (53 FR 45660). The Final Policy adopted by OSTP was included in proposed common regulations published in the **Federal Register** on November 10, 1988 (53 CFR 45661) by sixteen departments and agencies in the Executive Branch of the Federal Government, including the Department of Education. The final common regulations are published in another section of this **Federal Register** part.

The notice of proposed rulemaking (NPRM) for the common regulations specifically asked for comments addressing what effect promulgation of the Model Policy would have on each of the agencies involved in the proposed rulemaking. The Secretary proposed a departure from the common regulations that would require representation on an Institutional Review Board (IRB) of at least one person primarily concerned with the welfare of the research subjects whenever the research involves handicapped children or mentally disabled persons. As discussed below,

the Secretary has decided to withdraw this across-the-board departure in favor of program-specific regulations under those programs of the Department that are likely to support covered research that involves these research subjects.

Composition of the IRB

Comment

The Department proposed a departure to § ____.107(a) of the common regulations that would have required that, for all programs of the Department, "when an IRB reviews research that deals with handicapped children or mentally disabled persons, the IRB shall include at least one person primarily concerned with the welfare of the research subjects." The remainder of the departure reiterated the common rule's provision, which required institutions to consider representation on the IRB of persons who are knowledgeable about and experienced in working with certain vulnerable subjects if the IRB regularly reviews research involving those vulnerable subjects. Twenty-one institutions focused on this proposed departure in their comments. The majority of these comments were opposed to the proposed departure.

Some commenters, while supporting the proposed general language in § ____.107, stated their belief that the departure was not necessary because the policy in § ____.107 already addresses representation of the special concerns of vulnerable subjects on the IRB. Thus, the rights of handicapped children and mentally disabled persons should be represented on any IRB that regularly reviews proposals involving those individuals and there is nothing to be gained by emphasizing these two categories of subjects. Such an emphasis was seen as a precedent with the potential for discrimination against other categories of vulnerable subjects. When special expertise is required, IRBs already have the option, and, they believed, the obligation to seek informed consultants. However, one commenter stated "If in future staffing of our IRB, someone with expertise in this area is available and willing to serve, we would be happy to encourage such participation."

One commenter suggested that only when an IRB regularly reviews research that deals with handicapped children or mentally disabled persons should the IRB include at least one person primarily concerned with the welfare of the research subjects. Otherwise, consultation should take place when appropriate. Another suggestion was that handicapped children be added to the list of examples of vulnerable subjects for which an IRB that regularly reviews research might want to consider inclusion of one or more members who are knowledgeable about and experienced in working with these subjects.

Some commenters objected to the lack of consistency among Federal agencies and cited the Department of Education's proposed departure as inconsistent with the purpose of the common rule. One commenter indicated that the departure would not pose any problem.

Response

The language of the proposed departure was rooted in the Secretary's concern that the welfare of research subjects who are handicapped children or mentally disabled persons be adequately protected because of the diminished capacity of such persons to protect their own interests and their corresponding greater potential for harm. It should be noted that, while the common rule does, in general, protect the interests of vulnerable populations, it does not specifically command representation of their interests in all cases. For example, the common rule only requires that when an IRB regularly reviews research involving vulnerable subjects, consideration should be given to including on the IRB a researcher experienced in working with such subjects. Thus, the Department believes it is appropriate to offer special protection for handicapped children and mentally disabled persons, and the protection proposed in the departure would have satisfied that need.

The comments also appear to misunderstand the intent of the Department's proposed departure. Some commenters believed that the departure would require that an IRB include a permanent member to represent the special populations covered by the departure. Others appeared to believe that the departure would apply to all research of the institution that involved the special populations covered by the departure. The proposed departure would have produced neither of these results. Instead, the proposed departure would have required the addition of one member on an *ad hoc* basis only when the research is sponsored or funded by the Department of Education and purposefully requires the inclusion of handicapped children or mentally disabled persons.

As explained above, the Secretary believes that there is a special need to protect handicapped children and mentally disabled persons. However, given the broad policy objective of providing consistent treatment through common regulations, the Secretary has decided that the IRB special representation requirements contained in the proposed departure are not necessary for most of the programs of the Department, because most programs of the Department do not support research likely to involve those persons. Thus, the Secretary has decided to withdraw the departure. However, the Secretary believes that the concerns addressed by the proposed departure have a particular urgency in those programs of the Department that support a significant amount of research involving handicapped children and mentally disabled persons. Therefore, the Secretary is amending the regulations for the programs of the National Institute on Disability and Rehabilitation Research (34 CFR parts 350 and 356) to ensure that the protections that would have been afforded under the departure are implemented in those specific programs.

Although the Secretary has decided to publish this regulation in final form, due to the strong public interest created by the proposed departure, and because a number of commenters appeared to misunderstand the effect of the proposed rule, the Secretary has also decided to offer the public an additional opportunity to comment on the final rule. The address to which commenters should send their comments and the date by which those comments must be received is stated at the beginning of this preamble.

Changes

In the notice of proposed rulemaking, the proposed departure was stated as follows: "When an IRB reviews research that deals with handicapped children or mentally disabled persons, the IRB must include at least one person primarily concerned with the welfare of the research subjects." The Secretary has decided to change this language in the program-specific regulations adopted in this document to make clear that the regulation specifically protects handicapped children and mentally disabled persons when those persons are purposefully included in a research protocol, rather than incidentally. Therefore, the language has been changed to state: "When an IRB reviews research that purposefully requires inclusion of handicapped children or mentally disabled persons in the research sample, the IRB must include at least one person primarily concerned with the welfare of the research subjects."

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established under the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these interim final regulations will not have a significant economic impact on a substantial number of small entities.

The small entities that are affected by these interim final regulations are small institutions receiving research grants or contracts under the programs of the National Institute on Disability and Rehabilitation Research. However, the regulations do not have a significant economic impact on these entities because the regulations do not impose excessive regulatory burdens. These regulations impose minimal requirements that are necessary to ensure the proper treatment of handicapped children and mentally disabled persons under the programs of the National Institute on Disability and Rehabilitation Research.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these interim final regulations. Comments are specifically invited on whether other research programs of the Department should have added protections for handicapped children and mentally disabled persons.

All comments submitted in response to these regulations will be available for public inspection, during and after the comment period, in room 3127, 400 Maryland Avenue, SW., Washington, DC between the hours of 9 a.m. and 4:30 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducng regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these interim final regulations.

Assessment of Educational Impact

The Secretary has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 350

Education, Education of the handicapped, Educational research, Grant programs—education.

34 CFR Part 356

Education, Education research, Fellowships.

(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: June 6, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by amending parts 350 and 356 as follows:

PART 350—DISABILITY AND REHABILITATION RESEARCH: GENERAL PROVISIONS

3. The authority citation for part 350 continues to read as follows:

Authority: 29 U.S.C. 760–762, unless otherwise noted.

4. Section 350.3 is amended by revising paragraph (d) and the authority citation at the end of the section to read as follows:

§ 350.3 What regulations apply to these programs?

* * * * *

(d)(1) The regulations in 34 CFR part 97, PROTECTION OF HUMAN SUBJECTS, except § 97.107(a).

(2) Each Institutional Review Board (IRB) established under part 97 must have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB must be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds, and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB must be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB must therefore include persons knowledgeable in these areas. When an IRB reviews research that purposefully requires inclusion of handicapped children or mentally disabled persons as research subjects, the IRB must include at least one person primarily concerned with the welfare of these research subjects. If an IRB regularly reviews another vulnerable category of subjects, such an non-handicapped children, prisoners, pregnant women, or handicapped adults, consideration must also be given to the inclusion of one or more individuals who are knowledgeable about the experience in working with these subjects.

(Authority: 20 U.S.C. 761a, 762, 42 U.S.C. 300v-1(b))

PART 356—DISABILITY AND REHABILITATION RESEARCH: RESEARCH FELLOWSHIPS

1. The authority citation for part 356 continues to read as follows:

Authority: 29 U.S.C. 761a(d), unless otherwise noted.

2. Section 356.3 is amended by revising paragraph (c) and the authority citation at the end of the section to read as follows:

§ 356.3 What regulations apply to this program?

* * * * *

(c)(1) The regulations in 34 CFR part 97, PROTECTION OF HUMAN SUBJECTS, except § 97.107(a).

(2) Each Institutional Review Board (IRB) established under part 97 must have at least five members, with varying backgrounds to promote complete and adequate review of research activities commonly conducted by the institution. The IRB must be sufficiently qualified through the experience and expertise of its members, and the diversity of the members, including consideration of race, gender, and cultural backgrounds, and sensitivity to such issues as community attitudes, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects. In addition to possessing the professional competence necessary to review specific research activities, the IRB must be able to ascertain the acceptability of proposed research in terms of institutional commitments and regulations, applicable law, and standards of professional conduct and practice. The IRB must therefore include persons knowledgeable in these areas. When an IRB reviews research that purposefully requires inclusion of handicapped children or mentally disabled persons as research subjects, the IRB must include at least one person primarily concerned with the welfare of these research subjects. If an IRB regularly reviews another vulnerable category of subjects, such as non-handicapped children,

prisoners, pregnant women, or handicapped adults, consideration must also be given to the inclusion of one or more individuals who are knowledgeable about and experienced in working with these subjects.

(Authority: 29 U.S.C. 761a(d), 42 U.S.C. 300v–1(b))

[FR Doc. 91–14261 Filed 6–17–91; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 46

Federal Policy for the Protection of Human Subjects: Additional Protections for Children Involved as Subjects in Research

AGENCY: Department of Health and Human Services.

ACTION: Technical amendment.

SUMMARY: This technical amendment is to correct a reference in 45 CFR part 46 subpart D (Additional Protection for Children Involved as Subjects in Research) to subpart A of that part of the **Federal Register**.

In the revision to subpart A, published elsewhere in this issue, the numbering of exemptions in 45 CFR part 46.101(b) changes.

The reference to those exemptions in subpart D 45 CFR part 46.401(b) is now amended accordingly.

EFFECTIVE DATE: This regulation shall become effective on August 19, 1991.

FOR FURTHER INFORMATION CONTACT: Dr. Joan P. Porter, staff Director, Interagency Human Subjects Coordinating Committee, building 31, room 5B59, Bethesda, Maryland 20892 Telephone (301) 496–7005.

List of Subjects in 45 CFR Part 46

Human subjects, Research, Reporting and record-keeping requirements, Infants and children.

PART 46—PROTECTION OF HUMAN SUBJECTS

1. The authority for part 46 is revised to read:

Authority: 5 U.S.C. 30; Sec. 474(a), 88 Stat. 352 [42 U.S.C. 289*l*–3(a)].

2. In subpart D—Additional Protections for Children Involved as Subjects in Research, § 46.401, paragraph (b) is revised to read as follows:

§ 46.40§ To what do these regulations apply?

* * * * *

(b) Exemptions at § 46.101(b)(1) and (b)(3) through (b)(6) are applicable to this subpart. The exemption at § 46.101(b)(2) regarding educational tests is also applicable to this subpart. However, the exemption at § 46.101(b)(2) for research involving survey or interview procedures or observations of public behavior does not apply to research covered by this subpart, except for research involving observation of public behavior when the investigator(s) do not participate in the activities being observed.

* * * * *

Dated: March 29, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

[FR Doc. 91–14262 Filed 6–17–91; 8:45 am]
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Tuesday, June 18, 1991

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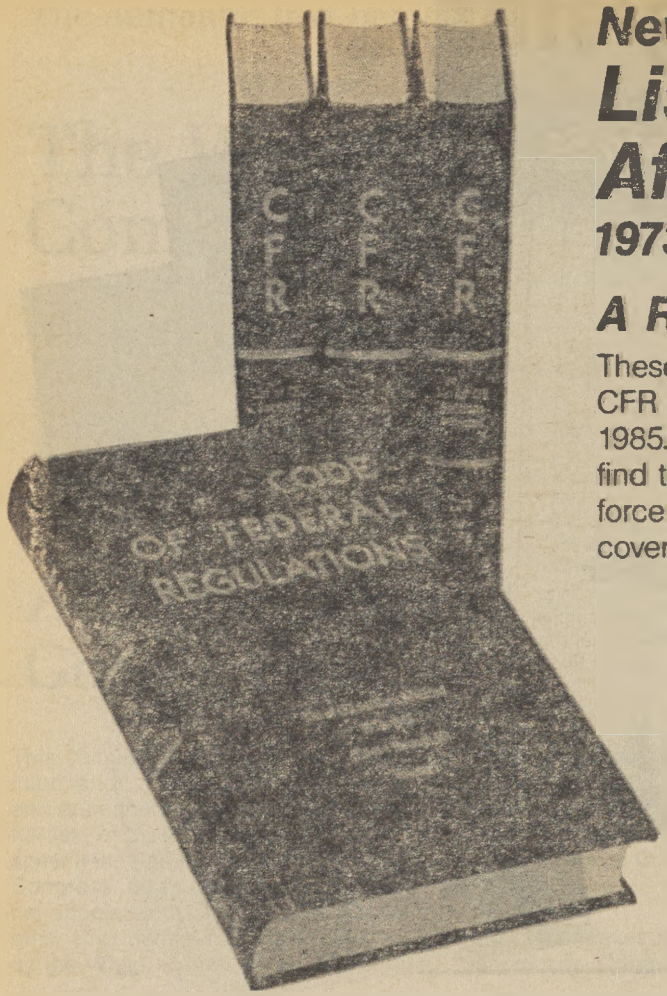

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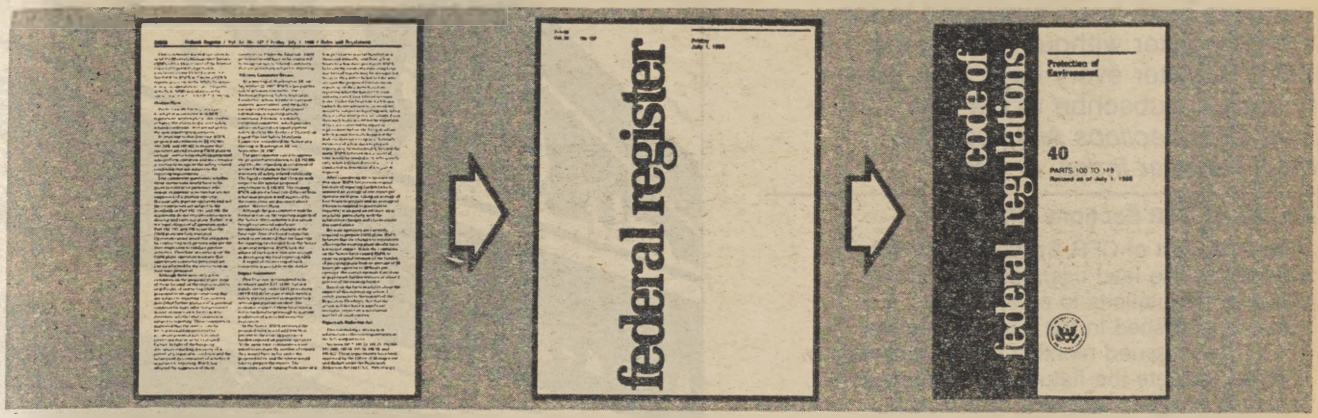

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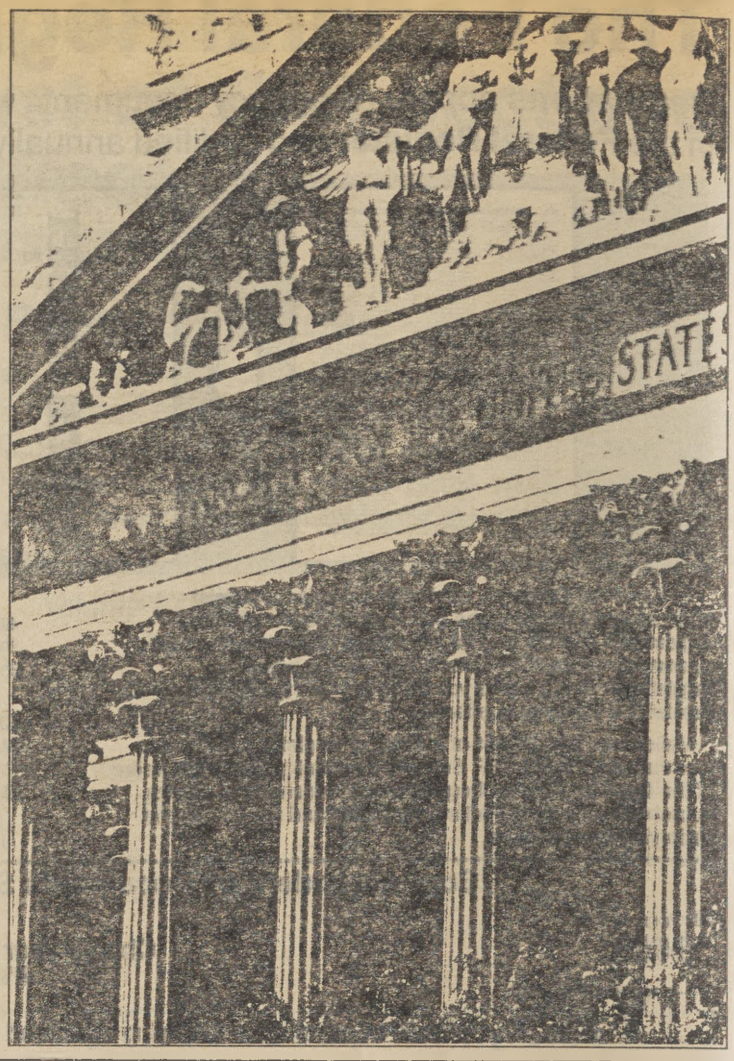

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