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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 56, No. 187

Thursday, September 26, 1991

Agricultural Marketing Service
RULES
Almonds grown in California, 48727–48729
(2 documents)
Celery grown in Florida, 48726
Marketing orders; expenses and rates of assessment, 48725
PROPOSED RULES
Almonds grown in California, 48765
Kiwifruit grown in California, 48762
Tomatoes grown in—
Florida, 48764

Agriculture Department
See also Agricultural Marketing Service; Soil Conservation Service
RULES
Organization, functions, and authority delegations:
Assistant Secretary for Marketing and Inspection Services et al., 48723
NOTICES
Agency information collection activities under OMB review, 48777

Army Department
RULES
Freedom of Information Act; implementation:, 48932

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind and Other Severely Handicapped, Committee for Purchase From
See Committee for Purchase From the Blind and Other Severely Handicapped

Centers for Disease Control
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV)—
Counseling and testing (two models); comparison and evaluation, 48800

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
District of Columbia, 48777

Coast Guard
RULES
Marine engineering:
Vessel piping systems
CFR correction, 48736
Regattas and marine parades:
Head of Connecticut Regatta, 48735
PROPOSED RULES
Drawbridge operations:
Arkansas, 48770
Inland navigation rules:
Waterways tributary to Gulf of Mexico; revision, 48773
Pollution:
Financial responsibility of vessels for water pollution, 49006
Vessel traffic management:
Prince William Sound automated dependent surveillance system; equipment carriage requirement, 48771

Commerce Department
See International Trade Administration; National Oceanic and Atmospheric Administration

Committee for Purchase From the Blind and Other Severely Handicapped
RULES
Committee policies and procedures; revisions, 48974

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Singapore, 48780

Customs Service
RULES
Organization, functions, and authority delegations:
Field officers; penalties and liquidated damage cases
Correction, 48823

Defense Department
See Army Department; Navy Department

Drug Enforcement Administration
RULES
Chemical Diversion and Trafficking Act of 1988; implementation:
Chemicals and thresholds; list additions, 48732

Education Department
RULES
Postsecondary education:
Guaranteed student loan and PLUS programs—
Default reduction initiative, 48930
NOTICES
Grants and cooperative agreements; availability, etc.:
Disabled individuals, severely—
Supported employment services, community-based projects; special projects and demonstrations program, 48970

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
NOTICES
Meetings:
Mining Waste Policy Dialogue Committee, 48795
Superfund program:
Toxic chemical release reporting; community right-to-know—
Form revisions, 48795
Superfund; response and remedial actions, proposed settlements, etc.:
Resource Services, Inc., Site, MO, 48795

Federal Aviation Administration
PROPOSED RULES
Transition areas, 48768, 48769
(2 documents)
NOTICES
Exemption petitions; summary and disposition, 48816

Federal Communications Commission
RULES
Television broadcasting:
Children's Television Act; implementation by broadcasting and cable services, 48736

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities under OMB review, 48799

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 48822

Federal Energy Regulatory Commission
NOTICES
Natural gas certificate filings:
Northwest Pipeline Corp. et al., 48782
Natural Gas Policy Act:
Self-implementing transactions, 48787
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 48793
Arkla Energy Resources; correction, 48823
CNG Transmission Corp., 48793
Paiute Pipeline Co., 48793
Southern Natural Gas Co., 48794

Federal Maritime Commission
NOTICES
Casualty and nonperformance certificates:
Carnival Cruise Lines Inc., 48799
(2 documents)

Federal Reserve System
RULES
Extension of credit by Federal Reserve banks (Regulation A):
Discount rates change, 48730

Fish and Wildlife Service
RULES
Endangered and threatened species:
Guthrie's ground plum, 48748
White irisette, 48752
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 49104

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Lincomycin, 48732
NOTICES
Animal drugs, feeds, and related products:
Bioproducts, Inc., et al.; approval withdrawn, 48802
Medical devices:
Silicone gel-filled and inflatable breast prostheses; patient risk information, 49098

General Services Administration
NOTICES
Federal telecommunications standards:
Telecommunications systems; time and frequency information, 48799

Health and Human Services Department
See Centers for Disease Control; Food and Drug Administration; Health Care Financing Administration; National Institutes of Health; Public Health Service

Health Care Financing Administration
RULES
Medicaid and medicare:
Long-term care facilities (skilled nursing and intermediate care); requirements, 48826
Nurse aide training and competency evaluation programs, 48880
NOTICES
Medicaid:
State plan amendments, reconsideration; hearings—
Maryland, 48803
Texas, 48804

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Low income housing:
Housing assistance payments (Section 8)—
Fair market rent schedules for existing housing, loan management and property disposition, moderate rehabilitation, and housing voucher programs, 49024

Immigration and Naturalization Service
RULES
Immigration:
Immigrant visas; sanctions removal for Hungary, 48730
PROPOSED RULES
Immigration:
Subpoenas issuance; powers and duties, 48766

Interior Department
See Fish and Wildlife Service; Land Management Bureau; National Park Service; Reclamation Bureau; Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Low-income housing credit, 48733

International Trade Administration
NOTICES
Antidumping:
Elemental sulphur from Canada, 48777
Portable electric typewriters from Japan, 48778
Silicon metal from Argentina, 48779

Justice Department
See also Drug Enforcement Administration; Immigration and Naturalization Service; Juvenile Justice and Delinquency Prevention Office
RULES
Organization, functions, and authority delegations:
Director, Prisons Bureau, et al.; Federal tort claims, 48734

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Comprehensive plan for 1992 FY, 48994

Land Management Bureau
NOTICES
Oil and gas leases:
Wyoming, 48808
Opening of public lands:
New Mexico, 48808
Realty actions; sales, leases, etc.:
New Mexico, 48808–48810
(2 documents)

Maritime Administration
NOTICES
Mortgagees and trustees; applicants approved, disapproved, etc.:
CoreStates Bank, N.A.; correction, 48823

National Aeronautics and Space Administration
RULES
Acquisition regulations:
Miscellaneous amendments, 48737

National Commission on Severely Distressed Public Housing
NOTICES
Meetings, 48813

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Arts Education Advisory Council, 48813
Humanities Panel, 48814

National Highway Traffic Safety Administration
NOTICES
Motor vehicle safety standards:
Nonconforming vehicles—
Importation eligibility; determinations, 48816

National Institute for Occupational Safety and Health
See Centers for Disease Control

National Institutes of Health
NOTICES
Privacy Act:
Systems of records, 48805

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Puerto Rico and U.S. Virgin Islands shallow-water reef fish, 48755
NOTICES
Permits:
Marine mammals, 48779

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 48812

National Science Foundation
NOTICES
Meetings:
Behavioral and Neural Sciences Division advisory panels, 48814
Developmental Biology Advisory Panel, 48814
Research Career Development Special Emphasis Panel, 48815

Navy Department
NOTICES
Environmental statements; availability, etc.:
Marine Corps Base, Camp Pendleton, Oceanside, CA; sewage effluent compliance project, 48780
Naval Air Station, Alameda, CA, et al.; dredged material disposal, 48781

Nuclear Waste Technical Review Board
NOTICES
Meetings, 48815

Personnel Management Office
PROPOSED RULES
Administrative grievance system; revision, 48757
NOTICES
Agency information collection activities under OMB review, 48815

Postal Rate Commission
NOTICES
Meetings; Sunshine Act, 48822

Public Health Service
See also Centers for Disease Control; Food and Drug Administration; National Institutes of Health
NOTICES
Organization, functions, and authority delegations:
Agency for Toxic Substances and Disease Registry, 48805

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Price-San Rafael Rivers Unit, UT, 48811

Severely Distressed Public Housing, National Commission
See National Commission on Severely Distressed Public Housing

Soil Conservation Service
NOTICES
Environmental statements; availability, etc.:
Price-San Rafael Rivers Unit, UT, 48811

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Initial and permanent regulatory programs:
Surface coal mining and reclamation operations—
Individual civil penalties, 48924

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See also Coast Guard; Federal Aviation Administration; Maritime Administration; National Highway Traffic Safety Administration; Urban Mass Transportation Administration

NOTICES
Aviation proceedings:
Hearings, etc.—
F.S. Air Service, Inc., 48816
Secretarial determinations:
Lebanon; aircraft security and passenger safety, 48816

Treasury Department
See also Customs Service; Internal Revenue Service
NOTICES
Agency information collection activities under OMB review, 48820, 48821
(3 documents)

Urban Mass Transportation Administration
NOTICES
Environmental statements; availability, etc.:
East St. Louis to Scott Air Force Base, IL; transit service extension, 48819

Veterans Affairs Department
RULES
Loan guaranty:
Guaranteed manufactured home loans, home and condominium loans, and home improvement loans—
Maximum interest rates decrease, 48735

Separate Parts In This Issue

Part II
Department of Health and Human Services, Health Care Financing Administration, 48826

Part III
Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 48924

Part IV
Department of Defense, Department of the Army, 48932

Part V
Department of Education, 48970

Part VI
Committee for the Implementation of Textile Agreements, 48974

Part VII
Department of Education, 48990

Part VIII
Department of Justice, Office of Juvenile Justice and Delinquency Prevention, 48994

Part IX
Department of Transportation, Coast Guard, 49006

Part X
Department of Housing and Urban Development, 49024

Part XI
Department of Health and Human Services, Food and Drug Administration, 49098

Part XII
Department of the Interior, Fish and Wildlife Service, 49104

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR

Proposed Rules:

771 48757

7 CFR

2 48723
920 48725
926 48725
967 48726
981 (2 documents) 48727–48729

Proposed Rules:

920 48762
966 48764
981 48765

8 CFR

243 48730

Proposed Rules:

287 48766

12 CFR

201 48730

14 CFR

Proposed Rules:

71 (2 documents) 48768, 48769

19 CFR

10 48823
171 48823
172 48823

21 CFR

558 48732
1310 48732

24 CFR

888 49024

26 CFR

1 48733

28 CFR

0 48734

30 CFR

Proposed Rules:

724 48924
846 48924

32 CFR

518 48932

33 CFR

100 48735

Proposed Rules:

117 48770
130 49006
131 49006
132 49006
137 49006
161 48771
162 48773

34 CFR

682 48990

38 CFR

36 48735

41 CFR

51-1 48974
51-2 48974
51-3 48974
51-4 48974
51-5 48974
51-6 48974
51-7 48974
51-8 48974
51-9 48974
51-10 48974

42 CFR

431 48880
433 48880
442 48826
447 48826
483 (2 documents) 48826, 48880
488 48826
489 48826
498 48826

46 CFR

56 48736

47 CFR

73 48736
76 48736

48 CFR

1801 48737
1804 48737
1806 48737
1807 48737
1810 48737
1812 48737
1815 48737
1817 48737
1819 48737
1825 48737
1827 48737
1832 48737
1837 48737
1842 48737
1852 48737
1853 48737

50 CFR

17 (2 documents) 48748–48752
20 49104
669 48755

Rules and Regulations

Federal Register
Vol. 56, No. 187
Thursday, September 26, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

[Docket No. PE-91-001]

Revision of Delegation of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department by delegating to the Assistant Secretary for Marketing and Inspection Services and the Administrator, Agricultural Marketing Service (AMS), the authority to administer various programs contained in the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101-624. It also removes the delegations of authority pertaining to the Office of Transportation to reflect the abolishment of that Office. The functions formerly performed by the Office of Transportation will be performed by AMS.

EFFECTIVE DATE: September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Burt McKitrick, Personnel Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC, 20090-6456, (202) 447-4874.

SUPPLEMENTARY INFORMATION: The Food, Agriculture, Conservation, and Trade Act of 1990 contains the following new programs:

National Laboratory Accreditation Program (7 U.S.C. 138-138i) provides authority for USDA to establish a user-fee funded national laboratory accreditation program.

Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001-6013); Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101-6112); and Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201-6212) authorize national research and promotion programs for pecans, mushrooms, and limes.

Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301-6311) provides authority to establish a national program for soybean research and promotion.

Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401-6417) provides authority to establish a processor-funded fluid milk promotion program.

Producer Research and Promotion Board Accountability (104 Stat. 3927) states the sense of the Congress regarding federally-authorized checkoff programs regarding agricultural promotion and research, and consumer information relating to food and nutrition.

Consistency with International Obligations of the United States (7 U.S.C. 2278) requires the Secretary of Agriculture to consult with the United States Trade Representative regarding certain research and promotion programs which provide for an assessment on imports.

Organic Foods Production Act of 1990 (7 U.S.C. 6501-6522) authorizes a national organic production program establishing national standards for the production and certification of organically produced foods.

Pesticide Recordkeeping (7 U.S.C. 136i-1) requires recordkeeping by certified applicators of restricted use pesticides.

The Secretary of Agriculture has determined that these programs can be conducted most effectively under the jurisdiction of the Assistant Secretary for Marketing and Inspection Services and the Administrator of AMS. This document amends the delegations of authority of the United States Department of Agriculture in 7 CFR part 2 by delegating to the Assistant Secretary for Marketing and Inspection Services and the Administrator of AMS the responsibility and authority for administering the above described programs, except with respect to the National Laboratory Accreditation Program. With respect to that Program, the Secretary has determined that the responsibility and authority for administering the program for laboratories accredited for pesticide residue analysis in fruits and vegetables and other agricultural commodities excluding meat and poultry products should be delegated to the Administrator, AMS, and the responsibility and authority for administering the program for laboratories accredited only for pesticide residue analysis in meat and poultry products should be delegated to the Administrator, Food Safety and Inspection Service.

In addition, this document reassigns delegations on transportation matters from the Administrator, Office of Transportation (7 CFR 2.52), to the Administrator, Agricultural Marketing Service (7 CFR 2.50), and reserves 7 CFR 2.52.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment thereon 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 E.O. 12291. Finally, this subject 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, 7 CFR part 2 is amended as follows:

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

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 2.17 is amended by redesignating paragraphs (a) (3), (4), and (5) as (a) (8), (9), and (10), respectively, by adding new paragraphs (a)(3) to (a)(7) and (a)(8)(xliv) to (a)(8)(liv), by

removing paragraph (d), and by adding new paragraph (g)(2)(v) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

* * * * *

(a) * * *

(3) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(4) Administer transportation activities under Section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(5) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(6) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(7) Cooperate with other Departmental agencies in the development and recommendation of policies for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(8) * * *

(xliv) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited for pesticide residue analysis in fruits and vegetables and other agricultural commodities, except those laboratories analyzing only meat and poultry products.

(xlv) Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013).

(xlvi) Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112).

(xlvii) Lime Research, Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212).

(xlviii) Soybean Promotion, Research and Consumer Information Act (7 U.S.C. 6301–6311).

(xlix) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417).

(l) Producer Research and Promotion Board Accountability (104 Stat. 3927).

(li) Consistency with International Obligations of the United States (7 U.S.C. 2278).

(lii) Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522), provided that the Administrator, AMS, will enter into agreements, as necessary, with the Administrator, Food Safety and Inspection Service, to provide inspection services.

(liii) Pesticide Recordkeeping (7 U.S.C. 136i–1) with the provision that the Administrator, AMS, will enter into agreements, as necessary, with other Federal agencies.

(liv) The International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406).

* * * * *

(g) * * *

(2) * * *

(v) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products.

* * * * *

3. Paragraph 2.17 (a)(8) (xxxvi), as redesignated, is amended by removing the references "(a)(3)(xxxiv) and (xxxv)" and adding in its place "(a)(8) (xxxiv) and (xxxv)."

4. Section 2.18 is amended by adding a new paragraph (a)(3) to read as follows:

§ 2.18 Reservations of authority.

* * * * *

(a) * * *

(3) Appoint members of the National Processor Advertising and Promotion Board established by section 1999H(b)(4) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6407(b)).

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

5. Section 2.50 is amended by redesignating paragraphs (a)(3) to (a)(7) as (a)(8) to (a)(12), respectively, by adding new paragraphs (a)(3) to (a)(7) and (a)(8)(xlv) to (a)(8)(lv), and by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 2.50 Administrator, Agricultural Marketing Service.

(a) * * *

(3) Exercise the functions of the Secretary of Agriculture relating to the transportation activities contained in section 203(j) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(j)) as amended, but excepting matters otherwise assigned.

(4) Administer transportation activities under section 201 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1291).

(5) Apply results of economic research and operations analysis to evaluate transportation issues and to recommend revisions of current procedures.

(6) Serve as the focal point for all Department transportation matters including development of policies and strategies.

(7) Cooperate with other Departmental agencies in the development and recommendation of policies and programs for inland transportation of USDA and CCC-owned commodities in connection with USDA programs.

(8) * * *

(xlv) National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited for pesticide residue analysis in fruits and vegetables and other agricultural commodities, except those laboratories analyzing only meat and poultry products.

(xlvi) Pecan Promotion and Research Act of 1990 (7 U.S.C. 6001–6013).

(xlvii) Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6101–6112).

(xlviii) Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6201–6212).

(xlix) Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6301–6311).

(l) Fluid Milk Promotion Act of 1990 (7 U.S.C. 6401–6417).

(li) Producer Research and Promotion Board Accountability (104 Stat. 3927).

(lii) Consistency with International Obligations of the United States (7 U.S.C. 2278).

(liii) Organic Foods Production Act of 1990 (7 U.S.C. 6501–6522) provided that the Administrator, AMS, will enter into agreements, as necessary, with the Administrator, Food Safety and Inspection Service, to provide inspection services.

(liv) Pesticide Recordkeeping (7 U.S.C. 136i-l) with the provision that the Administrator, AMS, will enter into agreements, as necessary, with other Federal agencies.

(lv) the International Carriage of Perishable Foodstuffs Act (7 U.S.C. 4401–4406).

(b) * * *

(1) Taking final action on regulations under section 8c (15) (A) of the Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 608c (15) (A)); section 12(a) of the Cotton Research and Promotion Act (7 U.S.C. 21111(a)); section 311(a) of the Potato Research and Promotion Act (7 U.S.C. 2620(a)); section 118(a) of the Dairy Production Stabilization Act of 1983, as amended, (7 U.S.C. 4509 (a)); section 1625(a) of the Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4814), section 1650(a) of the Watermelon Research and Promotion Act (7 U.S.C. 4909), section 10(a) of the Honey Research, Promotion, and Consumer Information Act (7 U.S.C.

4609(a)); section 14(a) of the Egg Research and Consumer Information Act (7 U.S.C. 2713(a));section 1714(a) of the Floral Research and Consumer Information Act (7 U.S.C. 1714(a)); section 1710(a) of the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. 3409(a)); section 1913(a) of the Pecan Promotion and Research Act of 1990 (7 U.S.C. 6008), section 1927(a) of the Mushroom Promotion, Research, and Consumer Information Act of 1990 (7 U.S.C. 6106), section 1957(a) of the Lime Research, Promotion, and Consumer Information Act of 1990 (7 U.S.C. 6202), section 1971(a) of the Soybean Promotion, Research, and Consumer Information Act (7 U.S.C. 6303), and section 1999K(a) of the Fluid Milk Promotion Act of 1990 (7 U.S.C. 6410).

(2) Issuing, amending, terminating, or suspending any marketing agreement or order or any provision thereof under the Agricultural Marketing Agreement Act of 1937; the Cotton Research and Promotion Act; the Potato Research and Promotion Act; Subtitles B and C of the Dairy Production Stabilization Act of 1983, as amended; the Pork Promotion, Research, and Consumer Information Act of 1985; the Beef Research and Information Act, as amended; the Watermelon Research and Promotion Act; the Honey Research, Promotion, and Consumer Information Act; the Floral Research and Consumer Information Act; the Egg Research and Consumer Information Act; the Wheat and Wheat Foods Research and Nutrition Education Act; the Pecan Promotion and Research Act of 1990; the Mushroom Promotion, Research, and Consumer Information Act of 1990; the Lime Research, Promotion, and Consumer Information Act of 1990; the Soybean Promotion, Research, and Consumer Information Act; the Fluid Milk Promotion Act of 1990; and, the Organic Foods Production Act of 1990.

§ 2.50 [Amended]

6. Paragraph 2.50(a)(8)(xxxvii), as redesignated, is amended by removing the references "(a)(3)(xxxv) and (xxxvi)" and adding in its place "(a)(8)(xxxv) and (xxxvi)."

§ 2.52 [Removed and Reserved]

9. Section 2.52 is removed and reserved.

10. Section 2.55 is amended by revising the heading thereof, and by adding a new paragraph (a)(4) to read as follows:

§ 2.55 Administrator, Food Safety and Inspection Service.

(a) * * *

(4) Administer the National Laboratory Accreditation Program (7 U.S.C. 138–138i) with respect to laboratories accredited only for pesticide residue analysis in meat and poultry products.

* * * * *

Dated: August 23, 1991.

Edward Madigan,

For Subpart C: Secretary of Agriculture.

Dated: August 23, 1991.

JoAnn R. Smith,

For Subpart F: Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 91–23236 Filed 9–25–91; 8:45 am]

BILLING CODE 3410–02–M

Agricultural Marketing Service

7 CFR Parts 920 and 926

[Docket No. FV–91–419]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 920 and 926 for the 1991–92 fiscal period. Authorization of these budgets enables the Kiwifruit Administrative Committee and the Tokay Grape Industry Committee (committees) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1991, through March 31, 1992 (§ 926.230) and August 1, 1991, through July 31, 1992 (§ 920.209).

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 920 (7 CFR part 920), regulating the handling of kiwifruit grown in California, and Marketing Agreement No. 93 and Order No. 926 (7 CFR part 926), regulating the handling of Tokay grapes grown in San Joaquin County, California. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 100 handlers of California kiwifruit under Marketing Order No. 920, and approximately 850 kiwifruit producers. There are approximately 9 handlers of California Tokay grapes under Marketing Order No. 926, and approximately 40 Tokay grape producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms as defined as those whose annual receipts are less than $3,500,000. The majority of California kiwifruit producers and an estimated 30 to 40 percent of the kiwifruit handlers and the majority of the Tokay grape producers and handlers may be classified as small entities.

The budgets of expenses for the 1991–92 fiscal period were prepared by the Kiwifruit Administrative Committee and the Tokay Grape Industry Committee, the agencies responsible for local administration of the marketing orders, and submitted to the Department of Agriculture for approval. The members of these committees are handlers and producers of California kiwifruit and producers of California Tokay grapes. They are familiar with the committees' needs and with the costs of goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the committees were derived by dividing anticipated expenses by expected shipments of kiwifruit and Tokay grapes. Because these rates will be applied to actual shipments, they

must be established at rates that will provide sufficient income to pay the committees' expenses.

The Kiwifruit Administrative Committee met on July 24, 1991, and unanimously recommended a 1991–92 budget of $138,452, $45,494 less than the previous year. Major increases in staff salaries and the pension plan will be offset by major decreases in the field staff food and lodging, member food and lodging, controlled buys, and contingency categories, and the elimination of funding for the maturity test. The committee also recommended an assessment rate of $0.015 per tray of kiwifruit, $0.005 more than last season's. The vote was six in favor, two opposed, and one abstaining. The two people voting no felt the assessment rate should be higher, and the one abstaining preferred not taking sides. This rate, when applied to anticipated shipments of 7.5 million 7½ pound trays, will yield $112,500 in assessment income. This, along with $25,952 from the committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1991–92 fiscal period, estimated to be approximately $20,000, will be within the maximum permitted by the order of one fiscal period's expenses.

The Tokay Grape Industry Committee met on April 2, 1991, and unanimously recommended a 1991–92 budget of $5,375, $8,160 less than the previous year. Major decreases were the elimination of the executive travel and manager's salary categories. When the previous manager retired late last year, the committee's secretary assumed the manager's duties. The committee also met on July 29, 1991, and unanimously recommended an assessment rate of $0.07 per 23-pound lug, the same as last season. Anticipated shipments of 39,606 lugs will yield $2,772.42 in assessment income. This, along with $2,602.58 from the committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1991–92 fiscal period are estimated to be approximately $476, which is within the maximum permitted by the order of one fiscal period's expenses.

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

A proposed rule was published in the **Federal Register** on August 28, 1991 (56 FR 42543). That document contained a proposal to add § 920.209 and § 926.230 to authorize expenses and establish assessment rates for the committees. That rule provided that interested persons could file comments through September 9, 1991. No comments were received.

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

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1991–92 fiscal period for the Tokay Grape Industry Committee began on April 1, 1991, and the 1991–92 fiscal period for the Kiwifruit Administrative Committee began on August 1, 1991, and the marketing orders require that the rates of assessment for the fiscal period apply to all assessable Tokay grapes and kiwifruit handled during the fiscal period. In addition, handlers are aware of these actions which were recommended by the committees at public meetings.

List of Subjects in 7 CFR Parts 920 and 926

Marketing agreements, Grapes, Kiwifruit, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 920 and 926 are hereby amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

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

2. A new § 920.209 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 920.209 Expenses and assessment rate.

Expenses of $138,452 by the Kiwifruit Administrative Committee are authorized, and an assessment rate of $0.015 per 7½ pound tray of California kiwifruit is established for the fiscal period ending July 31, 1992. Unexpended funds may be carried over as a reserve.

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

3. The authority citation for 7 CFR part 926 continues to read as follows:

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

4. A new § 926.230 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 926.230 Expenses and assessment rate.

Expenses of $5,375 by the Tokay Grape Industry Committee are authorized, and an assessment rate of $0.07 per 23-pound lug of California Tokay grapes is established for the fiscal period ending March 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: September 23, 1991.

William J. Doyle,

Acting. Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–23238 Filed 9–25–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 967

[FV–91–407FR]

Handling Regulation for Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes the quantity of Florida celery which handlers may ship to fresh markets during the 1991–92 marketing season at 6,789,738 crates or 100 percent of producers' based quantities. This final rule is intended to lend stability to the industry and, thus, help to provide consumers with an adequate supply of the product. As in past seasons, the limitation on the quantity of Florida celery handled for fresh shipment is not expected to restrict the quantity of Florida celery actually produced or shipped to fresh markets, since production and shipments are anticipated to be less than the allotment. This action was recommended by the Florida Celery Committee (Committee), the agency responsible for local administration of the order.

EFFECTIVE DATE: September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Christian D. Nissen, Marketing

Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 382–1754.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 967 (7 CFR Part 967), both as amended, regulating the handling of celery grown in Florida. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are an estimated 7 handlers of celery grown in Florida subject to regulation under the celery marketing order and approximately 13 producers of celery in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The minority of celery handlers and producers may be classified as small entities.

The final rule is based upon the recommendation and information submitted by the Committee and upon other available information. The Committee met on June 11, 1991, and recommended a marketable quantity of 6,789,738 crates of fresh celery for the 1991–92 season beginning August 1, 1991. Additionally, a uniform percentage of 100 percent was recommended which will allow each producer registered pursuant to § 967.37(f) of the order to market 100 percent of such producer's bases quantity. These recommendations were based on an appraisal of expected 1991–92 supplies and prospective demand.

As required by § 967.37(d)(1) of the order, a reserve of 6 percent (407,384 crates) of the 1991–92 total base quantities is authorized for new producers and increases for existing producers. There were no applications for new base quantities or any requests for adjustments in base quantities from producers with existing base quantities.

The final rule will limit the quantity of Florida celery which handlers may purchase from producers and ship to fresh markets during the 1991–92 season to 6,789,738 crates. It is expected that the 6,789,738 crate marketable quantity will be above actual shipments for the 1991–92 season. Thus, the 6,789,738 crate marketable quantity is not expected to restrict the amount of Florida celery which growers produce or the amount of celery which handlers ship. For these reasons, the final rule should lend stability to the industry and thus, help to provide consumers with an adequate supply of the product.

Based on available information, the Administrator of the AMS has determined that issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

A proposed rule concerning this action was published in the **Federal Register** on August 1, 1991 (56 FR 36742). Comments on the proposed rule were invited from interested persons until August 12, 1991. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this regulation, as hereafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is hereby 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 1991–92 marketing year for Florida celery began on August 1; and (2) Handlers are aware of this action, which was recommended by the Committee at a public meeting, and need no additional time to comply with the requirements.

List of Subjects in 7 CFR Part 967

Celery, Florida, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is revised as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

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

Subpart—Administrative Rules and Regulations

2. A new § 967.327 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 967.327 Handling regulation, marketable quantity, and uniform percentage for the 1991–92 season beginning on August 1, 1991.

(a) The marketable quantity established under § 967.36(a) is 6,789,738 crates of celery.

(b) As provided in § 967.38(a), the uniform percentage shall be 100 percent.

(c) Pursuant to § 967.36(b), no handler shall handle any harvested celery unless it is within the marketable allotment of a producer who has a base quantity and such producer authorizes the first handler thereof to handle it.

(d) As required by § 967.37(d)(1), a reserve of six percent of the total base quantities is hereby authorized for: (1) New producers and (2) increases for existing base quantity holders.

(e) Terms used herein shall have the same meaning as when used in the said marketing agreement and order.

Dated: September 23, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–23240 Filed 9–25–91; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

[FV–91–291FR]

Handling of Almonds Grown in California; Extension of Date for Satisfying Inedible Disposition Obligations for the 1990–91 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule extends the date from July 31, 1991, to August 31, 1991, by which handlers of California almonds must satisfy their inedible disposition obligations for the 1990–91 crop year. The action was unanimously recommended by the Almond Board of California (Board), the agency responsible for local administration of

the Federal marketing order for California almonds. This action is intended to provide handlers with additional flexibility in their operations.

EFFECTIVE DATE: October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, Marketing Order Administration Branch, room 2525–S, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 475–5992.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

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

There are approximately 105 handlers of California almonds subject to regulation under the marketing order for almonds grown in California during the current season. There are approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This rule finalizes an interim final rule which revised, for 1991 only, § 981.442 of "Subpart—Administrative Rules and Regulations." This action is based on a unanimous recommendation of the Board and upon other available information.

This action gives handlers of California almonds an additional month to satisfy their 1990–91 crop year inedible disposition obligation. Therefore, this action relaxes restrictions on almond handlers and will not impose any additional burden or costs on handlers.

Section 981.42 of the order provides that handlers are required to deliver a quantity of almond kernels equal to their inedible disposition obligation to the Board or Board accepted crushers, feed manufacturers, or feeders. A handler's inedible disposition obligation is the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State Inspection Service (inspection agency), less any tolerance in effect for the crop year. Section 981.42 also provides that the Board may establish rules and regulations necessary to the administration of these provisions.

Section 981.442(a)(5) of such rules and regulations provides that each handler's inedible disposition obligation is satisfied when the almond meat content of the material delivered to accepted users equals the inedible disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred.

At its May 10, 1991, meeting the Board recommended extending the date for satisfying the inedible disposition obligation from July 31, 1991, to August 31, 1991. This action was recommended for the 1990–91 crop year only. An interim final rule on the action was published in the **Federal Register** on June 28, 1991 (56 FR 29561). Comments were requested until July 29, 1991. No comments were received.

The Board's May 10 recommendation was made because handlers had withheld almonds from normal markets as reserve throughout the 1990–91 crop year. Often, this reserve product was held in an unprocessed form. On May 10, 1991, the Board also unanimously recommended a further revision of the salable percentage, increasing it from 80 to 93 percent and decreasing the reserve percentage from 20 to 7 percent for California almonds received by handlers during the 1990–91 crop year. The additional 13 percent reserve was released to the salable category under a separate action. The Board's view was that it would not be possible for handlers of California almonds to process the almonds released to the salable category and sort out the inedibles in time to meet the July 31 deadline. Extending the date by which handlers of California almonds must satisfy their 1990–91 crop year inedible disposition obligations will allow handlers additional time to process their reserve inventory and, thus, satisfy their obligations.

Based on the above, the Administrator of the AMS has determined that the issuance of this final rule will not have significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the information and recommendation submitted by the Board and other available information, it is found that this action as hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is revised as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–91, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules and Regulations

2. The last sentence in paragraph (a)(5) of § 981.442 is revised to read as follows:

Note: This section will not be published in the annual Code of Federal Regulations.

§ 981.442 Quality control.

(a) * * *

(5) * * * Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred:

Provided, That for 1990–91 almond crop year almonds, handlers have until August 31, 1991, to satisfy their inedible disposition obligations.

* * * * *

Dated: September 23, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–23235 Filed 9–25–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 981

[FV-91-403FR]

Expenses and Assessment Rate for Almonds Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate for the 1991–92 crop year under the marketing agreement and order for California almonds. Funds to administer this program are derived from assessments on handlers. This action is needed in order for the Almond Board of California (Board), which is responsible for local administration of the order, to have sufficient funds to meet the expenses of operating the program. An annual budget of expenses is prepared by the Board and submitted to the U.S. Department of Agriculture (Department) for approval.

EFFECTIVE DATE: September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 475–5992.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981 [7 CFR part 981], both as amended, regulating the handling of almonds grown in California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are 110 handlers of California almonds and there are approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of almonds handlers and producers may be classified as small entities.

The marketing order for California almonds requires that the assessment rate for a particular crop year shall apply to all assessable almonds handled from the beginning of such year. An annual budget of expenses is prepared by the Board and submitted to the Department for approval. The members of the Board are handlers and producers of regulated almonds. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

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

The Board met on June 13, 1991, and unanimously recommended 1991–92 marketing order program expenditures of $11,540,095 and an assessment rate for the 1991–92 crop year of 2.25 cents per pound (kernelweight basis). The Board also unanimously recommended that handlers should be eligible to receive credit for their own marketing promotion activities for up to 1.75 cents of this 2.25-cent-per-pound assessment rate.

The 2.25-cent-per-pound 1991–92 recommended assessment rate compares with an actual 1990–91 assessment rate of 2.77 cents per pound. The advertising portion of the assessment rate has been 2.5 cents per pound since 1979. The decrease to 1.75 cents per pound is because the current Board favors more generic advertising and promotion conducted by the Board as opposed to creditable brand advertising conducted by individual handlers. The .5-cent-per-pound non-creditable portion of the total assessment, which handlers must pay to the Board, is .23 cent per pound higher than the .27-cent-per-pound 1990–91 assessment rate. The higher rate is needed to cover increased personnel costs for compliance and promotional activities. Revenues are expected to be $2,596,250 from administrative assessments ($1,601,250 from 1991–92 and $995,000 from 1990–91), $800,000 from advertising assessments, $35,000 from interests and $330,000 from the sale of generic packages for a total of $3,761,250.

Projected expenses of $11,540,095 for 1991–92 compare with 1990–91 budgeted expenses of $18,946,254. Major budget categories for the 1991–92 almond crop year are $1,974,000 for public relations, $1,158,500 for general administration, $413,095 for production research, $70,000 for crop estimation, and $100,000 for an econometric study. Comparable actual expenditures for the 1990–91 almond crop year were $1,575,675, $957,600, $393,179, and $119,800, respectively. No econometric study was conducted last year. The increase in the general administration category includes $100,000 for a management study to indentify new areas for the Board to direct its efforts and to possibly restructure its management, as well as additional funds to audit each handler every year.

Administrative expenditures are expected to total $4,061,306. Total revenue to meet these expenses is projected to be $3,761,250 plus a cash carryin from 1990–91 of $300,056. The remaining $7,472,500 of 1991–92 expenses is the estimated amount which handlers are expected to spend on their own marketing promotion activities based on a projected 1991–92 marketable California almond production of 427 million pounds. This figure also assumes that all handlers receive full credit against their 1.75 cents per pound creditable assessment obligation. Unexpended funds from 1991–92 may be carried over to cover expenses during the first four months of the 1992–93 crop year.

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

a significant economic impact on a substantial number of small entities.

A proposed rule was published in the July 25, 1991, issue of the **Federal Register** [56 FR 34034]. Comments on the proposed rule were invited from interested persons until August 5, 1991. No comments were received by the deadline.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This action should be expedited because the Committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553].

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

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

2. Section 981.338 is added to read as follows:

[This section will not be published in annual Code of Federal Regulations.]

981.338 Expenses and Assessment Rate.

Expenses of $11,540,095 by the Almond Board of California are authorized for the crop year ending on June 30, 1992. An assessment rate for that crop year payable by each handler in accordance with section 981.81 is fixed at 2.25 cents per pound of almonds (kernelweight basis) less any amount credited pursuant to section 981.41, but not to exceed 1.75 cents per pound of almonds (kernelweight basis).

Dated: September 23, 1991.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–23234 Filed 9–25–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 243

[INS No. 1326–91]

RIN 1115–AC21

Imposition of Sanctions; Removal of the Republic of Hungary

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule removes the Republic of Hungary as one of the countries for which the issuance of immigrant visas is restricted. Prior to this change, the Department of State was required to make individual requests to the Immigration and Naturalization Service for a waiver of sanctions under section 243(g). This change will no longer require the Department of State to make individual requests for waivers for citizens from the Republic of Hungary.

EFFECTIVE DATE: September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Carol Jenifer, Detention and Deportation Officer, Immigration and Naturalization Service, 425 I Street NW., room 7262, Washington, DC 20530, telephone (202) 514–2276.

SUPPLEMENTARY INFORMATION: Under section 243(g) of the Immigration and Nationality Act (Act), as amended, any country that denies or unduly delays acceptance of the return of an alien who is a national, citizen, subject, or resident of that country shall have restrictions placed on the issuance of immigrant visas by the Secretary of State until such time as the country accepts the returning alien.

The provisions of section 243(g) of the Act have been applied to residents of the Union of Soviet Socialist Republics, Hungary, Czechoslovakia, and Cuba. These sanctions may be waived upon request to the Department of State.

On September 28, 1989, the Parliament of the Republic of Hungary adopted a law which no longer denies or delays the acceptance of the return for resettlement of any alien who is a Hungarian citizen. Information received by the Department of State from the United States Embassy in Budapest and the Embassy of the Hungarian Republic in Washington, DC indicates that the law is being fully implemented.

The Service's implementation of this rule as a final rule is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reasons and the necessity for immediate implementation of this final rule are as follows: The Government of Hungary no longer denies or unduly delays acceptance of the return of any Hungarian citizen to the territory of Hungary.

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

List of Subjects in 8 CFR Part 243

Aliens, Voluntary departure.

Accordingly, part 243 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 243—DEPORTATION OF ALIENS IN THE UNITED STATES

1. The authority citation for part 243 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1253.

§ 243.8 [Amended]

2. Section 243.8 is amended by (a) removing the word "Hungary," from the first sentence; (b) removing the term "and Hungary" from the fourth and fifth sentences; (c) replacing the term "Republics," with the term "Republics (USSR)," in the first sentence; and by (d) changing the term "him" to "him or her" wherever it appears in this section.

Dated: September 16, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91–23150 Filed 9–25–91; 8:45 am]

BILLING CODE 4410–01–M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rates

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A—Extensions of Credit by Federal Reserve Banks to reflect its recent approval of a reduction in discount rates at each Federal

Reserve Bank. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Banks. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

EFFECTIVE DATE: The amendments to Regulation A were effective September 19, 1991. The discount rate changes were effective on the dates specified in §§ 201.51 and 201.52.

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary of the Board (202/452–3257); for the hearing impaired only, Telecommunications Device for the Deaf (TTD) (202/452–3544), Dorothea Thompson, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Reserve Bank extensions of credit. The discount rate is the interest rate that is charged depository institutions when they borrow from their district Federal Reserve Banks.

The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks effective on the dates specified below. The Board took this action in light of weakness in the money and credit aggregates, the improving inflation environment, and concerns about the ongoing strength of the economic expansion. The reduction, in part, realigns the discount rate with market interest rates.

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of these amendments because the Board for the "good cause" stated above finds that delaying the changes in the discount rates listed in Regulation A to allow notice and public comment on the changes in impracticable, unnecessary, and contrary to the public interest.[1]

The provisions of 5 U.S.C. 553(d) generally prescribing 30 days' prior notice of the effective date of a rule have not been followed because section 553(b) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the discount rates listed in Regulation A is contrary to the public interest.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.), the Board certifies that the changes will not have a significant adverse economic impact on a substantial number of small entities. The changes reduce rates of interest charged to borrowers from Reserve Banks, and the amendments will have no general effect on regulatory burdens for all depository institutions, no specific effect on such burdens for small depository institutions, and have no particular adverse effect on other small entities.

List of Subjects in 12 CFR Part 201

Banks, Banking, Credit, Federal Reserve System.

For the reasons outlined above, the Board of Governors amends 12 CFR part 201 as set forth below:

PART 201—[AMENDED]

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: Secs. 10(a), 10(b), 13, 13a, 14(d) and 19 of the Federal Reserve Act (12 U.S.C. 347a, 347b, 343 *et seq.*, 347c, 348 *et seq.* 357, 374, 374a and 461); and sec. 7(b) of the International Banking Act of 1978 (12 U.S.C. 347d).

2. Section 201.51 is revised to read as follows:

§ 201.51 Short-term adjustment credit for depository institutions.

The rates for short-term adjustment credit provided to depository institutions under § 201.3(a) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	5.0	Sept. 13, 1991.
New York	5.0	Sept. 13, 1991.
Philadelphia	5.0	Sept. 13, 1991.
Cleveland	5.0	Sept. 13, 1991.
Richmond	5.0	Sept. 13, 1991.
Atlanta	5.0	Sept. 13, 1991.
Chicago	5.0	Sept. 13, 1991.
St. Louis	5.0	Sept. 17, 1991.
Minneapolis	5.0	Sept. 13, 1991.
Kansas City	5.0	Sept. 13, 1991.
Dallas	5.0	Sept. 13, 1991.
San Francisco	5.0	Sept. 13, 1991.

3. Section 201.52 is revised to read as follows:

§ 201.52 Extended credit for depository institutions.

(a) *Seasonal credit.* The rates for seasonal credit extended to depository institutions under § 201.3(b)(1) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	5.0	Sept. 13, 1991.
New York	5.0	Sept. 13, 1991.
Philadelphia	5.0	Sept. 13, 1991.
Cleveland	5.0	Sept. 13, 1991.
Richmond	5.0	Sept. 13, 1991.
Atlanta	5.0	Sept. 13, 1991.
Chicago	5.0	Sept. 13, 1991.
St. Louis	5.0	Sept. 17, 1991.
Minneapolis	5.0	Sept. 13, 1991.
Kansas City	5.0	Sept. 13, 1991.
Dallas	5.0	Sept. 13, 1991.
San Francisco	5.0	Sept. 13, 1991.

(b) *Other extended credit.* The rates for other extended credit provided to depository institutions under sustained liquidity pressures or where there are exceptional circumstances or practices involving a particular institution under § 201.3(b)(2) of Regulation A are:

Federal Reserve Bank	Rate	Effective
Boston	5.0	Sept. 13, 1991.
New York	5.0	Sept. 13, 1991.
Philadelphia	5.0	Sept. 13, 1991.
Cleveland	5.0	Sept. 13, 1991.
Richmond	5.0	Sept. 13, 1991.
Atlanta	5.0	Sept. 13, 1991.
Chicago	5.0	Sept. 13, 1991.
St. Louis	5.0	Sept. 17, 1991.
Minneapolis	5.0	Sept. 13, 1991.
Kansas City	5.0	Sept. 13, 1991.
Dallas	5.0	Sept. 13, 1991.
San Francisco	5.0	Sept. 13, 1991.

These rates apply for the first 30 days of borrowing. For credit outstanding for more than 30 days, a flexible rate will be charged which takes into account rates on market sources of funds, but in no case will the rate charged be less than the basic discount rate plus one-half percentage point. Where extended credit provided to a particular depository institution is anticipated to be outstanding for an unusually prolonged period and in relatively large amounts, the 30-day time period may be shortened.

By order of the Board of Governors of the Federal Reserve System, September 18, 1991.

William W. Wiles,

Secretary of the Board.

[FR Doc. 91–23019 Filed 9–25–91; 8:45 am]

BILLING CODE 6210–01–M

[1] The Board's Rules of Procedure provide that advance notice and deferred effective date will ordinarily be omitted in the public interest for changes in discount rates. 12 CFR 262.2(e).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations reflecting approval of two new animal drug applications (NADA's) held by Bioproducts, Inc., and I.M.S., Inc. The NADA's provide for the manufacture of a Type B medicated feed containing lincomycin. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA's.

EFFECTIVE DATE: October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8749.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 132–659 held by Bioproducts, Inc., 8221 Brecksville Rd., Cleveland, OH 44141, and NADA 133–034 held by I.M.S., Inc., 13619 Industrial Rd., Omaha, NE 68137, for the manufacture of Type B medicated feed containing lincomycin.

This document removes those portions of the regulations that reflect approval of these NADA's in 21 CFR 558.325(a)(5).

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.325 [Amended]

2. Section 558.325 *Lincomycin* is amended in paragraph (a)(5) by removing the phrase "Nos. 043733, 050639, and 051359" and replacing it with "No. 043733".

Dated: September 19, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91–23193 Filed 9–25–91; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

Addition of New Listed Chemicals and Thresholds

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final rule.

SUMMARY: The DEA is amending its regulations implementing the Chemical Diversion and Trafficking Act of 1988 (CDTA) to include the additional chemicals set forth in the Crime Control Act of 1990. The inclusion of these chemicals into the CDTA requires any handler of listed chemicals to comply with the requirements specified in 21 CFR 1310 and 1313. The DEA is also amending the threshold on two existing listed chemicals. The effective date listed below is the date on which the thresholds become effective; the effective date of the chemicals listed was October 31, 1990, which was the date of enactment of the Crime Control Act of 1990.

EFFECTIVE DATE: October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Gitchel, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7297.

SUPPLEMENTARY INFORMATION: The Crime Control Act of 1990 (Pub. L. 101–647) amends the list of chemicals which are subject to the requirements of the Chemical Diversion and Trafficking Act of 1988 (CDTA). On June 14, 1991, a notice of proposed rulemaking was published in the **Federal Register** (56 FR 27472) to allow interested parties to submit comments or objections to the thresholds set forth.

One comment was received which concerned the identification of the chemicals. It was recommended that the chemicals be identified by C.A.S. Number and that all commonly used names be listed to assist in correct identification. This suggestion was addressed in the implementing regulations in 1989. At that time, DEA determined that the numbering systems were designed for other purposes and did not specifically meet the needs of the CDTA. However, DEA has produced a publication available to regulated persons which cross references the listed chemicals with various numbering systems and lists common names for the chemicals.

The Crime Control Act of 1990 adds twelve chemicals to the list of precursor chemicals, one of which was previously listed as an essential chemical and another, D-lysergic acid is and remains a controlled substance in Schedule III of the Controlled Substances Act. The new list under 21 CFR 1310.02(a) shows some of the chemicals with an additional name in parentheses. These names reflect the conventional spelling for the chemicals. The parenthetical name is the one listed in 21 CFR 1310.04(f).

In addition to the new listed chemicals, the threshold for two other listed chemicals is amended. The new threshold for hydriodic acid is set to be consistent with its reclassification as a precursor chemical rather than an essential chemical. The threshold on 3,4-methylenedioxyphenyl-2-propanone is lowered based upon information that quantities below the threshold level are being purchased to evade the requirements of the CDTA.

The Administrator of the Drug Enforcement Administration hereby certifies that this final rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq. This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to section 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this action has been reviewed by the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria contained in E.O. 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1310

Drug Enforcement Administration, Drug traffic control, Reporting and recordkeeping requirements.

For reasons set out above, 21 CFR part 1310 is amended as follows:

PART 1310—[AMENDED]

1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b).

2. Section 1310.02 is amended by adding paragraphs (a)(13) through (a)(24) to read as follows:

§ 1310.02 Substances covered.

* * * * *

(a) * * *

(13) Methylamine and its salts.

(14) Ethylamine and its salts.

(15) D-lysergic acid, its salts, optical isomers, and salts of optical isomers.

(16) Propionic anhydride.

(17) Insosafrole (Isosafrole).

(18) Safrole.

(19) Piperonal.

(20) N-Methylepherdrine, its salts, optical isomers, and salts of optical isomers (N-Methylephedrine).

(21) N-Ethylephedrine, its salts, optical isomers, and salts of optical isomers.

(22) N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.

(23) N-Ethylpseudoephedrine, its salts, optical isomers, and salts of optical isomers.

(24) Hydriotic acid (Hydriodic Acid).

§ 1310.02 Amended

* * * * *

3. Section 1310.02 is amended by removing paragraph (b)(5) and redesignating paragraphs (b)(6) through (b)(8) as paragraphs (b)(5) through (b)(7).

4. Section 1310.04 is amended by revising paragraph (f)(1)(xii) and adding paragraphs (f)(1)(xiii) through (f)(1)(xxiv) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(1) Listed Precursor Chemicals.

Chemical	Threshold by base weight
* * * * *	
(xii) 3, 4-Methylenedioxyphenyl-2-propanone.	4 kilograms.
(xiii) Methylamine and its salts	1 kilogram.
(xiv) Ethylamine and its salts	1 kilogram.
(xv) D-lysergic acid, its salts, optical isomers, and salts of optical isomers	10 grams.
(xvi) Propionic anhydride	1 gram.
(xvii) Isosafrole	4 kilograms.
(xviii) Safrole	4 kilograms.
(xix) Piperonal	4 kilograms.
(xx) N-Methylephedrine, its salts, optical isomers, and salts of optical isomers	1 kilogram.
(xxi) N-Ethylephedrine, its salts, optical isomers, and salts of optical isomers	1 kilogram.
(xxii) N-Methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers	1 kilogram.
(xxiii) N-Ethylpseudoephedrine, its salts, optical isomers, and salts of optical isomers	1 kilogram.
(xxiv) Hydriotic acid (57%)	1.7 kilograms (or 1 liter by volume).

§ 1310.04 [Amended]

* * * * *

5. Section 1310.04 is amended by removing paragraph (f)(2)(i)(E) and redesignating paragraphs (f)(2)(i)(F) through (f)(2)(i)(H) as paragraphs (f)(2)(i)(E) through (f)(2)(i)(G).

6. Section 1310.04 is amended by removing paragraph (f)(2)(ii)(E) and redesignating paragraphs (f)(2)(ii)(F) through (f)(2)(ii)(H) as paragraphs (f)(2)(ii)(E) through (f)(2)(ii)(G).

Dated: August 12, 1991.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 91-23060 Filed 9-25-91; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8368]

RIN 1545-AP16

Low-Income Housing Credit and FIRREA

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final Income Tax Regulations concerning the low-income housing credit of section 42 of the Code. The final regulations address the question whether a building financed with the proceeds of a below market loan under an Affordable Housing Program established pursuant to section 721 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) is a federally subsidized building for purposes of section 42. This information will enable taxpayers who obtain financing under an Affordable Housing Program for a building eligible for the section 42 credit to determine the correct applicable percentage under section 42(b).

EFFECTIVE DATE: The regulations are effective for Affordable Housing Program loans made after August 8, 1989 (the effective date of FIRREA).

FOR FURTHER INFORMATION CONTACT: Christopher J. Wilson, 202-377-6349 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking published in the **Federal Register** on February 5, 1991 (56 FR 4588), provides that a below market loan funded in whole or in part with funds from an Affordable Housing Program established under section 721 of FIRREA is not, solely by reason of the Affordable Housing Program funds, a below market Federal loan (as defined in section 42(i)(2)(D)), and that any building financed with the proceeds of such a loan is not, solely by reason of the Affordable Housing Program funds, a federally subsidized building for purposes of determining the applicable percentage under section 42(b). Section 42(i)(2)(D) defines a below market Federal loan, in part, as any loan funded in whole or in part with Federal funds.

This proposed rule was predicated upon an examination of the characteristics of the Federal Home Loan Banks and the Affordable Housing Programs. Analysis of these characteristics leads to the conclusion that funds loaned under the Affordable Housing Programs should not be considered Federal funds for purposes of section 42. As a result, a new building financed with the proceeds of an Affordable Housing Program loan will not, solely by reason of such proceeds, be ineligible for the applicable percentage described in section 42(b)(1)(A) (*i.e.*, the appropriate monthly percentage that will yield, over a 10-year period, amounts of credit that have an aggregate present value equal to 70 percent of the qualified basis of the building).

Public Comment

All comments received by the Internal Revenue Service support the conclusion reached by the notice of proposed rulemaking. Several commentators urged that the final regulations also address the treatment of "direct subsidies" funded under an Affordable Housing Program. See, *e.g.*, section 42(d)(5)(A). One commentator suggested that the final regulations clarify that a building that is financed with a below-market loan under an Affordable

Housing Program and that is not otherwise federally funded will not be considered a federally subsidized building if the loan is insured by the Federal Housing Administration. These comments exceed the scope of the regulations as proposed and are not addressed by the final regulations.

Special Analyses

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required.

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). Pursuant to section 7805(f) of the Internal Revenue Code, the notice of the proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these final regulations is Christopher J. Wilson, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR 1.37–1 Through 1.44A–4

Credits, Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

The amendments to 26 CFR part 1 are as follows:

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

Paragraph 1. The authority for part 1 is amended by adding a citation to read as follows:

Authority: Sec. 7805, 68A Stat. 917 (26 U.S.C. 7805) * * * Section 1.42–3 is also issued under 26 U.S.C. 42(n). * * *

Par. 2. New 1.42–3 is added to read as follows:

§ 1.42–3 Treatment of buildings financed with proceeds from a loan under an Affordable Housing Program established pursuant to section 721 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

(a) *Treatment under sections 42(i) and 42(b).* A below market loan funded in whole or in part with funds from an Affordable Housing Program established under section 721 of FIRREA is not, solely by reason of the Affordable Housing Program funds, a below market Federal loan as defined in section 42(i)(2)(D). Thus, any building with respect to which the proceeds of the loan are used during the tax year is not, solely by reason of the Affordable Housing Program funds, treated as a federally subsidized building for that tax year and subsequent tax years for purposes of determining the applicable percentage for the building under section 42(b).

(b) *Effective date.* The rules set forth in paragraph (a) of this section are effective for loans made after August 8, 1989.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: September 3, 1991.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 91–23152 Filed 9–25–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Order No. 1528–91]

Delegation of Authority Relating to Federal Tort Claims

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This Order delegates authority to specified components of the Department of Justice to settle administrative claims presented pursuant to the Federal Tort Claims Act where the amount of the settlement does not exceed $10,000. This Order will alert the general public to the components' new authority, and is being codified in the CFR to provide a permanent record of this delegation.

EFFECTIVE DATE: September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Jeffrey Axelrad, Director, Torts Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530, (202) 501–7075.

SUPPLEMENTARY INFORMATION: This Order has been issued to delegate settlement authority and is a matter solely related to division of responsibility within the Department of Justice. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a major rule within the meaning of Executive Order No. 12291.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

PART 0—[AMENDED]

Accordingly, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.172 is amended by revising paragraph (a) to read as follows:

§ 0.172 Authority: Federal tort claims.

(a) The Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization, the Director of the United States Marshals Service and the Administrator of the Drug Enforcement Administration shall have authority to adjust, determine, compromise, and settle a claim involving the Bureau of Prisons, Federal Prison Industries, the Immigration and Naturalization Service, the U.S. Marshals Service and the Drug Enforcement Administration, respectively, under section 2672 of title 28, U.S. Code, relating to the administrative settlement of Federal tort claims, if the amount of a proposed adjustment, compromise, settlement or award does not exceed $10,000. When in the opinion of one of the said Directors or one of the said Commissioners such a claim pending before him presents a novel question of law or a question of policy, he shall obtain the advice of the Assistant Attorney General in charge of the Civil Division.

* * * * *

Dated: September 16, 1991.

William P. Barr,

Acting Attorney General.

[FR Doc. 91–23045 Filed 9–25–91; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 91-138]

Head of the Connecticut Regatta, Middletown, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of Implementation of 33 CFR 100.105.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.105, for the Head of the Connecticut Regatta to be held on Sunday, October 13, 1991 from 9 a.m. to 6 p.m. The regulations in 33 CFR 100.105 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The purpose of this regulation is to provide for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATE: The regulations, 33 CFR 100.105 are effective from 9 a.m. to 6 p.m. on Sunday, October 13, 1991 and will be in effect each year thereafter during the same time period on the second Saturday of October or as published in a **Federal Register** Notice and the Coast Guard Local Notice to Mariners.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, (617) 223-8310.

Drafting Information: The drafters of this notice are LTJG E.G. WESTERBERG, project officer, First Coast Guard District Boating Safety Division, and LT J.B. GATELY, project attorney, First Coast Guard District Legal Division.

SUPPLEMENTARY INFORMATION: This notice provides the effective period for the permanent regulation governing the 1991 running of the Head of the Connecticut Regatta in Middletown, Connecticut. A portion of the Connecticut River will be closed off during the effective period of all vessel traffic except participants, official regatta vessels, and patrol craft. The regulated area is that area off the towns of Cromwell, Portland, and Middletown CT, between the southern tip of Gildersleeve Island and Light Number 87. Further public notification, including the full text of the regulations will be accomplished through advance notice in the First Coast Guard District Local Notice to Mariners.

Dated: September 16, 1991.

J.D. Sipes,

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

[FR Doc. 91-23204 Filed 9-25-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: September 18, 1991.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Caden, Loan Guaranty Service (264), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3042.

SUPPLEMENTARY INFORMATION: The Secretary is required by 38 U.S.C. 1812(f) to establish maximum interest rates for manufactured home loans guaranteed by VA as he/she finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Secretary is also required by 38 U.S.C. 1803(c) to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register** (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119.)

These regulations are adopted under the authority granted to the Secretary by sections 210(c), 1803(c)(1), 1811(d)(1) and 1812 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, Veterans.

Approved: September 17, 1991.

Anthony J. Principi,

Deputy Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below:

PART 36—LOAN GUARANTY

1. The authority citation for §§ 36.4201 through 36.4287 continues to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 72 Stat. 1114, 84 Stat. 1110 (38 U.S.C. 210, 1812).

§ 36.4212 [Amended]

2. In § 36.4212, remove the date "August 12, 1991", wherever it appears, and add, in its place, the date "September 18, 1991".

3. In § 36.4212, paragraph (a)(1), remove the number "11½", wherever it appears, and add, in its place, the number "11"; in paragraphs (a)(2) and (a)(3), remove the number "11", wherever it appears, and add, in its place, the number "10½".

4. The authority citation for §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 72 Stat 1114 (38 U.S.C. 210).

§ 36.4311 [Amended]

5. In § 36.4311, remove the date "August 12, 1991", wherever it appears, and add, in its place, the date "September 18, 1991".

6. In § 36.4311, paragraph (a), remove the number "9", wherever it appears, and add, in its place, the number "8½"; in paragraph (b), remove the number "9¼", wherever it appears, and add, in its place, the number "8¾"; in paragraph (c), remove the number "10½", wherever it appears, and add, in its place, the number "10".

7. The authority citation for §§ 36.4500 through 36.4600 continues to read as follows:

Authority: Sections 36.4500 to 36.4600 issued under 72 Stat. 1114 (38 U.S.C. 210).

§ 36.4503 [Amended]

8. In § 36.4503, paragraph (a), remove the numbers "9" and "10½", wherever they appear, and add in their place, the numbers "8½" and "10", respectively.

[FR Doc. 91-23180 Filed 9-25-91; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 56

Vessel Piping Systems

CFR Correction

In title 46 of the Code of Federal Regulations, parts 41-69, revised as of October 1, 1990, on page 207, in § 56.50-55, Table 56.50-55(a), was inadvertently omitted and should be added after paragraph (a)(1). The table is set out below:

§ 56.50-55 Bilge pumps.

(a) * * *

(1) * * *

TABLE 56.50-55(a)—POWER BILGE PUMPS REQUIRED FOR SELF-PROPELLED VESSELS

Vessel length, in feet	Passenger vessels [1]			Dry cargo vessel [2]		Tank vessels	Mobile offshore drilling units
	International voyage [3]	Ocean coastwise, and Great Lakes	All other waters	Ocean, coastwise, and Great Lakes	All other waters	All waters	All waters
180' or more	[4] 3	[4] 3	2	3	2	2	2
Below 180' and exceeding 65'	[4] 3	[5] 2	[5] 2	[5] 2	[5] 2	2	2
65' or less	3	1	1	1	1	1	2

[1] Small passenger vessels under 100 gross tons refer to Subpart 182.25 of Subchapter T (Small Passenger Vessel) of this chapter.

[2] Dry bulk carriers having ballast pumps connected to the tanks outside the engineroom and to the cargo hold may substitute the appropriate requirements for tank vessels.

[3] Not applicable to passenger vessels which do not proceed more than 20 miles from the nearest land, or which are employed in the carriage of large numbers of unberthed passengers in special trades.

[4] When the criterion numeral exceeds 30, an additional indepeldent power driven bilge pump is required. (See Part 171 of this chapter for determinatimn of criterion numeral.)

[5] Vessels operating on lakes (including Great Lakes), bays, sounds, or rivers where steam is always available, or where suitable water supply is available from a power pump of adequate pressure and capacity, siphons or eductors may be substituted for one of the required power pumps, provided a siphon or eductor is permanently installed in each hold or compartment.

* * * * *

BILLING CODE 1505-01-D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket Nos. 90-570 and 83-670, FCC 91-292]

Broadcast Television and Cable Services; Children's Television Commercial Limitations

AGENCY: Federal Communications Commission.

ACTION: Final rule; extension of effective date.

SUMMARY: The Commission extends the effective date for imposition of commercial limits on all children's television programming from October 1, 1991, to January 1, 1992.

EFFECTIVE DATE: The effective date for the commercial limits on children's programming is extended from October 1, 1991, to January 1, 1992.

ADDRESSES: Federal Communication Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gina Harrison, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in MM Docket Nos. 90-570 and 83-670, FCC 91-292, adopted September 20, 1991, and released September 20, 1991.

The complete text of this Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-

1422, 1919 M Street NW., room 246, Washington, DC 20554.

Synopsis of this Order

1. The Commission extends the effective date for imposition of commercial limits on all children's television programming from October 1, 1991, to January 1, 1992. Among other provisions, the Children's Television Act of 1990 (47 U.S.C. 303a, 303b (Act)), imposed commercial limits of 10.5 minutes an hour on weekend, and 12 minutes an hour on weekday, television broadcast and cable children's programs. The Commission originally set an October 1, 1991 effective date for all the rules implementing the Act. Report and Order (56 FR 19611, April 29, 1991). A Memorandum Opinion and Order (56 FR 42707, August 29, 1991) granted an extension of time, until January 1, 1992, for imposition of the commercial limits on children's programs acquired pursuant to barter contracts entered into prior to April 12, 1991. The more inclusive extension allowed in the current action is taken to ensure that all parties responsible for compliance with the commercial limits, particularly in the current economic situation, are treated fairly. The action is further taken out of concern that the negative repercussions caused by immediate implementation of the commercial limits can jeopardize the financing of children's programming throughout the year, contrary to the overall goals of the Act. The Commission also observed that in light of the extension of time, it would be unlikely to be sympathetic to claims of transitional difficulties on the part of broadcasters and cable operators in implementing commercial time limits. The Commission also reminded affected parties that the October 1, 1991 effective date remains in force for all other aspects of the rules implementing the Act, including those rules and policies pertaining to the programming renewal review requirement.

2. Although CBS, Inc. requested a waiver of the effective date for network programs or alternatively, for all non-barter children's programming, the Commission believed it more appropriate to address this issue in the context of the rulemaking proceeding and to reconsider the effective date for the commercial limits on its own motion. In addition, because this action involves relieving affected parties of a restriction on a temporary basis, it is permissible to make the change effective less than 30 days after publication in the **Federal Register**. 5 U.S.C. 553(d)(1); 47 CFR 1.427(b).

Final Regulatory Flexibility Analysis Statement

2. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have a significant impact on a substantial number of small entities because, by delaying the effective date of the commercial limits, the Commission is averting the negative financial repercussions likely to follow an immediate effective date for the limits. This decision will place affected parties on an equal footing with one another in competing for advertising sales.

2. The Secretary shall send a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981)).

3. Accordingly, *It is Ordered,* That pursuant to the authority contained in sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, and the Children's Television Act of 1990, 47 U.S.C. 303a and 303b, the October 1, 1991, effective date for imposition of commercial limits *Is hereby Extended,* effective immediately upon release of this Order (September 20, 1991), to January 1, 1992, for all children's programs.

List of Subjects

47 CFR Part 73

Television broadcasting.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-23241 Filed 9-25-91; 8:45 am]

BILLING CODE 6712-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1804, 1806, 1807, 1810, 1812, 1815, 1817, 1819, 1825, 1827, 1832, 1837, 1842, 1852, and 1853

[NASA FAR Supplement Directive 89-9]

RIN 2700-AB10

Acquisition Regulation; Miscellaneous Amendments to NASA FAR Supplement

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule.

SUMMARY: This document amends the NASA Federal Acquisition Regulation Supplement (NFS) to reflect a number of miscellaneous changes dealing with NASA internal or administrative matters. The major changes involve: (1) Provision of operational information, publications, and points of contract for procurement policy; (2) Revision of NASA Form 507 reporting requirements; (3) Change in NASA Headquarters approval of Justification for Other Than Full and Open Competition; (4) Revision to the procurement plan content regarding considerations given to post-award contract management; (5) Implementation of the Metric Conversion Act of 1975; (6) Priorities and Allocations reference change; (7) Revisions in price negotiations and profit; (8) Implementation of NASA Small Business and Small Disadvantaged Business Set-Asides; (9) Provision of policies and procedures for achieving the NASA goal for awards to socially and economically disadvantaged small businesses; (10) Revisions in Buy American Act determinations; (11) Name and address change of facility to which contractors must submit reports of work; and (12) Revision of determination and addition of clause for advance payments.

EFFECTIVE DATE: September 30, 1991.

FOR FURTHER INFORMATION CONTACT: David K. Beck, Chief, Regulations

Development Branch, Procurement Policy Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–8250.

SUPPLEMENTARY INFORMATION:

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this rule is a part, is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The regulations herein are in the exempted category. NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The regulation imposes no new burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR part 1320, nor does it significantly alter any reporting or recordkeeping requirements currently approved under OMB control number 2700–0042.

List of Subjects in 48 CFR Parts 1801, 1804, 1806, 1807, 1810, 1812, 1815, 1817, 1819, 1825, 1827, 1832, 1837, 1842, 1852, and 1853

Government procurement.

Darleen A. Druyun,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR parts 1801, 1804, 1806, 1807, 1810, 1812, 1815, 1817, 1819, 1825, 1827, 1832, 1837, 1842, 1852, and 1853, continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Part 1801 is amended as set forth below:

a. In subpart 1801.1, section 1801.104–370 is revised to read as follows:

1801.104–370 Dissemination of procurement regulations and related NASA publications.

(a) The Office of Procurement, NASA Headquarters (Code HP), distributes the Federal Acquisition Regulation (FAR), Federal Acquisition Regulation Circulars (FAC), NASA FAR Supplement (NFS), NASA FAR Supplement Directives (NFSD), Grant and Cooperative Agreement Handbook (G&CAHB), Procurement Notices (PN), Procurement Information Circulars (PIC), and Grants Notices (GN) directly to NASA Headquarters offices and to installation distribution points. Mrs. Cynthia O'Bryant (202–453–2105) is the contact point for Headquarters personnel and the installation distribution points. NASA center personnel may be placed on the distribution list or may obtain extra copies by contacting the designated distribution point for their installation. (Do not order these documents on a NASA Form 2 from the Goddard Space Flight Center.)

(b) Heads of field installations shall ensure that copies of all procurement-related NASA publications are promptly distributed upon receipt.

(c) The information in paragraph (d) of this section should be used to respond to requests for copies of procurement-related publications. Unnecessary referrals to other offices should be avoided.

(d) NASA does not provide subscriptions (or updating issuances) directly to other Government agencies, private concerns, or individuals. Subscriptions to the procurement-related NASA publications listed below may be obtained by writing to Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402, or by calling (202) 783–3238. Telephone orders may be charged to Visa, Mastercard, or a GPO Deposit Account. A subscription consists of the basic edition, plus all changes issued for an indefinite period. The prices and periods of subscriptions are set by the Superintendent of Documents.

NASA FAR Supplement (NFS)

GPO Subscription Stock No. 933–003–00000–1

NASA Grant and Cooperative Agreement Handbook (G&CAHB)

GPO Subscription Stock No. 933–001–00000–8

Federal Acquisition Regulation (FAR)

GPO Subscription Stock No. 922–006–00000–8 (Note: The FAR is not a NASA publication.)

Public libraries that possess the Code of Federal Regulations (CFR) are also a source of information, but this source is updated only once each year. See 48 CFR chapter 1 for the FAR and 48 CFR chapter 18 for the NFS.

(e) NHB 8030.6, Guidelines for the Acquisition of Investigations (a verbatim reprint of NFS 1870.103, appendix I), may be obtained by following installation procedures for ordering NASA Handbooks. It is available for purchase by the public from the NASA Information Center, Code DBP–4, Washington, DC 20546. Telephone (202) 453–1000.

(f) NHB 5103.6, Source Evaluation Board Handbook (a verbatim reprint of NFS 1870.303, appendix I), is available in single copies to Government employees from Code HS, Gloria Shively (202–453–2080). For bulk requests, contact Code NA–2, Juanita DeButts (202–453–2924). Copies are sold to contractors, the public, and other non-governmental entities by the NASA Information Center, Code DBD–4, Washington, DC 20546. Telephone: (202) 453–1000.

(g) How to Compete for NASA Contracts and Guidance for the Preparation and Submission of Unsolicited Proposals are available from the Office of Small and Disadvantaged Business Utilization (Code K), NASA, Washington, DC 20546. Telephone: (202) 453–2088. They are also available from the Small and Disadvantaged Business Utilization representatives at each NASA installation.

(h) Selling to NASA is available from the same sources noted in paragraph (g) of this section. Copies may also be purchased from the GPO. The GPO Stock Number is 033–000–01065–6.

1801.302–70 [Amended]

b. In subpart 1801.3, in section 1801.302–70, paragraph (b), "Attn." is revised to read "Attn:".

c. In subpart 1801.3, section 1801.370 is added to read as follows:

1801.370 Points of contact.

Individuals within the Office of Procurement (Code H) are assigned primarily responsibility for maintaining the currency of and providing information about specific procurement regulations and related matters. In some instances, the responsibility is shared by other functional offices. This section lists the various procurement-related areas and publications and the individuals assigned to them. It provides at the end an alphabetical directory of those individuals and their telephone numbers.

(a) Principal procurement-related publications and contact individuals.

(1) NASA FAR Supplement (NFS) and Federal Acquisition Regulation (FAR)

(i) FAR Council—Bailets

(ii) FAR and NFS Substantive areas—

Part 1	
1.602–3	Bennett.
Balance of 1.6	Pesnell.
1.7	Pesnell.
All other subparts	Bailets.
Part 2	Brown.
Part 3	Sudduth.
Part 4	
4.6	Baker/Brown.
4.9	Baker/Brown.
4.72	Evey/Brown.
All other subparts	Brown.
Part 5	Jeffries
Part 6	
6.5	King/Pesnell.
All other subparts	Pesnell.
Part 7	
7.71	Evey/Sudduth.
7.72	Nelson/Sudduth.
All other subparts	Sudduth.
Part 8	
8.3	Brown/Cephas.
All other subparts	Brown.
Part 9	
9.4	Brundage.
All other subparts	Pesnell.
Part 10	
10.002(c)	Pesnell.
All other subparts	Sudduth.
Part 11	Sudduth.
Part 12	
12.1	Brown.
12.2	Brundage.
12.3	Brown.
12.4	Brown.
12.5	Brundage.
Part 13	
13.71	Thompson/Brown.
All other subparts	Brown.
Part 14	Brown.
Part 15	
15.1	Jeffries.
15.4	Jeffries.
15.5	Sudduth.
15.6	Whelan.
15.7	Jeffries.
15.8	Guenther/Bailets.
15.9	Guenther/Bailets.
15.10	Brundage.
Part 16	Guenther/Pesnell.
Part 17	Sudduth.
Part 19	Jeffries/Rosen.
Part 20	Jeffries.
Part 22	Pesnell/Gilson.
Part 23	
23.5	Sudduth.
All other subparts	Brown.
Part 24	Brundage.
Part 25	Jeffries.
Part 26	Sudduth.
Part 27	Kempf/Pesnell.
Part 28	Pesnell.
Part 29	Bennett.
Part 30	LeCren/Bailets.
Part 31	LeCren/Bailets.
Part 32	LeCren/Bailets.
Part 33	Brundage.
Part 34	Sudduth.
Part 35	Sudduth.
Part 36	Pesnell/Stamper.
Part 37	
37.2	Baker/Pesnell.
All other subparts	Pesnell/Gilson.
Part 38	Brown.
Part 39	Bennett.
Part 42	
42.7	LeCren/Bailets.
42.8	LeCren/Bailets.
42.10	Guenther/Bailets.
All other subparts	Pendleton/Bennett.
Part 43	Pendleton/Pesnell.
Part 44	Jeshow/Jeffries.
Part 45	Bennett/Pendleton/ Wilchek.
Part 46	Bennett/Jeshow.
Part 47	Jeffries/Brunner.
Part 48	Wilson/Jeffries.
Part 49	Bennett.
Part 50	
50.4	Pesnell.
All other subparts	Brundage.
Part 51	Brown.
Part 52	Brown/All analysts in assigned areas.
Part 53	Brown.
Part 70	
70.3	Evey/Sudduth.
70.4	Thompson/Sudduth.
All other subparts	Sudduth.

(iii) Publication Matters—Beck

(iv) Distribution and Filing—O'Bryant

(2) Grant and Cooperative Agreement Handbook (G&CAHB)

(i) All areas, including Federal Demonstration Project—Beck

(ii) Government Furnished Property—Wilchek

(iii) Financial Management—Smith

(iv) Intellectual Property—Kempf

(3) Procurement Notices (PN)—Contact named on PN

(4) Grant Notices (GN)—Contact named on GN

(5) Guidelines for Acquisition of Investigations (NHB 8030.6)—Sudduth

(6) Source Evaluation Board Handbook (NHB 5103.6)—Evey

(7) How to Compete for NASA Contracts—Sudduth

(8) Selling to NASA—Rosen

(9) Guidance for the Preparation and Submission of Unsolicited Proposals—Sudduth

(b) Consolidated Contact List.

Name (code)	(202) 453–
Bailets, Lynn W. (HP)	8252
Baker, Herbert H. (HM)	8994
Beck, David K. (HP)	8250
Bennett, Carol E. (HP)	8254
Brown, Madelon C. (HP)	8925
Brundage, Paul D. (HP)	8922
Brunner, Peter F. (NIB)	2975
Cephas, Barbara (HS)	8033
Evey, Walker L. (HS)	2080
Gilson, Gordon K. (NR)	2882
Guenther, Anne (HC)	9204
Jeffries, Kenneth (HP)	8253
Kempf, Robert F. (GP)	2424
King, Bruce C. (HH)	1803
LeCren, Joseph (HC)	9203
Nelson, Harold (HH)	8924
O'Bryant, Cynthia B. (HP)	2105
Pesnell, James A. (HP)	8358
Maraist, William J. (HP)	2105
Rosen, Eugene D. (K)	2088
Smith, Phillip T. (BFC)	8147
Stamper, William (NXF)	9317
Sudduth, David (HP)	8923
Thompson, Scott (HM)	8918
Whelan, Thomas J. (HP)	8251
Wilchek, Billie E. (NIE)	2989
Wilson, Roger (HH)	8009

PART 1804—ADMINISTRATIVE MATTERS

3. Part 1804 is amended as set forth below:

1804.202 [Amended]

a. In section 1804.202, paragraph (a), "the NASA Scientific and Technical Information Facility" is changed to read "the NASA Center for Aerospace Information (CASI)."

1804.671–4 [Amended]

b. In section 1804.671–4, paragraph (d), the number "5" is changed to read "4."

c. In section 1804.671–4, paragraph (l) is revised to read as follows:

* * * * *

(l) Item 9—Contractor Place of Performance (CPOP) VID (7 positions). Enter the unique Contractor Place of performance (CPOP) VID which indicates the contractor's place of performance address. This is a seven character alpha-numeric code generated by the Acquisition Management Subsystem (AMS).

1804.671–4 [Amended]

d. In section 1804.671–4, paragraph (u), under Nonprofit Organization, Code 05 is revised and Codes 15 and 25 are added to read as follows:

Nonprofit Organization

05 Educational (Non-Minority). A non-minority educational institution that is *not* State, Federal, or local-government-owned.

* * * * *

15 Educational (HBCU). A Historically Black College or University (HBCU) that is *not* State, Federal, or local-government-owned.

25 Eductional (Other Minority). A minority educational institution, other than an HBCU, that is *not* State, Federal, or local-government-owned.

1804.671–4 [Amended]

e. In section 1804.671–4, paragraph (u), under State/Local Government, Code 09 is revised and Codes 19 and 29 are added to read as follows:

State/Local Government

09 Educational (Non-Minority). A State, Federal, or local-government-owned non-minority educational institution.

(Privately owned non-minority educational institutions shall be coded 05.)

* * * * *

19 Educational (HBCU). A State, Federal, or local-government-owned Historically Black College or University (HBCU). (Privately owned HBCU's shall be coded 15.)

29 Educational (Other Minority). A State, Federal, or local-government-owned non-minority educational institution, other than an HBCU. (Privately owned minority educational institutions, other than HBCU's, shall be coded 25.)

1804.671-4 [Amended]

f. In section 1804.671-4, paragraph (ll) is revised to read as follows:

* * * * *

(ll) Item 33—Contract administration delegated. Enter "Y" (yes) or "N" (no) in the first blank to indicate whether any contract administration functions have been delegated to another Government agency (see FAR subpart 42.2). If an "N" was entered, leave the rest of this field blank. If a "Y' was entered, continue to the second blank and enter a "Y" or "N" to indicate whether there was a blanket delegation. A blanket delegation is defined as a delegation of all contract administration functions listed in FAR 42.302(a), with the exception of those non-assignable functions specified in NFS 1842.202(c), plus post award audit. If not a blanket delegation, enter a "Y" for each individual function delegated among the ten items listed. It is not necessary to enter an "N" for non-delegated functions.

1804.671-4 [Amended]

g. In section 1804.671-4, paragraph (tt) is revised to read as follows:

* * * * *

(tt) Item 41—Woman-owned business (1 position). Enter "Y" (yes) or "N" (no) to indicate whether the business concern is a woman-owned business. A woman-owned business is one that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

1804.671-4 [Amended]

h. In section 1804.671-4, paragraphs (ccc) through (sss) are redesignated as (ddd) through (ttt), and Item numbers 50 through 66 associated with these paragraphs are renumbered 51 through 67. A new paragraph (ccc) is added to read as follows:

* * * * *

(ccc) Item 50—Value Engineering Clause. Enter "Y" (yes) or "N" (no) to indicate whether the contract contains any one of the value engineering clauses at FAR 52.248-1, 52.248-2, or 52.248-3.

* * * * *

PART 1806—COMPETITION REQUIREMENTS

1806.304 [Amended]

4. Section 1806.304, paragraph (a), is revised to read as follows:

* * * * *

(a) All justifications for contract actions over $100,000 shall be submitted to the procurement officer for concurrence before being forwarded for approval. Justifications over $1,000,000 shall also be submitted to the installation's Competition Advocate for concurrence, and those over $10,000,000 shall be further submitted for the concurrence of the installation's Director, before being forwarded for approval. For actions requiring Headquarters approval, the contracting officer shall include signature blocks for the concurrence of the NASA Competition Advocate and the approval of the Assistant Administrator for Procurement in the same section of the document where signatures are obtained evidencing certification or concurrence by installation personnel. A separate Headquarters signature page shall not be used.

* * * * *

PART 1807—ACQUISITION PLANNING

5. Subpart 1807.1 is amended as set forth below:

1807.170-1 [Amended]

a. In section 1807.170-1, the existing paragraph "(c)" is designated as paragraph "(d)", and a new paragraph "(c)" is added to read as follows:

* * * * *

(c) Contract management considerations. The procurement plan shall address the basic plan for management of the pending contract. At a minimum, the procurement plan shall address the rationale for any planned delegations of contract administration functions to DOD contract administration service components, the need for delegation of any duties to a Contracting Officer's Technical Representative, the extent of subcontracting activity expected and the plan for processing consent to subcontract actions, quality assurance requirements, anticipated approach to oversight of Government property, oversight of the contractors' property system, site access and site preparation, if required, and the need for any unique contract management activity of contract clauses.

* * * * *

1807.170-2 [Amended]

b. In section 1807.170-2, the following sentence is added to the end of the paragraph:

* * * Installation prescribed formats shall ensure all contract management considerations enumerated at 1807.170-1(c) are addressed.

PART 1810—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

1810.002 [Amended]

6. In section 1810.002, the following text is added to read as set forth below:

Implementation of the Metric Conversion Act of 1975, as amended, FAR 10.002(c), shall be in accordance with the policy section of NMI 8010.2. Requiring activities are responsible for designating the system of weights and measures applicable to each requirement (see 46.103).

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

1812.302, 1812.303-70 [Amended]

7. In section 1812.302, paragraph (b), and in section 1812.303-70, paragraph (c), the citation "15 CFR part 350" is revised to read "15 CFR part 700."

PART 1815—CONTRACTING BY NEGOTIATION

8. Part 1815 is amended as set forth below:

a. Subpart 1815.8 is revised to read as follows:

Subpart 1815.8—Price Negotiation

1815.804 Cost or pricing data.
1815.804-3 Exemptions from or waiver of submission of certified cost or pricing data.
1815.805-4 Technical analysis.
1815.805-470 Responsibilities of NASA requirements personnel.
1815.805-5 Field pricing support.
1815.807 Prenegotiation objectives.
1815.807-70 Content of the prenegotiation position memorandum.
1815.807-71 Installation reviews.
1815.807-72 Headquarters reviews.
1815.808 Price negotiation memorandum.
1815.870 Subcontract price redetermination.
1815.870-1 General.
1815.870-2 NASA contract clause.
1815.871 [Reserved]

1815.872 Tracking and resolution of expenditure and system audit findings.

Subpart 1815.8—Price Negotiation

1815.804 Cost or pricing data.

1815.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) When an exemption is granted under FAR 15.804–3(e)(2) for repetitive submissions of catalog items, Government approval of the exemption claim shall state the effective period, usually not more than one year, and require the contractor to furnish any later information that might raise a question as to the exemption's continuation.

(b) When exempting submission under FAR 15.804–3(e)(3), the contracting officer shall document the reasons for the exemption. For example, if the item being procured is similar to a commercial item, only an explanation of a price differential may be needed. If the fact of substantial sales to the general public is well known, the actual sales prices, but not the quantity of sales, may be required.

(c) The authority in FAR 15.804–3(i) to waive the requirement for cost or pricing data is delegated to the Assistant Administrator for Procurement, without power of redelegation. Set forth below is a sample format for the determination and findings to be made by the Assistant Administrator for Procurement to waive the requirement for submission and certification of cost or pricing data as required by 10 U.S.C. 2306a(b). Requests for waivers shall be addressed to NASA Headquarters, Contract Pricing and Finance Office, Code HC and shall include the name and telephone number of the contracting officer, a copy of the contractor's refusal to submit and/or certify cost or pricing data, a discussion of the contracting officer's efforts to obtain the data and/or certification, and the basis for the contracting officer's determination of price reasonableness.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Washington, DC 20546

Determination and Findings

Authority to Waive Submission of Certified Cost or Pricing Data

On the basis of the following findings and determination, the requirement for submitting certified cost or pricing data described below may be waived pursuant to the authority of 10 U.S.C. 2306a(b), as implemented by NASA FAR Supplement 1815.804–3(c).

Findings

1. The *(1)* proposes to enter into a contract with *(2)* for the procurement of *(3)*.

2. Pursuant to FAR 15.804–2, the proposed contractor is required to submit certified cost or pricing data. However, waiver of submission of the certified cost or pricing data described below is justified for the reasons indicated: (4)

Determination

The requirement for submission of certified cost or pricing data described below in the above findings for the proposed procurement is hereby waived.

Assistant Administrator for Procurement

Date_____

Notes—

(1) Name of installation.

(2) Name of proposed contractor.

(3) Brief description of supplies or services.

(4) Identification of the cost or pricing data requirements to be waived. The waiver may be partial, for example, limited to a particular subcontractor. Also describe the circumstances and conditions that make the proposed procurement an exceptional case, and state the reasons justifying the proposed waiver.

(d) (1) NASA and the Canadian Department of Defense Production (DDP) have agreed that a letter of agreement between DDP and the U.S. Military Departments will also apply to NASA contracts with the Canadian Commercial Corporation (CCC), an agency of the Government of Canada.

(2) The CCC, in the letter of agreement, provides its assurance of the fairness and reasonableness of the proposed prices, and also provides for follow up audit activity where appropriate to help insure that excess profits are found and refunded to NASA. The integrity of the representations of assurance made by the agents of the Canadian Government can be assumed.

(3) The review and audit practices of the Government of Canada, the price assurance representations, and the adjustments rendered where profits are excessive are considered to satisfy the requirements of 10 U.S.C. 2306a. Therefore, NASA has waived the requirement for certification of cost or pricing data submitted by the CCC during the period April 1, 1990 through March 31, 1993. This waiver applies only to the certification and does not waive the requirement for submission of cost or pricing data.

(4) When a procurement action requires use of the waiver, a telephone report should be made to NASA Headquarters, Contract Pricing and Finance Division, Code HC. This information is used to determine the continuing need for a blanket waiver authorization.

1815.805–4 Technical analysis.

1815.805–470 Responsibilities of NASA requirements personnel.

NASA requirements personnel are responsible for conducting a technical evaluation of proposals to determine whether the supplies or services offered will meet specifications. In addition, when a cognizant contract administration office is not requested to perform the technical analysis portion of a field pricing report in accordance with FAR 15.805–5, the analysis will be the responsibility of NASA requirements personnel.

1815.805–5 Field pricing support.

(a) A field pricing report shall be obtained in accordance with FAR 15.805–5(a)(1), except that for cost-reimbursement contracts, the threshold for obtaining a field pricing report is $1,000,000.

(b) Whenever available data are adequate for a reasonableness determination, the contracting officer shall document the contract file to reflect the basis of the determination.

(c) When the contracting officer determines that information adequate to establish price reasonableness without full field pricing support is available within NASA, but that a review by the auditor is still needed, the contracting officer should address the request directly to the cognizant audit office. The cognizant ACO shall be provided an information copy of this request.

(d) When input from the ACO or auditor involves merely a verification of information, contracting officers are encouraged to obtain this verification by direct telephone contact with the cognizant officer and shall record it in the contract file.

(e) When the thresholds at 1815.805–5(a) are met and the cost proposal is for a product of a follow-on nature, notwithstanding any other provision of section 1815.805–5, a complete report shall be requested from the cognizant contract administration office. The field pricing report will include, but not be limited to, actuals incurred under the previous contract, learning experience, technical and production analysis, and subcontract proposal analysis.

1815.807 Prenegotiation objectives.

Before conducting negotiations requiring installation or Headquarters review, contracting officers or their representatives shall prepare a prenegotiation position memorandum setting forth the technical, business, contractual, pricing, and other aspects to be negotiated.

1815.807-70 Content of the prenegotiation position memorandum.

The prenegotiation position memorandum (PPM) should fully explain the contractor and Government positions. Since the PPM will ultimately become the basis for negotiation, it should be structured to track to the price negotiation memorandum (see FAR 15.808 and 1815.808). In addition to the information described in FAR 15.807 and, as appropriate, 15.808(a), the PPM should address the following subjects, as applicable, in the order presented:

(a) *Introduction.* Include a description and a history of the procurement and a history of prior procurements for the same or similar items. Address the extent of competition and its results. Identify the contractor and place of performance (if not evident from the description of the procurement). Document compliance with law, regulations and policy, including JOFOC, synopsis, method of contracting D&F, EEO compliance, and current status of contractor systems (see FAR 15.808(a)(4)). In addition, the negotiation schedule should be addressed and the Government negotiating team members identified by name and position.

(b) *Type of contract contemplated.* Explain the type of contract contemplated and the reasons for its suitability.

(c) *Special features and requirements.* In this area, discuss any special features (and related cost impact) of the procurement, including such items as—

(1) Letter contract or precontract costs authorized and incurred;

(2) Results of preaward survey;

(3) Contract option requirements;

(4) Government property to be furnished;

(5) Contractor/Government investment in facilities and equipment (and any modernization to be provided by the contractor/Government);

(6) Plant reconversion or plant clearance (see 1845.106-71); and

(7) Any deviations, special clauses, or unusual conditions anticipated, for example, unusual financing, warranties, EPA clauses and when approvals were obtained, if required.

(d) *Cost analysis.*

(1) Include a parallel tabulation, by element of cost and profit/fee, of the contractor's proposal, the Government's negotiation objective, and the Government's maximum position, if applicable. For each element of cost, compare the contractor's proposal and each Government position, explain the differences and how the Government position(s) were developed, including the estimating assumptions and projection techniques employed, and how the positions differ in approach. Explain how historical costs, including costs incurred under a letter contract (if applicable), were used in developing the negotiation objective.

(2) Significant differences between the field pricing report (including any audit reports) and the negotiation objectives and/or contractor's proposal shall be highlighted and explained, as shall technical evaluation results that caused the Government's cost negotiation objectives to differ significantly from the contractor's proposed cost (such as differences in staffing). For each proposed subcontract meeting the requirement of FAR 15.806-2(a), there shall be a discussion of the price and, when appropriate, cost analyses performed by the contracting officer, including the negotiation objective for each such subcontract. The discussion of each major subcontract shall include the type of subcontract, the degree of competition achieved by the prime contractor, the price and, when appropriate, cost analyses performed on the subcontractor's proposal by the prime contractor, any unusual or special pricing or finance arrangements, and the current status of subcontract negotiations.

(3) The rationale for the Government's profit/fee objectives and, if appropriate, a completed copy of the NASA Form 634, Structured Approach—Profit/Fee Objective, and DD Form 1861, Contract Facilities Capital Cost of Money, should be included. For incentive and award fee contracts, describe the planned arrangement in terms of share lines, ceilings, cost risk, and so forth, as applicable.

(e) *Negotiation approval sought.* Indicate the specific approvals sought, for example, dollar parameters, special clauses/conditions and fee objectives.

1815.807-71 Installation reviews.

Each contracting activity shall establish a formal system for the prenegotiation review of any proposal over $250,000 ($100,000 at Stennis Space Center, Jet Propulsion Laboratory, Space Station Procurement Office, and Headquarters Acquisition Division). The scope of coverage, exact procedures to be followed, levels of management review, and contract file documentation requirements should be directly related to the dollar value and complexity of the procurement. The primary purpose of these reviews is to ensure that the negotiator, or negotiating team, is thoroughly prepared to enter into negotiations with a well-conceived, realistic, and fair plan.

1815.807-72 Headquarters reviews.

Approval of the prenegotiation position by the Assistant Administrator for Procurement is required before negotiations are entered into on any procurement action selected for Headquarters review. Generally, at the time a procurement is processed as a Master Buy Plan (MBP) action under subpart 1807.71, a decision will have been made as to whether the prenegotiation position will be subject to Headquarters review and approval. However, prenegotiation positions on any procurement actions may be selected for Headquarters review and approval at any point in the acquisition cycle prior to actual negotiations.

(a) *Scheduling of presentation.* When a prenegotiation presentation is required by Headquarters or requested by the installation concerned, scheduling of the presentation will be arranged by the Office of Procurement, Program Operations Division (Code HS), in consultation with appropriate Headquarters program officials. The installation shall notify Code HS sufficiently in advance of the desired presentation to permit scheduling and preparation by Headquarters staff.

(b) *Advance information.* Not less than ten working days in advance of the scheduled prenegotiation presentation, the installation shall provide Code HS with the following:

(1) Five copies of the PPM.

(2) Five copies of any briefing charts and/or viewgraphs to be used in the presentation. Briefing charts and/or viewgraphs shall summarize key points/factors identified in the PPM and should be grouped in the same manner as presented in the PPM.

(3) One copy each of the contractor's proposal, the Government technical evaluation, and all pricing reports (including any audit reports).

(c) *Waiver.* The Assistant Administrator for Procurement may waive the presentation requirement if, on the basis of Headquarters review of the advance information provided under subparagraph (b)(2) of this section, it is clear that installation personnel are thoroughly prepared to enter into negotiations.

(d) *Safeguarding prenegotiation material.* Prenegotiation data are very sensitive and should be handled accordingly. Close coordination with Code HS personnel should be maintained to ensure that prenegotiation material is not comprised during transit. Distribution of prenegotiation data shall be made on a need-to-know basis.

1815.808 Price negotiation memorandum.

(a) The price negotiation memorandum (PNM) serves as a detailed summary of (1) the technical, business, contractual, pricing (including price reasonableness), and other elements of the contract negotiated, and (2) the methodology and rationale used in arriving at the final negotiated agreement.

(b) When the PNM is a "stand-alone" document, it shall contain the information required by the FAR and NFS for both PPM's and PNM's. However, when a PPM has been prepared under 1815.807, the subsequent PNM need only provide the information required by FAR 15.808 and explain the differences between the prenegotiation objective position and the final negotiated settlement, including each proposed subcontract that meets the requirements of FAR 15.806–2(a). If, at the time of negotiated settlement for cost-reimbursement type prime contracts, there remain significant pricing uncertainties with respect to any proposed subcontract that meets the requirement of FAR 15.806–2(a), each such subcontract shall be discussed in the PNM, identified in the contract Schedule for special surveillance, and set aside for subcontract consent by the NASA contracting officer in accordance with FAR 44.2 and NFS 1844.102–70.

1815.870 Subcontract price redetermination.

1815.870–1 General.

(a) When subcontracts have been placed on a price-redetermination or fixed-price-incentive basis and the prime contract is a fixed-price type redeterminable contract as described in FAR 16.205, 16.206 and 16.403–2 which is to be finally priced, it may be appropriate to negotiate a firm prime contract price, even though the contractor has not yet established final subcontract prices. The contracting officer may do this when convinced that the amount included for subcontracting is reasonable, for example, when realistic cost or pricing data on subcontract efforts are available.

(b) However, even though the available cost data are highly indefinite and there is a distinct chance that one or more of the subcontracts eventually may be redetermined at prices lower than those predicted in redetermining the prime contract price, other circumstances may require prompt negotiation of the final contract price. In such a case, the contract modification evidencing the revised contract price shall provide for adjustment of the total amount paid or to be paid under the contract on account of subsequent redetermination of the specified subcontracts. This may be done by including in the contract modification the clause prescribed at 1815.870–2.

1815.870–2 NASA contract clause.

The contracting officer shall insert the clause at 1852.215–71, Adjustment for Subcontract Price Redetermination, in contract modifications that reflect a repricing of the prime contract, but provide for future adjustment of the repriced contract upon subsequent redetermination of specified subcontract(s).

1815.871 [Reserved]

1815.872 Tracking and resolution of expenditure and system audit findings.

(a) This section implements OMB Circular No. A–50, NASA Management Instruction (NMI) 9970.1, Audit Follow-up, and NASA Handbook 9970.2, NASA Audit Follow-up Handbook, provide more detailed guidance. Expenditure and system audit recommendations shall be resolved by formal review and approval procedures analogous to those at 1815.807–71.

(b) On expenditure or system audits where a major disagreement exists between the contracting officer and the auditor that, in the opinion of the procurement officer, (1) represents a significant dollar amount, (2) contravenes a DCAA Headquarters position or policy, or (3) requires NASA Headquarters involvement for any reason, the planned resolution will be coordinated with NASA Headquarters, Code HC, before final action.

(c)(1) The contract audit follow-up system tracks all expenditure and system audits when NASA has cognizant resolution and disposition authority. Included are estimating system surveys; accounting system reviews; defective pricing reviews; cost accounting standards (CAS) noncompliance issues (including CAS disclosure statements if they contain noncompliance issues); internal control reviews, operations audits; and reports on incurred costs, settlement of final indirect cost rates, final pricing submissions, termination settlement proposals, equitable adjustment claims, hardship claims, and escalation claims. Preaward audit reports involving the placement of contracts or contract modifications shall not be included in the tracking system.

(2) All audit reports involving questioned costs in the categories specified in subparagraph (c)(1) of this section shall be reported semi-annually to Code HC except those reports covered incurred costs, settlement of final indirect cost rates, final pricing submissions, termination settlement proposals, equitable adjustment claims, hardship claims, and escalation claims. These reports are reportable only if questioned and/or qualified costs equal $100,000 or more.

(3) The objective of the tracking system is to ensure that audit recommendations are resolved as expeditiously as possible, but at a maximum, within six months of the date of the audit report.

(d) Identification and tracking of expenditure and system audit reports under NASA cognizance are accomplished in cooperation with DCAA by means of the DCAA form, Contract Audit Follow-up Summary Sheet. The original form is attached by DCAA to the original audit report and sent to the contracting officer having negotiation or resolution responsibility. A copy of the form is sent by DCAA to NASA Headquarters (Code HC). The summary sheet identifies the total costs questioned, considered avoidable, and/or unsupported/qualified. The form also identifies the responsible contracting officer.

b. Subpart 1815.9 is revised to read as follows:

Subpart 1815.9—Profit

1815.902 Policy.
1815.903 Contracting officer responsibilities.
1815.903–70 Contracting officer authority for negotiating architect-engineer fees.
1815.970 NASA structured approach for profit or fee objective.
1815.970–1 Contractor effort.
1815.970–2 Other factors.
1815.970–3 Facilities capital cost of money.
1815.971 Payment of profit or fee under letter contracts.

Subpart 1815.9—Profit

1815.902 Policy.

As authorized by FAR 15.902, NASA has established a structured approach for determining profit or fee objectives. This approach, described in 1815.970, is based on the profit-analysis factors appearing in FAR 15.905 and shall be used to determine profit or fee objectives for conducting negotiations in those acquisitions that require cost analysis, except in the case of—

(a) Artchitect-engineer contracts;

(b) Management contracts for operation and/or maintenance of Government facilities;

(c) Construction contracts;

(d) Contracts primarily requiring delivery of material supplied by subcontractors;

(e) Termination settlements;

(f) Cost-plus-award-fee contracts (however, contracting officers may find it advantageous to perform a structured profit analysis as an aid in arriving at an appropriate fee arrangement); and

(g) Contracts having unusual pricing situations when the structured approach is determined unsuitable and the exemption is (1) justified in writing, and (2) authorized by the procurement officer.

1815.903 Contracting officer responsibilities.

1815.903–70 Contracting officer authority for negotiating architect-engineer fees.

It is NASA policy that if a contract involving architect-engineer services covers any services other than the production and delivery of designs, plans, drawings, and specifications, the part of the contract price for these other services is not subject to the 6 percent fee limitation set forth in FAR 15.903(d)(1).

1815.970 NASA structured approach for profit or fee objective.

(a) The factors in 1815.970–1 through 1815.970–3 shall be considered in all cases in which profit is to be specifically negotiated. The weight ranges listed after each category and factor on NASA Form 634, Structured Approach Profit/Fee Objective, shall be used whenever the structured approach is used.

(b) The contracting officer shall first measure Contractor Effort by assigning a profit percentage in column 1.(c), within the designated weight ranges, to each element of contract cost recognized by the contracting officer. The amount calculated for the cost of money for facilities capital is not to be included as part of the cost base in column 1(a) in the computation of profit.

(c) The suggested cost categories under Contractor Effort are for reference purposes only. The format of individual proposals will vary, but these broad and basic categories provide a sample structure for the evaluation of all categories of cost.

(d) After computing a total dollar profit in line 1.A for Contractor Effort, the contracting officer shall calculate the specific profit dollars for cost risk, investment, performance, subcontract program management, socioeconomic programs, and special situations. (Inventive and developmental contributions, unusual pricing agreements and additional factors shall be combined under special situations.)

(e) In making a judgment of the weight assigned to each cost category and factor, the contracting officer should be governed by the description and purpose of each category and factor and the considerations for evaluating them as set forth in 1815.970–1, –2, and –3. The rationale supporting the assigned weights shall be documented in the PPM in accordance with 1815.807–70(c)(3).

(f)(1) The structured approach was designed for arriving at profit or fee objectives for commercial organizations. However, as modified in accordance with paragraph (2) of this section, the structured approach shall be used as a basis for arriving at fee objectives for nonprofit organizations (FAR subpart 31.7), excluding educational institutions (FAR subpart 31.3). It is NASA policy not to pay profit or fee on contracts with educational institutions.

(2) For contracts with nonprofit organizations under which fees are involved, an adjustment of up to 3 percent shall be subtracted from the total profit/fee objective. In developing this adjustment, it will be necessary to consider—

(i) Tax position benefits;

(ii) Granting of financing through letters of credit;

(iii) Facility requirements of the nonprofit organization; and

(iv) Other pertinent factors that may work to either the advantage or disadvantage of the contractor in its position as a nonprofit organization. The adjustments should not be applied as deductions against historical fee levels, but rather to the fee objective as calculated under the structured approach.

1815.970–1 Contractor effort.

This factor takes into account what resources are necessary and what the contractor must do to meet the contract performance requirements. Evaluation of this factor requires analyzing the cost content of the proposed contract as follows:

(a) *Material acquisition (subcontracted items, purchased parts, and other material).* (1) Consider the managerial and technical efforts necessary for the prime contractor to select subcontractors and administer subcontracts, including efforts to introduce and maintain competition. These evaluations shall be performed for purchases of raw materials or basic commodities; purchases of processed material, including, all types of components of standard of near-standard characteristics; and purchases of pieces, assemblies, subassemblies, special tooling, and other products special to the end item. In performing the evaluation, also consider whether the contractor's purchasing program makes a substantial contribution to the performance of a contract through the use of subcontracting programs involving many sources, new complex components and instrumentation, incomplete specifications, and close surveillance by the prime contractor.

(2) Recognized costs proposed as direct material costs, such as scrap charges, shall be treated as material for profit evaluation. If intracompany transfers are accepted at price in accordance with FAR 31.205–26(e), they shall be evaluated as material. Other intracompany transfers shall be evaluated by individual components of costs, i.e., material, labor, and overhead.

(b) *Direct labor (engineering, service, manufacturing, and other labor).* (1) Analysis of the various items of cost should include evaluation of the comparative quality and level of the engineering talents, service contract labor, manufacturing skills, and experience to be employed. In evaluating engineering labor for the purpose of assigning profit weights, consideration should be given to the amount of notable scientific talent or unusual or scarce engineering talent needed, in contrast to journeyman engineering effort or supporting personnel.

(2) Evaluate service contract labor in a like manner by assigning higher weights to engineering, professional, or highly technical skills and lower weights to semiprofessional or other skills required for contract performance.

(3) Similarly, the variety of engineering, manufacturing and other types of labor skills required and the contractor's manpower resources for meeting these requirements should be considered. For purposes of evaluation, subtypes of labor (for example, quality control, and receiving and inspection) proposed separately from engineering, service, or manufacturing labor should be included in the most appropriate labor type. However, the same evaluation considerations as outlined above will be applied.

(c) *Overhead and general management (G&A).* Analysis of individual items of cost within overhead and G&A includes the evaluation of the makeup of these expenses, how much they contribute to contract performance, and the degree of substantiation provided for rates proposed in future years.

(1) The composite of the weights assigned to the individual elements of the overhead pools will be the profit consideration given the pools as a whole.

(2) The contracting officer, in an evaluation of the overhead rate of a contractor using a single indirect cost rate, should break out the applicable

sections of the composite rate which could be classified as engineering overhead, manufacturing overhead, other overhead pools, and G&A expenses, and apply the appropriate weight.

(d) *Other costs.* Include all other direct costs associated with contractor performance under this item, for example, travel and relocation, direct support, and consultants. Analysis of these items of cost should include their nature and how much they contribute to contract performance.

1815.970–2 Other factors.

(a) *Cost risk.* The degree of risk assumed by the contractor should influence the amount of profit or fee a contractor is entitled to anticipate. For example, if a portion of the risk has been shifted to the Government through cost-reimbursement or price redetermination provisions, unusual contingency provisions, or other risk reducing measures, the amount of profit or fee should be less than for arrangements under which the contractor assumes all the risk. This factor is one of the most important in arriving at prenegotiation profit objectives.

(1) Other risks on the part of the contractor, such as loss of reputation, losing a commercial market, or losing potential profits in other fields, shall not be considered in this factor. Similarly, any risk on the part of the contracting office, such as the risk of not acquiring an effective space vehicle, is not within the scope of this factor.

(2) The degree of cost responsibility assumed by the contractor is related to the share of total contract cost risk assumed by the contractor through the selection of contract type. The weight for risk by contract type would usually fall within the 0-to-3 percent range for cost-reimbursement contracts and 3-to-7 percent range for fixed-price contracts.

(i) Within the ranges set forth in paragraph (a)(2) of this section, a cost-plus-fixed-fee contract normally would not justify a reward for risk in excess of 0 percent, unless the contract contains cost risk features such as ceilings on overheads, etc. In such cases, up to 0.5 percent may be justified. Cost-plus-incentive-fee contracts fill the remaining portion of the range, with weightings directly related to such factors as confidence in target cost, share ratio of fees, etc.

(ii) The range for fixed-price type contracts is wide enough to accommodate the various types of fixed-price arrangements. Weighting should be indicative of the price risk assumed and the end item required, with only firm-fixed-price contracts with requirements for prototypes or hardware reaching the top end of the range.

(3) The cost risk arising from contract type is not the only form of cost risk to consider.

(i) The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a particular contract type. This consideration should be a part of the contracting officer's overall evaluation in selecting a weight to apply for cost risk. It may be determined, for instance, that the prime contractor has effectively transferred real cost risk to a subcontractor, and the contract cost risk weight may, as a result, be below the range that would otherwise apply for the contract type proposed. The contract cost risk weight should not be lowered, however, merely on the basis that a substantial portion of the contract costs represents subcontracts unless those subcontract costs represent a substantial transfer of the contractor's risk.

(ii) In making a contract cost risk evaluation in a procurement action that involves definitization of a letter contract, unpriced change orders, or unpriced orders under BOAs, consideration should be given to the effect on total contract cost risk as a result of having partial performance before definitization. Under some circumstances it may be reasoned that the total amount of cost risk has been effectively reduced. Under other circumstances it may be apparent that the contractor's cost risk is substantially unchanged. To be equitable, determination of a profit weight for application to the total of all recognized costs, both incurred and yet to be expended, must be made with consideration of all attendant circumstances and should not be based solely on the portion of costs incurred, or percentage of work completed, before definitization.

(b) *Investment.* NASA encourages its contractors to perform their contracts with a minimum of financial, facilities, or other assistance from the Government. As such, it is the purpose of this factor to encourage the contractor to acquire and use its own resources to the maximum extent possible. Evaluation of this factor should include an analysis of the contractor's facilities and the frequency of payments.

(1) To evaluate how facilities contribute to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors furnishing their own facilities that significantly contribute to lower total contract costs should be provided additional profit. On the other hand, contractors that rely on the Government to provide or finance needed facilities should receive a correspondingly lower profit. Cases between the above examples should be evaluated on their merits, with either a positive or negative adjustment, as appropriate, in the profit objective. However, where a highly facilitized contractor is to perform a contract that does not benefit from this facilitization, or when contractor's use of its facilities has a minimum cost impact on the contract, profit need not be adjusted.

(2) In analyzing payments, consider the frequency of payments by the Government to the contractor and unusual payments, i.e., advance payments or milestone payments. The key to this weighting is proper consideration of the impact the contract will have on the contractor's cash flow. Generally, negative consideration should be given for payments more frequent than monthly, with maximum reduction being given as the contractor's working capital approaches zero. Positive consideration should be given for payments less frequent than monthly.

(c) *Performance.* The contractor's past and present performance should be evaluated in such areas as product quality, meeting performance schedules, efficiency in most control (including the need for and reasonableness of costs incurred), accuracy and reliability of previous cost estimates, degree of cooperation by the contractor (both business and technical), timely processing of changes and compliance with other contractual provisions.

(d) *Subcontract program management.* Subcontract program management includes evaluation of the contractor's commitment to its competition program and its past and present performance in competition in subcontracting. If a contractor has consistently achieved excellent results in these areas in comparison with other contractors in similar circumstances, such performance merits a proportionately greater opportunity for profit or fee. Conversely, a poor record in this regard should result in a lower profit or fee. Until NASA Form 634 is revised to show this factor, it may be considered under the heading "Special situations" discussed in paragraph (f) of this section. Use a weight range from −1 percent to +1 percent.

(e) *Federal socioeconomic programs.* In addition to rewarding contractors for

unusual initiative in supporting Government socioeconomic programs, failure or unwillingness on the part of the contractor to support these programs should be viewed as evidence of poor performance for the purpose of establishing this profit objective factor.

(f) *Special situations.* (1) *Unusual pricing agreements.* Occasionally, unusual contract pricing arrangements are made with the contractor under which it agrees to accept a lower profit or fee for changes or modifications within a prescribed dollar value. In such circumstances, the contractor should receive favorable consideration in developing the profit objective.

(2) This factor need not be limited to situations that increase profit/fee levels. A negative consideration may be appropriate when the contractor is expected to obtain spin off benefits as a direct result of the contract, for example, products with commercial application.

1815.970–3 Facilities capital cost of money.

(a) When facilities capital cost of money (CAS 414, cost of money as an element of the cost of facilities capital) is included as an item of cost in the contractor's proposal, it shall not be included in the cost base for the purpose of calculating profit/fee (see 1815.970(b)). In addition, a reduction in the profit objective shall be made in an amount equal to the amount of facilities capital cost of money allowed in accordance with FAR 31.205–10(a)(2).

(b) DD Form 1861, Contract Facilities Capital Cost of Money, shall be used to calculate facilities capital cost of money. Overhead pools, for example, engineering, manufacturing, and G&A, are listed by year in the first column of the DD Form 1861 labeled POOL. The allocation base figure for each overhead pool listed is extracted by year from the prenegotiation position memorandum and inserted in the second column. Each allocation base is then multiplied by the recommended facilities capital cost of money factor for that base. The total facilities capital cost of money amounts appearing in the last column labeled Amount are totaled in the space provided in the line labeled Total. This total represents the estimated facilities capital cost of money amount for the contract and is the figure to be used to calculate the prenegotiation position memorandum objective cost and to reduce the profit objective in accordance with 1815.970–3(1). The lines labeled Treasury Rate and Facilities Capital Employed (Total Divided by Treasury Rate) and Section 7 of the form labeled Distribution of Facilities Capital Employed do not apply to NASA and should be ignored.

(c) If a contractor proposed CAS 417, cost of money as an element of the cost of capital assets under construction, as a separate cost element, a reduction in the profit objective shall be made similar to that made for CAS 414, facilities capital cost of money.

1815.971 Payment of profit or fee under letter contracts.

NASA's policy is to pay profit or fee only on definitized contracts.

1815.1003–4 [Amended]

c. In section 1815.1003–4, paragraph (c) is revised as set forth below:

* * * * *

(c)(1) If an unsuccessful offeror in a negotiated procurement submits, prior to the award of the contract, a written request for a debriefing, such a debriefing will be provided at the earliest feasible time. Except as provided in paragraph (c)(2) of this section, debriefings shall be conducted after announcement of the selection decision and prior to award of the contract. (*Selection decision* means the final selection of the one successful contractor, or the contractors where more than one contract is to be awarded). If the selection decision involves more than one contractor pursuant to the Major System Acquisition process, the debriefing will be limited in such a manner that it does not prematurely disclose innovative concepts, designs, and approaches of the successful contractor(s) that would result in a transfusion of ideas which also could inhibit contractors during the early phase from offering their best and most promising ideas for meeting the mission need.

(2) When the exigency of the situation will not permit delaying the award in order to debrief unsuccessful offerors, such debriefings may be conducted after award.

* * * * *

PART 1817—SPECIAL CONTRACTING METHODS

1817.204 [Amended]

9. In section 1817.204, paragraph (a), the sentence "In addition to these exclusions, the 5-year limitation is not applicable to contracts for which the time needed to design, manufacture, and deliver the end item of hardware is greater than five years" is revised to read "In addition to these exclusions, the 5-year limitation is not applicable to contracts for which the time needed to produce the end item of hardware is greater than five years."

PART 1819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

10. Part 1819 is amended as set forth below:

1819.705–4 [Amended]

a. In Section 1819.705–4, change the title "Positive subcontracting goals" to read "Reviewing the subcontracting plan"; designate the existing paragraph as paragraph "(a)", and add a new paragraph "(b)" to read as follows:

* * * * *

(b) NASA contracting officers may accept as an element of a subcontracting plan the prime contractor's intention to use total small business, small disadvantaged business, or women-owned business set-asides in awarding subcontracts so long as such set-asides are competitive and awards are made at reasonable prices. Use of this procedure will be viewed as a good indication of an aggressive subcontracting plan. Set-asides may be encouraged but may not be required when negotiating subcontracting plans.

Subpart 1819.70—[Added]

b. Subpart 1819.70 is added to read as follows:

Subpart 1819.70—NASA Small Disadvantaged Business Contracting and Subcontracting Goal

1819.7001 Scope of subpart.
1819.7002 Definitions.
1819.7003 General policy.
1819.7004 Contract clause.

Subpart 1819.70—NASA Small Disadvantaged Business Contracting and Subcontracting Goal

1819.7001 Scope of subpart.

This subpart implements legislative provisions (Public Laws 101–507 and 101–144) which require the NASA Administrator to ensure, to the fullest extent possible, that at least 8% of Federal funding for prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, be made available to small business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of section 8(a) (5) and (6) of the Small Business Act (15 U.S.C. 637(a) (5) and (6)), including Historically Black Colleges and Universities and minority education institutions. For purposes of this subpart, socially and economically disadvantaged individuals shall be deemed to include women.

1819.7002 Definitions.

Historically Black Colleges and Universities, as used in this subpart means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

Minority educational institutions, as used in this subpart, means institutions meeting the criteria established in 34 CFR 607.2 by the Secretary of Education.

Small disadvantaged business concern, as used in this subpart, means a small business concern owned or controlled by individuals who are both socially and economically disadvantaged (within the meaning of section 8(a) (5) and (6) of the Small Business Act (15 U.S.C. 637(a) (5) and (6)). Socially and economically disadvantaged individuals shall be deemed to include women.

1819.7003 General policy.

The Congress has indicated its commitment to increasing the role of small disadvantaged concerns, including women-owned concerns, Historically Black Colleges and Universities, and minority educational institutions, in the aerospace industry, particularly in NASA-related procurement (Public Laws 101–507 and 101–144). The agency's goal is to award to such concerns and organizations 8% of the total value of prime and subcontracts in support of authorized programs by the end of fiscal year 1994. The participation of NASA prime contractors is essential to meet this goal.

1819.7004 Contract clause.

The contracting officer shall insert the clause at 1852.219–76, NASA Small Disadvantaged Business Goal, in all solicitations and contracts (other than those for small purchases).

PART 1825—FOREIGN ACQUISITION

11. Part 1825 is amended as set forth below:

1825.102 [Amended]

a. In section 1825.102, paragraph (b)(3) is removed and paragraph (b) is revised, to read as follows:

* * * * *

(b) Contracting officer determinations under FAR 25.102(a)(4) and 25.102(b), domestic nonavailability of end products.

(1) NASA has determined that the items listed in FAR 25.108(d)(1) are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities or a satisfactory quality.

(2)(i) NASA contracting officers may make any determinations of nonavailability both before entering into contracts and in the course of contract administration; provided, however, that in the latter case the Government receives adequate consideration. A copy of each nonavailability determination shall be included in the contract file.

(ii) The following is the format for nonavailability determinations made by contracting officers:

b. Subpart 1825.9 is revised as set forth below:

Subpart 1825.9—Additional Foreign Acquisition Clauses

1825.901 Omission of the Examination of Records clause.

(a) When the contracting officer omits the clause at 52.215–1 under the conditions at FAR 25.901(c)(1)(i)(B), the contracting officer shall prepare a written report in triplicate to be furnished to the Congress. The head of the installation concerned shall sign the report and forward it to the Assistant Administrator for Procurement (Code HC), who shall submit it to the Administrator for the Administration's signature and forwarding to Congress.

(b) The contracting officer shall ordinarily initiate the request to the Administrator for determination and findings for exclusion of the clause at 52.215–1. The request shall consist of (1) a letter submitted to the Administrator through normal procurement channels and (2) a proposed determination and findings prepared for the Administrator's signature according to the format in FAR 25.904.

PART 1827—PATENTS, DATA, AND COPYRIGHTS

12. Subpart 1827.4 is amended as set forth below:

1827.406 [Amended]

a. In section 1827.406, paragraph (b)(1)(iv), "(NASA Form 1626)" is revised to read "(SF 298)".

b. In section 1827.406, paragraph (b)(1)(v), "NASA Scientific and Technical Information Facility" is revised to read "NASA Center for AeroSpace Information (CASI)," and the Zip Code "21090" is revised to read "21090–2934."

PART 1832—CONTRACT FINANCING

13. Part 1832 is amended as set forth below:

a. Section 1832.402–1 is added to read as follows:

1832.402–1 SBIR Phase I contracts.

Advance Payments for all Small Business Innovation Research (SBIR) Phase I contracts have been authorized through a class deviation. This authorization is for the Government fiscal years ending September 30, 1993.

1832.410–70 [Amended]

b. In section 1832.410–70, paragraph (b) is removed, paragraphs (c) and (d) are redesignated as paragraphs (b) and (c), and newly designated paragraph (c) is revised to read as follows:

* * * * *

(c) Generally, the format in FAR 32.410 should be used, tailored as follows:

(1) The phrase "Advance payments (in an amount not to exceed $_____ at any time outstanding)" at format paragraph (a)(2), and not the alternate phrase "(in an aggregate amount not exceeding * * *)," shall be used for all determinations and findings. The phrase means the maximum unliquidated dollar amount a contractor would need in advance payments at any point in time for the particular contract. The amount would not usually be the full contract value. The amount inserted should be based on an analysis of the contractor's financing needs (monthly or other appropriate period) for the specific contract involved.

(2) In the second sentence of format subparagraph (a)(4), delete the reference to a special bank account.

(3) Use format subparagraph (a)(6), not (a)(7) or (a)(8).

(4) At the end of format paragraph (b), use "is in the public interest."

c. Section 1832.412–70 is added to read as follows:

1832.412–70 Instructions for contract clause.

Whenever paragraph (e) of the clause at FAR 52.232–12 or paragraph (d) for Alternate V of that clause is used, the clause shall be modified as set forth at 1852.232–76. In addition, the dollar amount to be inserted in either of those paragraphs after "Unliquidated advance payments shall not exceed $_____" is the same amount determined for 1832.410–70(c)(1).

1832.702–70 [Amended]

d. In § 1832.702–70, a new paragraph (e) is added to read as follows:

* * * * *

(e) A class deviation from the conditions set forth in paragraphs (a), (b), and (c) of this section exists to permit incremental funding of contracts under Phase II of the SBIR Program until the last year of the program (FY 1993 unless extended). This deviation exists with the understanding that the contracts will be fully funded when funds become available.

PART 1837—SERVICE CONTRACTING

1837.110 [Amended]

14. In § 1837.110, "(Code HP)" is revised to read "(Code HC)."

PART 1842—CONTRACT ADMINISTRATION

15. Part 1842 is amended as set forth below:

1842.202 [Amended]

a. In § 1842.202, paragraph (b), the phrase "listed in paragraph (c)" is revised to read "listed under paragraph (c)."

1842.7003 [Amended]

b. In § 1842.7003, paragraph (c) is revised to read as follows:

* * * * *

(c) The clause may be used with its Alternate II in cost-reimbursement contracts when (1) Alternate I is used, (2) work will be performed at a NASA installation, and (3) it is desired that administrative leave be granted contractor personnel in special circumstances, such as inclement weather or potentially hazardous conditions.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

16. Part 1852 is amended as set forth below:

a. Section 1852.219–76 is added to read as follows:

1852.219–76 NASA Small Disadvantaged Business Goal.

As prescribed in 1819.7004, insert the following clause:

NASA SMALL DISADVANTAGED BUSINESS GOAL (JULY 1991)

(a) Definitions.

Historically Black Colleges and Universities, as used in this clause, means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

Minority educational institutions, as used in this clause means institutions meeting the critera established in 34 CFR 607.2 by the Secreary of Education.

Small disadvantaged business concern, as used in this clause, means a small business concern owned or controlled by individuals who are both socially and economically disadvantaged (within the meaning of section 8(a) (5) and (6) of the Small business Act (15 U.S.C. 637(a) (5) and (6)). For purposes of this clause, socially and economically disadvantaged individuals shall be deemed to include women.

(b) The NASA Administrator is required to ensure, to the fullest extent possible, that at least 8% of the total value of prime and subcontracts awarded in support of authorized programs, including the space station by the time operational status is obtained, is made available to small business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (including women), Historically Black Colleges and Universities, and minority educational institutions.

(c) The contractor hereby agrees to assist NASA in achieving this goal by using its best efforts to award subcontracts to small disadvantaged business concerns, Historically Black Colleges and Universities, and minority educational institutions, as defined in this clause, to the fullest extent consistent with efficient contract performance.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as small disadvantaged business concerns, Historically Black Colleges and Universities, and minority educational institutions.

(End of clause).

b. Section 1852.232–76 is added to read as follows:

1852.232–76 Advance Payments.

As prescribed at 1832.412–70, modify the clause at FAR 52.232–12 by deleting paragraph (e), or, in the case of Alternate V to that clause, by deleting paragraph (d), and adding the following paragraph:

(e) or (d) *Maximum payment.* Unliquidated advance payments shall not exceed $_____ at any time outstanding. In addition, when the sum of all unliquidated advance payments, unpaid interest charges, and other payments exceed _____ percent of the contract price, the Government shall withhold further payments to the Contractor. On completion or termination of the contract, the Government shall deduct from the amount due to the Contractor all unliquidated advance payments and all interest charges payable. If previous payments to the Contractor exceed the amount due, the excess amount shall be paid to the Government on demand. For purposes of this paragraph, the contract price shall be considered to be the stated contract price of $_____ less any subsequent price reductions under the contract, plus (1) any price increases resulting from any terms of this contract for price redetermination or escalation, and (2) any other price increases that do not, in the aggregate, exceed $_____ [Insert an amount not higher than 10 percent of the stated contract amount inserted in this paragraph]. Any payments withheld under this paragraph shall be applied to reduce the unliquidated advance payments. If full liquidation has been made, payments under the contract shall resume.

(End of clause).

1852.235–70 [Amended]

c. In the clause of § 1852.235–70, the date "MAR 1989" is changed to read "SEPT 1991."

d. In paragraph (a) of the clause to § 1852.235–70, "NASA Scientific and Technical Information Facility (STIF)" is changed to read "NASA Center for AeroSpace Information (CASI)," and "STIF" is changed to "CASI" in both occurrences.

PART 1853—FORMS

17. Subpart 1853.2 is amended as set forth below:

1853.207 [Amended]

a. In § 1853.207, paragraph (b), the phrases "1806.304(a) and" and "1806.304 and" are removed.

1853.227 [Removed]

b. Section 1853.227 is removed.

[FR Doc. 91–22933 Filed 9–25–91; 8:45 am]
BILLING CODE 7510–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN: 1018–AB52

Endangered and Threatened Wildlife and Plants; Astragalus bibullatus (Guthrie's Ground-plum) Determined To Be Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines Guthrie's ground-plum to be an endangered species under authority of the Endangered Species Act (Act) of 1973, as amended. This rare plant is presently known from only three sites in Tennessee and is endangered throughout its range by habitat alteration; residential, commercial, or industrial development; and livestock grazing. This action extends Federal protection under the Act to Guthrie's ground-plum.

EFFECTIVE DATE: October 28, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, NC 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Astragalus bibullatus Barneby and Bridges (Guthrie's ground-plum) is a

perennial member of the pea family (Fabaceae) that is presently known to exist only in Rutherford County in Tennessee's central basin. The plant has short stems (5 to 15 centimeters; 2 to 6 inches) that arise from a tap root. Each stem supports 5 to 10 leaves. The leaves are 5 to 10 cm (2 to 4 inches) long and are composed of about 24 small leaflets. The inflorescence is a raceme supporting 10 to 16 purple flowers. The plants flower in April and May. During flowering, the peduncle supporting the inflorescence arches upward. After flowering and as the fruits mature, this peduncle gradually arches downward. The fruits are fleshy pods that usually mature in May and June. At maturity the pods are colored red above and yellow below. *Astragalus bibullatus* superficially resembles the widespread *A. tennesseensis*. However, *A. tennesseensis* can be readily distinguished by its yellow rather than purple flowers, its yellow-brown rather than reddish-topped fruits, and the copious number of hairs found on the plant (Somers and Gunn 1990).

Specimens that would now be assigned to *A. bibullatus* were apparently first collected in about 1881 by the early Tennessee botanist, Augustin Gattinger. For over 100 years this material was assigned to *A. crassicarpus*, which is a related but morphologically and geographically distinct species. The Rutherford County, Tennessee, type locality for the species was rediscovered in 1980 by Milo J. Guthrie of the Tennessee Department of Conservation (Department). Botanists familiar with the genus *Astragalus* determined that the plants found by Guthrie represented a new species. Barneby and Bridges described *Astragalus bibullatus* in 1987 using material collected from Guthrie's 1980 site by Jerry and Carol Baskin (University of Kentucky at Lexington) and others (Barneby and Bridges 1987).

Guthrie's ground-plum is endemic to the cedar glades of middle Tennessee. All sites are associated with thin-bedded, fossiliferous Lebanon limestone outcroppings that support the unique cedar glade communities found in Tennessee's central basin. The species only grows along glade margins with deeper soil or in areas within the glades that are partially shaded. Soil depths vary between 5 and 20 cm (2 to 8 inches) at the known sites. Ceder glades are typically wet in winter and spring and dry and very hot in summer and fall (Somers and Gunn 1990, Quarterman 1986).

A description of the species' status at each of the three known sites is provided below. This information is extracted in part from Somers and Gunn (1990).

Population 1

Population 1 consists of two colonies. The first colony was discovered by Guthrie and was referred to as the type locality in the above discussion. In 1988 this colony contained 171 plants on a 1.5-acre glade. The site is in private ownership and is not formally protected. The second colony occurs along one edge of a privately owned residential lot located about 0.25 mile from the first colony. In 1990 the site supported about 50 plants. Twenty-five of these occurred within a 100-square-foot area, while the remaining plants were scattered along a road that crosses the site.

In addition to the two colonies described above, there is a group of about 100 plants on a glade located approximately 1 mile northwest of colony 1. The owner of this site is a wildflower enthusiast and is believed to have established this colony with seeds collected from the nearby natural population (Somers, *in litt.*, 1990).

Population 2

This population is located about 12 miles from population 1. The site is privately owned and supports an apparently declining population of Guthrie's ground-plum. In 1984 several dozen plants were observed by biologists from the Department. In 1988 only 5 plants were observed during a visit to the site by Guthrie. The years between 1985 and 1988 were very dry in central Tennessee, and this may account for the observed decline in population 2. It is not known if the return of normal rainfall in 1989 and 1990 has resulted in a reversal of the decline observed in the previous years.

Population 3

Population 3 is located about 1 mile south of population 1. It was discovered in the spring of 1990 by the Department. Subsequent visits to the site by the Department's botanists revealed the presence of two colonies in this population. Colony 1 contains about 40 plants, while colony 2 contains about 200 plants. The 240 plants in population 3 make it the largest known for *A. bibullatus*. Additionally, Somers (*in litt.*, 1990) describes the glades at this site as pristine.

Extirpated Populations

There are believed to be two extirpated populations of Guthrie's ground-plum. The first was in Rutherford County and is represented by material collected near the La Vergne railroad station in 1901 by Augustin Gattinger. The landscape in this area has been radically changed since 1901, and it is unlikely that the species still survives at this location.

Another population is believed to have been extirpated from Davidson County, Tennessee. Vegetative material that was collected in 1948 from a site just north of the Rutherford/Davidson County line by botanists from the University of Tennessee at Knoxville has been identified by Barneby as *A. bibullatus*. The site from which the plant was collected is now under the waters of Percy Priest Reservoir. An examination of the glades adjacent to this part of the reservoir revealed that they were badly abused by vehicle travel. *Astragalus bibullatus* was not found in this area, and it is unlikely that the species still exists in Davidson County.

Federal government actions on this species began in 1987 with the issuance of a contract to the Department for a status survey. The Department conducted the survey during the 1987, 1988, and 1989 field seasons. During this survey they visited over 300 cedar glades and cedar glade remnants. Based upon the preliminary results of the Department's survey, *A. bibullatus* was added as a category 2 species to the Service's notice of review for native plants when it was revised in February 1990 (55 FR 6184).

Category 2 species are those for which the Service has information which indicates that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or are not on file to support the preparation of rules. This was the case with *A. bibullatus* in February 1990. Information on current threats, biological vulnerability, distribution, and status was provided by the Department's final report on the status of Guthrie's ground-plum. This report was received and accepted by the Service in the spring of 1990. Based upon the information provided in this report, the Service developed a proposed rule to list the species as endangered. The proposal was published in the **Federal Register** on October 10, 1990 (55 FR 41245).

Summary of Comments and Recommendations

In the October 10, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State

agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice announcing the **Federal Register** publication of the proposed rule was published in the Daily News Journal, Murfreesboro, Tennessee, on October 27, 1990.

Two written responses to the proposed rule were received from private individuals during the comment period. One individual provided information on threats to the species and expressed support for the proposed addition of Guthrie's ground-plum to the Federal list of endangered species. The other individual's comments were nonsubstantive in nature. The information on threats to the species has been incorporated into this rule. The Tennessee Department of Conservation reiterated their support for the addition of Guthrie's ground-plum in a letter received after the close of the official comment period.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that Guthrie's ground-plum should be classified as an endangered species. Procedures found at Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement these listing provisions were followed. 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 *Astragalus bibullatus* Barneby and Bridges (Guthrie's ground-plum) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The three known naturally occurring populations of *Astragalus bibullatus* are within a short distance of the rapidly growing middle-Tennessee city of Murfreesboro. Residential, commercial, and industrial development associated with this growth threatens to destroy or adversely modify the remaining habitat for the species. All of the known *A. bibullatus* locations are threatened by the encroachment of more competitive herbaceous vegetation and/or woody plants, such as cedar, that overshadow the species and compete for limited water and nutrients. Active management to reduce or eliminate this encroachment is required to ensure that the species continues to survive at all sites. Both the species and its habitat are vulnerable to livestock grazing, and this factor is a threat to all populations. Direct destruction of habitat for commercial, residential, or industrial development; intensive right-of-way maintenance activities; off-road-vehicle traffic; and trash dumping are the most significant threats to the species at this time (Somers and Gunn 1990; Horn, *in litt.*, 1990).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Little or no commercial trade in *Astragalus bibullatus* is known to exist at this time, although a small private population is believed to have been artificially established by a local wildflower enthusiast. Collecting for scientific purposes, wildflower gardening, or as a novelty would pose a significant threat to this species since all three populations are very small and cannot support collection.

C. *Disease or predation.* Disease and predation are not known to be factors affecting the continued existence of the species at this time.

D. *The inadequacy of existing regulatory mechanisms. Astragalus bibullatus* is listed as an endangered plant in Tennessee under that State's Rare Plant Protection and Conservation Act of 1985. This protects the species from taking without the permission of the landowner or land manager. When the species is added to the Federal list of endangered and threatened species, additional protection from taking is provided by the Act when the taking is in violation of any State law, including State trespass laws. Protection from inappropriate commercial trade will also be provided.

E. *Other natural or manmade factors affecting its continued existence.* The only other additional factor that threatens *Astragalus bibullatus* is the extended drought condition that the species faced through the fall of 1988. This extremely dry weather may be responsible for the decline observed in population 2 and may have adversely affected the other populations. These conditions probably caused higher than normal mortality of mature plants and seedlings and, if they had continued to the present time, could have had an adverse effect on the survival of *A. bibullatus.* Under normal population levels, losses due to drought would not be expected to have a significant impact on the species. However, given the limited number of individuals in the known populations, drought-associated losses could cause the extirpation of the species from some sites or result in the species' extinction.

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 make this rule final. Based on this evaluation, the preferred action is to list *Astragalus bibullatus* as an endangered species. The species is known to occur in only three small, geographically limited populations that are threatened by factors which could render the plant extinct throughout all or a significant portion of its range. The appropriate classification for such species is endangered, as defined in Section 3(6) of the Act. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species. The species is extremely rare, existing at only three locations. All populations are small, and the loss of even a few individuals to activities such as collection for scientific purposes or wildflower gardening could extirpate the species from its known locations. Taking, without permits, is prohibited by the Act from locations under Federal jurisdiction; however, none of the known populations are under Federal jurisdiction. Although the Tennessee Rare Plant Protection and Conservation Act of 1985 prohibits collection of *Astragalus bibullatus* without permission from the landowner, unlawful taking is difficult to enforce. Publication of critical habitat descriptions and maps would increase the vulnerability of the species without significantly increasing population. The owners and managers of all the known populations of *Astragalus bibullatus* have been made aware of the plant's location and of the importance of protecting the plant and its habitat. No additional benefits would result from a determination of critical habitat. Therefore, the Service concludes that it is not prudent to designate critical habitat for *Astragalus bibullatus.*

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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. All of the known populations of *Astragalus bibullatus* are on privately owned land with no known Federal involvement at present.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.61, will 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 jurisdiction. In addition, for endangered 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 endangered 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 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered 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 listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 431, Arlington, Virginia 22203 (703/358–2104).

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

Barneby, R.C., and E.L. Bridges. 1987. A new species of *Astragalus* (Fabaceae) from Tennessee's central basin. Brittonia 39(3):358–363.

Quarterman, E. 1986. Biota, ecology, and ecological history of cedar glades: Introduction. ASB Bulletin 33(4):124–127.

Somers, P., and S.C. Gunn. 1990. Status report, *Astragalus bibullatus* Barneby and Bridges. Unpublished report to the Southeast Region, U.S. Fish and Wildlife Service. 33 pp.

Author

The primary author of this final rule is Mr. Robert R. Currie, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

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

2. Amend § 17.12(h) by adding the following, in alphabetical order under Fabaceae 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					
Fabaceae—Pea family:						
*	*	*	*	*	*	*
Astragalus bibullatus	Guthrie's ground-plum	U.S.A. (TN)	E	437	NA	NA
*	*	*	*	*	*	*

Dated: September 6, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91-23147 Filed 9-25-91; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Sisyrinchium dichotomum (White Irisette)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service list *Sisyrinchium dichotomum* (white irisette) as an endangered species under authority of the Endangered Species Act of 1973, as amended (Act). *Sisyrinchium dichotomum* is endangered primarily by suppression of natural disturbance, conversion of habitat for industrial/residential development, encroachment by exotic species, trampling, and highway construction and improvements. This action implements Federal protection provided by the Act for *Sisyrinchium dichotomum.*

EFFECTIVE DATE: October 28, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Ms. Nora Murdock at the above address (704/259-0321 or FTS 672-0321).

SUPPLEMENTARY INFORMATION:

Background

Sisyrinchium dichotomum, described by Eugene P. Bicknell (1899) from material collected in North Carolina, is a perennial herb. The dichotomously branching stems grow approximately 11 to 20 centimeters tall. The basal leaves, usually pale to bluish green, are from one-third to one-half the height of the plant. The tiny (7.5 millimeters long) white flowers appear from late May through July in clusters of four to six at the ends of winged stems. The fruit of this species is a round, pale to medium brown capsule containing three to six round or elliptical black seeds (Bicknell 1899, Hornberger 1987).

Sisyrinchium dichotomum is endemic to the upper piedmont of North Carolina, where it is currently known from four locations in Polk, Henderson, and Rutherford Counties. The species occur on rich, basic soils probably weathered from amphibolite. It grows in clearings and the edges of upland woods where the canopy is thin and often where down-slope runoff has removed much of the deep litter layer ordinarily present on these sites.

White irisette is dependent upon some form of disturbance to maintain the open quality of its habitat. Currently, artificial disturbances, such as power line and road right-of-way maintenance (where they are accomplished without herbicides and at a season that does not interfere with the reproductive cycle of this species), are maintaining some of the openings that may have been provided historically by native grazing animals and naturally occurring periodic fires.

Sisyrinchium dichotomum has always been known as a narrow endemic, limited to an area in North Carolina bounded by White Oak Mountain, Sugarloaf Mountain, and Chimney Rock. Two of the remaining populations are within highway rights-of-way—one maintained by the North Carolina Department of Transportation and one inside a commercial recreation area where roads are privately maintained.

A third population is within an area recently subdivided for residential development; most of the plants in this latter population are also along private road rights-of-way, with some also being underneath power lines. Most of the fourth population is in an area adjacent to a secondary road. Colonies within these populations have been observed to be adversely impacted by road maintenance operations, erosion of steep roadbanks, natural succession due to suppression of disturbance, bulldozing as part of residential/industrial development, complete removal of the tree canopy (this species appears to prefer thin shade rather than complete sun), and trampling by tourists and sightseers. The continued existence of *Sisyrinchium dichotomum* is threatened by these activities, as well as by herbicide use, highway expansion and improvements, and by encroachment of exotic species. Kudzu (*Pueraria lobata*), Japanese honeysuckle (*Lonicera japonica*), and *Microstegium vimineum* are aggressive exotic weeds which threaten populations at all four sites.

Federal government actions on this species began with the publication of the February 21, 1990, revised Notice of Review for Native Plants in the **Federal Register** (55 FR 6184), in which this species appeared as a category 2 candidate for listing. Category 2 comprises taxa for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threats are not currently available to support proposed rules. Additional surveys recently have been conducted by Service and State personnel, and the Service now believes sufficient information exists to warrant listing *Sisyrinchium dichotomum* as endangered. Therefore, a proposal to that effect was published in the **Federal Register** on December 20, 1990 (55 FR 52191).

Summary of Comments and Recommendations

In the December 20, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the Tryon Bulletin (North Carolina) on January 9, 1991.

Seven comments were received; all but one expressed support for the proposal. The North Carolina Farm Bureau Federation expressed concern that listing this species without designating critical habitat would result in undue restrictions on the use of agricultural pesticides in the State. The Service believes that the recent consultation with the Environmental Protection Agency has resulted in an effective program for protecting endangered species from pesticides without unduly restricting the commercial use of such chemicals. In addition, the white irisette does not occur in areas immediately adjacent to farmland or commercially managed forests. Critical habitat was not designated for this species (see "Critical Habitat" section of this rule) because it is exceedingly rare and attractive to collectors; publication and general distribution of site-specific maps could result in the further endangerment of these plants, especially at sites where only a few individuals remain.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Sisyrinchium dichotomum* should be classified as an endangered species. Procedures found at section 4(a)(1) of

the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be 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 *Sisyrinchium dichotomum* (white irisette) Bicknell are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Sisyrinchium dichotomum* has been and continues to be endangered by destruction or adverse alteration of its habitat. The species is a narrow endemic known from only four populations, each of which has been partially impacted by residential development, road maintenance activities, and trampling by tourists and sightseers. Most of the colonies in the four remaining populations are on roadsides. The Chimney Rock population, located within a commercial recreation area visited annually by hundreds of thousands of tourists, currently has less than 100 individuals remaining. The Pacolet River population has approximately 100 plants surviving, and approximately 200 plants remain at the Sugarloaf Mountain location. The White Oak Mountain population is the largest surviving population, with approximately 1,000 plants; this site was recently subdivided for residential development. All populations have apparently undergone considerable decline over the past 50 years, since Walker (North Carolina Natural Heritage Program 1990) described the species as "fairly common" here in 1942. Because of the proximity of this species' populations to existing roads, it is extremely vulnerable to accidental destruction from road maintenance and improvement activities. Suppression of natural disturbance appears to be a problem for this species and will be discussed in detail under Factor E below.

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Sisyrinchium dichotomum* is not currently a significant component of the commercial trade in native plants; however, with its attractive growth habit and unusual white flowers, the species has potential for horticultural use, and publicity could generate an increased demand by wildflower enthusiasts. Because of the species' small and easily accessible populations, it is vulnerable to taking and vandalism that could result from increased publicity.

C. *Disease or predation.* Not known to affect this species at this time.

D. *The inadequacy of existing regulatory mechanisms. Sisyrinchium dichotomum* is afforded legal protection in North Carolina by North Carolina General Statutes, §§ 106–202.122, 106–202.19 (Cum. Sup. 1985), which provide for protection from intrastate trade (without a permit) and for monitoring and management of State-listed species; taking of plants without written permission of landowners is also prohibited. State prohibitions against taking are difficult to enforce and do not cover adverse alterations of habitat, such as exclusion of fire and other forms of natural disturbance. Although one site is registered with the North Carolina Natural Heritage Program as a State Natural Area, this designation is voluntary and not legally binding. The Endangered Species Act will provide additional protection and encouragement of active management for *Sisyrinchium dichotomum.*

E. *Other natural or manmade factors affecting its continued existence.* As mentioned in Factor A, many of the remaining populations are small in numbers of individual stems and in area covered by the plants. Of the four remaining populations, three have a combined total of less than 400 plants. Therefore, there may be low genetic variability within populations, making it more important to maintain as much habitat and as many of the remaining colonies as possible. Another threat to this species is the encroachment of aggressive exotics such as kudzu, Japanese honeysuckle, and *Microstegium vimineum.* All four populations are threatened by the invasion of these aggressive weeds.

Much remains unknown about the demographics and reproductive requirements of this species. Fire, or some other suitable form of disturbance, seems to be essential for maintaining the open habitat preferred by *Sisyrinchium dichotomum.* Fire suppression or lack of other periodic disturbance allows the canopy over these habitats to become too thick, shading out the *Sisyrinchium* and its shade-intolerant associates. Removal of the litter layer by fire, flooding, or other means also seems to be essential to germination and survival of seedlings of this species. The current distribution of this species is ample evidence of its dependence on disturbance, with all four remaining populations being located close to roads, utility line rights-of-way, or trails.

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 make this rule final. Based on this evaluation, the preferred action is to list *Sisyrinchium dichotomum* as endangered. With only four small populations remaining, all located in areas where they are vulnerable to extirpation from road maintenance/improvement activities or residential development, and, based upon its dependence on some form of active management, the species warrants protection under the Act. Endangered status seems appropriate because of imminent serious threats facing all four populations. According to Hornberger (1987), *Sisyrinchium dichotomum* has the most restricted range of all species of the genus found within the Southeastern United States, with only 11 collections having been made from 1902 through 1985. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate 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 *Sisyrinchium dichotomum* at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species" section, *Sisyrinchium dichotomum* is vulnerable to taking, and taking prohibitions are difficult to enforce. Take is regulated by the Act with respect to endangered plants only in cases of (1) removal and reduction to possession from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, damaging, or destroying these plants in knowing violation of any State law or regulation, including State criminal trespass law. All populations of *Sisyrinchium dichotomum* are located on private lands. Although the North Carolina General Statute prohibits collection of *Sisyrinchium dichotomum* without permission from the landowner, unlawful taking is difficult to enforce, and publication of critical habitat descriptions would make it more vulnerable, increasing enforcement problems for the State of North Carolina.

In addition, while listing under the Act increases the public's awareness of the species' plight, it can also increase the desirability of a species to collectors. As stated previously, *Sisyrinchium dichotomum* is an attractive wildflower whose populations are located primarily

along existing roadways, with one population located within a commercial recreation area visited by thousands of tourists annually. These sites are easily accessible. The species is extremely rare, existing at only four locations, and discovery and elimination of even one population would compromise the survival of the species. It also could be adversely affected by increased visits to, and associated trampling of, occupied sites as a result of critical habitat designation.

As discussed above, it would not now be prudent to determine critical habitat for *Sisyrinchium dichotomum*. The Federal and State agencies and landowners involved in protecting and managing the habitat of this species have been informed of the plant's locations and the importance of its protection. Protection of this species' habitat will be addressed through the recovery process and through the section 7 consultation process.

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, States, 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. Such actions are initiated by the Service following listing. 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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destory or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could impact *Sisyrinchium dichotomum* and its habitat in the future include, but are not limited to, the following: Power line construction and certain types of maintenance/improvements, highway construction and certain types of maintenance/improvements, and permits for mineral exploration and mining. The Service will work with the involved agencies to secure protection and proper management of *Sisyrinchium dichotomum* while accommodating agency activities to the extent possible.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Sisyrinchium dichotomum*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export the species, transport it in interstate of foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction of such plants on Federal lands and their removal, cutting, digging up, damaging, or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is expected that few trade permits would ever be sought or issued, since *Sisyrinchium dichotomum* is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquires regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

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

Bicknell, E. 1899. Studies in *Sisyrinchium*—VI: additional new species from the Southern States. Bulletin of the Torrey Botanical Club, 26:605–616.

Hornberger, K. 1987. Systematics of the genus *Sisyrinchium* (Iridaceae) in the Southeastern United States. Unpublished Ph.D. dissertation, University of Arkansas. 328 pp.

North Carolina Natural Heritage Program. 1990. Element occurrence records for *Sisyrinchium dichotomum*. Raleigh, NC. 6 pp.

Author

The primary author of this rule is Ms. Nora Murdock, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, room 224, Asheville, North Carolina 28801 (704/259–0321; FTS 672–0321).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

1. The authority citation for part 17 continues to read as follows:

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

2. Amend § 17.12(h) by adding the following, in alphabetical order under family Iridaceae 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					
Iridaceae—Iris family:						
* * *	* * *	* * *	*	*		
Sisyrinchium dichotomum	White irisette	U.S.A. (NC)	E	438	NA	NA
* * *	* * *	* * *	*	*		

Dated: September 3, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc 91-23148 Filed 9-25-91; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 669

[Docket No. 910793-1223]

RIN 0648-AE17

Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands

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

ACTION: Final rule.

SUMMARY: The Secretary of Commerce (1) modifies scheduled changes in mesh size requirements, and (2) changes the requirements for degradable panels for fish traps in the shallow-water reef fish fishery, in accordance with the framework procedure of the Fishery Management Plan for the Shallow-Water Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (FMP). This final rule prescribes minimum allowable mesh sizes for fish traps of (1) 1.5 inches (3.8 centimeters) for hexagonal mesh; (2) 1.5 inches (3.8 centimeters) for square mesh through September 13, 1993; and (3) 2.0 inches (5.1 centimeters) for square mesh effective September 14, 1993. The intended effect is to reduce adverse economic impacts on the industry while continuing the rebuilding program for the shallow-water reef fish resource, some species of which are overfished.

EFFECTIVE DATES: September 20, 1991, except that § 669.24(a)(3) is effective September 20, 1991, through September 13, 1993.

FOR FURTHER INFORMATION CONTACT: Miguel Rolon, 809-753-6910.

SUPPLEMENTARY INFORMATION: The shallow-water reef fish fishery is managed under the FMP, prepared by the Caribbean Fishery Management Council (Council), and its implementing regulations at 50 CFR part 669, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). In accordance with the framework procedures in the FMP, the Council recommended changes to the mesh size and degradable panel requirements for fish traps used in the fishery.

Discussion of the framework procedure, background for the recommended changes, explanation of the proposed management measures, and analysis of the impacts of the proposed changes are included in the proposed rule (56 FR 41114, August 19, 1991) and are not repeated here.

Comments and Responses

One comment was received during the public comment period, and is addressed below.

Comment: One comment was received from a commercial fishing company in St. Thomas, U.S. Virgin Islands, criticizing the September 14, 1993, deadline for removal of 1.5-inch (3.8 centimeter) square-mesh wire from the fishery. The commenter stated that square-mesh wire traps had a 4-year life expectancy, and documented its August 28, 1990, order of such wire. An exemption from the 2-year phase-out schedule was requested for fishermen with either previous orders or existing inventories of 1.5-inch (3.8 centimeter) square-mesh wire.

Response: According to information provided by the commenter, the order of 1.5-inch (3.8 centimeter) square mesh wire originated after public hearings held in St. Thomas, on April 6, 1989, and on June 27, 1989, at which the Council's intent to eliminate use of the wire was announced. The fish trapping company, which received part of its order on December 31, 1990, and the remainder on August 19, 1991, was already informed that the Council intended to eliminate the 1.5-inch (3.8 centimeter) square mesh wire.

The alleged 4-year trap life expectancy is not supported by a recent survey of the U.S. Virgin Islands Department of Fish and Wildlife that indicated most traps made of vinyl-coated wire last only about 2 years because of loss and theft. The exemption suggested would favor those able to provide appropriate documentation of their investment in square-mesh wire, in effect extending the phase-out timetable past the gear's life expectancy. Continued use of the 1.5-inch (3.8 centimeter) wire by the exempted fishermen would cause additional resource waste and excessive fishing morality, thereby impeding rebuilding efforts.

During the phase-out period for the 1.5-inch (3.8 centimeter) square-mesh wire, the Council will pursue studies off Puerto Rico and the U.S. Virgin Islands to evaluate the effectiveness of various mesh sizes and configurations. Additional modifications may be required as a result of these studies.

The proposed rule is published as final with one clarification. In this final rule, the specification of "jute" as a means of attaching an escape panel to a fish trap is revised to read "jute twine."

This final rule, in part, allows the use of fish traps with minimum mesh sizes smaller than 2.0 inches ((5.1 centimeters). A requirement for a minimum mesh size of 2.0 inches (5.1 centimeters) became effective September 14, 1991. In this regard, this final rule is a substantive rule that relieves a restriction. Further, a delay in effectiveness of this final rule would prolong an unnecessary and confusing period during which interim minimum mesh size and escape panel requirements would apply. Accordingly, the Assistant Administrator for Fisheries, NOAA, finds that good cause exists under the Administrative Procedure Act (5 U.S.C. 553(d)(1)) to waive the 30-day delayed effectiveness of this final rule.

Other Matters

This action is authorized by the FMP and complies with E.O. 12291.

List of Subjects in 50 CFR Part 669

Fisheries, Fishing.

Dated: September 20, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 669 is amended to read as follows:

PART 669—SHALLOW-WATER REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

1. The authority citation for part 669 continues to read as follows:

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

2. In § 669.7, paragraphs (h) and (i) are revised to read as follows:

§ 669.7 Prohibitions.

* * * * *

(h) Use or possess in the EEZ a fish trap with a mesh size smaller than the minimum mesh sizes specified in § 669.24(a).

(i) Use or possess in the EEZ a fish trap that does not have the degradable panels specified in § 669.24(a).

* * * * *

3. In § 669.24, paragraph (a) is revised to read as follows:

§ 669.24 Gear limitations.

(a) *Fish traps*—(1) *Mesh size.* A fish trap used or possessed in the EEZ that has hexagonal mesh openings of bare wire must have a minimum mesh size of 1.5 inches (3.8 centimeters), in the smallest dimension measured between centers of strands. A fish trap used or possessed in the EEZ that has rectangular mesh openings of bare wire, or that has bare wire mesh openings other than hexagonal or square, must have a minimum mesh size of 2.0 inches (5.1 centimeters), in the smallest dimension measured between centers of strands. A fish trap used or possessed in the EEZ that has mesh openings other than bare wire, such as plastic and coated-wire traps, must have a minimum mesh size of 2.0 inches (5.1 centimeters), in the smallest dimension of the opening, rather than between center of strands.

(2) *Degradable panels.* A panel must be located on each of two opposite sides of the trap, excluding the top, bottom, and side containing the trap entrance. The opening covered by the panel must measure not less than 8 inches (20.3 centimeters) by 8 inches (20.3 centimeters). The mesh size of the panel may not be smaller than the mesh size of the trap, and the panel must be attached to the trap with untreated jute twine with a diameter not exceeding ⅛ inch (.3 centimeter). An access door may serve as one of the panels, provided it is on an appropriate side, it is hinged only at its bottom, and its only other fastening is by jute twine not exceeding ⅛ inch (.3 centimeter) in diameter at the top of the door so that the door will fall open when the jute twine degrades. Jute twine used to secure a panel may not be wrapped or overlapped.

(3) *Interim exception.* Paragraphs (a)(1) and (a)(2) of this section notwithstanding, through September 13, 1993, a fish trap that has rectangular mesh openings with a minimum mesh size of 1.5 inches (3.8 centimeters), in the smallest dimension measured between center of strands, may be used or possessed in the EEZ. The degradable panels on such a trap must cover an opening not less than 9 inches (22.9 centimeters) by 9 inches (22.9 centimeters), and the mesh of the panels may not be smaller than 2-inch (5.1-centimeter) square-mesh wire. The location and attachment of the panels must be as specified in paragraph (a)(2) of this section.

* * * * *

[FR Doc. 91-23144 Filed 9-20-91; 3:16 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 187
Thursday, September 26, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 771

Agency Administrative Grievance System

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is publishing for comment proposed amendments to regulations on the agency administrative grievance system (AGS). These changes are proposed following completion of a study by OPM of AGS's established under this authority and completion of a review by OPM of Government-wide policies on this subject. These changes are proposed with the intent of clarifying the scope and coverage of the AGS and simplifying the procedural requirements of the regulations while, at the same time, continuing to afford agencies considerable discretion in establishing and administering their grievance systems. The regulations describe the responsibilities and obligations of both the employee and the agency in resolving workplace disputes in a prompt and fair manner under AGS's.

DATES: Comments must be received on or before November 25, 1991.

ADDRESSES: Written comments may be sent or delivered to Marjorie A. Marks, Chief; Employee Relations Division; Office of Employee and Labor Relations; Office of Personnel Management; room 7412; 1900 E Street, NW.; Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Gary D. Wahlert (202) 606–2920 or FTS 266–2920.

SUPPLEMENTARY INFORMATION:

I. Background

In 1979, following enactment of the Civil Service Reform Act of 1978, OPM extensively revised its Governmentwide regulations on the AGS to afford agencies more discretion and latitude in establishing their systems by eliminating or modifying many of the prescriptions and proscriptions long associated with that system. The AGS is primarily available to those employees in the Federal workforce who are not members of collective bargaining units established under chapter 71 of title 5 of the United States Code. Currently, over 60% of all employees are in such units. Recently, OPM completed a study of AGS's to determine whether they conform to regulatory requirements and the fundamental precepts that grievance systems be prompt, fair, and free from recrimination. The study found that the process is working reasonably well; however, some current and potential problems with the system were identified. For example, the study found that some agency employees do not fully understand or trust the system and thereby tend not to use it to resolve concerns about their employment situation. The study also found some problems concerning the prompt consideration and resolution of grievances in some situations and that agencies seldom evaluate their systems to determine how well they are working. In addition, inquiries from agencies and employees indicate that some modifications of Governmentwide regulations are needed.

Accordingly, OPM reviewed the policies in Part 771 and has concluded that with certain changes the AGS can be a more effective component of the Federal Government's overall dispute resolution system. As discussed below, OPM is proposing a variety of changes which are intended to clarify coverage of the AGS, clarify the obligations and responsibilities of agencies and employees under the AGS, and meet the objective of improving employee confidence in the AGS.

OPM strongly encourages managers, supervisors, employees, and their representatives to make efforts to prevent and/or seek early, informal resolution of disputes. Informal and alternative means of dispute prevention and resolution (e.g., supervisory-employee counseling, mediation, and settlement) can work to facilitate prompt identification and discussion of problems and often lead to mutually satisfactory resolutions of issues without incurring the time and expense of grievances, appeals, or other formal means of dispute resolution. OPM also encourages agencies to use the flexibilities in the AGS to design internal redress and reconsideration processes appropriate to the issues in dispute. In any event, the agency remains responsible for resolving disputes submitted to the AGS by its employees.

II. Definitions and Coverage

A. Definitions

OPM proposes to clarify the definition of an "employee" by describing which employees (and former employees) are covered by the AGS. The definition of "grievance" is clarified by cross-referencing that section of the regulations which describes subject matters that are not proper bases for grievances. The definition of "grievance files" would also be clarified by more thoroughly itemizing the types of materials contained in such files, e.g., to include the report of a fact-finder when fact-finding is used. Finally, OPM proposes to clarify the definition of "personal relief" which can be requested when a employee files a grievance by dropping the current regulation's requirement that such relief must directly benefit the grievant. In this regard, the raising of a direct and (implied) indirect benefits dichotomy contained in the current regulations is inherently confusing and detracts from the key policy that the relief must benefit the grievant personally. OPM believes that clarification of these definitions will better explain key terms used in the AGS and help reduce unintended misunderstandings and restrictions about the circumstances under which an employee may file a grievance.

B. Coverage (General)

Several changes are being proposed to clarify which categories of employees and types of matters are covered/not covered by AGS's and where agencies can exercise discretion in extending coverage under their AGS's. In addition, the proposed regulations seek to simplify the process of determining which types of employees and matters are covered by consolidating the discussion of coverage requirements in clearly designated subsections. Finally, OPM proposes to permit individual

agencies, based on their unique missions, needs, and employee relations programs, to seek OPM approval of exceptions to coverage requirements pertaining to employees and/or matters under part 771. OPM would carefully consider each such request on an individual basis, taking into account an agency's needs, objectives, circumstances, and rationale for seeking the exception.

1. Agency Coverage

OPM proposes to simplify the description of agencies covered by the regulations by identifying both covered agencies and excluded agencies in one consolidated section, 771.103. In addition, OPM proposes to exclude the Administrative Office of the United States Courts from coverage of the AGS. This proposed change is based on the Administrative Office of the United States Courts Personnel Act of 1990, Public Law 101–474, October 30, 1990, which created a separate personnel management system for that organization. No other changes are being proposed to those covered/non-covered agencies as reflected in current regulation.

2. Employee Coverage

Both covered and non-covered types of employees are likewise identified in one consolidated section, 771.104. The proposed regulations clarify that although the AGS is primarily a system for the resolution of disputes involving current nonbargaining unit employees, agencies may (but are not obligated to) extend coverage to some members of bargaining units. In this regard, the proposed regulations would clarify the current management flexibility to make the AGS available to bargaining unit employees to grieve matters which cannot be grieved under a negotiated grievance procedure established under section 7121 of title 5, United States Code (and which are otherwise grievable under the AGS). In keeping with the policy that the AGS is primarily a system for current employees, OPM proposes to narrow the provision in the current regulations that permits coverage of applicants for employment. Here, OPM proposes to limit the permissive coverage of applicants to only reinstatement and transfer eligibles applying for jobs advertised under a merit promotion program. While individuals in this category typically are not current employees of the agency advertising the job, they are current employees in other agencies (or former employees).

3. Subject-matter Coverage

Discussion of subject-matter coverage is also consolidated in one section, 771.105.

OPM is proposing that a limited number of matters critical to management's needs to function efficiently should continue to be mandatorily excluded from coverage of the AGS. Included in this category are matters concerning the formulation of agency policies, decisions on employee selections and promotions, actions to separate or terminate employees serving in probationary or trial periods, pay decisions, and the composition of employee performance elements and standards. In addition, OPM is proposing to include in this category agency decisions concerning recruitment bonuses, relocation bonuses, retention allowances, and supervisory differentials. Also in this category, OPM is clarifying that the failure of a Senior Executive Service (SES) appointee to be recertified and the conditional recertification of an SES career appointee are not grievable matters.

OPM believes, however, that some decisions regarding which matters should be covered by AGS's are best left to the discretion of individual agencies, given their missions, needs, and employee relations programs. Accordingly, OPM is proposing that agencies be granted discretion to decide whether to extend coverage on matters in dispute which relate to the geographic reassignment of employees (current policy does not afford discretion to cover such matters). Also included in this discretionary category is the matter where the employee has previously filed a complaint or other challenge in another review, reconsideration, or other dispute resolution process within the agency. Another matter relates to actions separating or terminating employees in situations not specifically excluded from coverage under the AGS. These could be covered by the AGS at the agency's discretion. In each of these discretionary subject-matter areas, an agency is free to decide to what extent each matter is covered by its AGS, i.e., all of a matter or just an aspect of it. Finally, OPM proposes additional flexibility for agencies by affording them the opportunity to request that OPM approve coverage under their AGS's of specific matters that would otherwise be excluded by the regulations.

a. *Probationary or trial periods.* An agency's review of employee performance or conduct during probationary or trial periods amounts to an extension of the examining process wherein agencies bear significant responsibility for making critical decisions to retain or not retain employees based on the demonstrated skills, abilities, and other factors relating to job performance and/or conduct. In this regard, 5 CFR Part 315 states that "(t)he agency shall utilize the probationary period as fully as possible to determine the fitness of the employee and shall terminate his services during this period if he fails to demonstrate fully his qualifications for continued employment." Consistent with the basic purpose of these appointments and case law issued by the courts (which has consistently held that probationary and trial period employees in the competitive and excepted service do not have rights to seek review of agency decisions to terminate their employment because of performance or conduct deficiencies), OPM is proposing to exclude from AGS coverage actions taken by agencies to separate or terminate such employees. With regard to separations or terminations after the completion of a probationary or trial period, the proposed regulations continue to permit affected employees access to the AGS to the extent that they do not have third party appeal to grievance rights outside the agency.

b. *Expiration dates of temporary personnel actions.* With respect to the expirations of temporary and limited time appointments and promotions on pre-established dates, OPM is clarifying that such actions are not subject to review under the AGS. This position is consistent with Governmentwide policy in parts 432 (Reduction in Grade and Removal Based on Unacceptable Performance) and 752 (Adverse Actions) which excludes the expiration of appointments/promotions actions from procedural and appellate coverage and recognizes that termination of appointments on their expiration dates involves a nondisciplinary action based on preestablished conditions of employment known and agreed to by the employees affected.

III. Procedures

Under OPM's proposed regulations, agencies would continue to have a great deal of flexibility to establish AGS procedures best suited to resolving the disputes at issue. Thus, under the proposed regulations, a single, uniform AGS could be established for the entire agency or the agency could establish different procedures for different types of matters, as long as each procedure complied with the basic procedural and coverage requirements in part 771. OPM believes that prudent exercise of discretion by agencies in establishing

procedures will help achieve the objective of having grievance systems that work fairly and efficiently to resolve disputes.

OPM is proposing limited changes in the procedural requirements for establishing and administering AGS's as follows:

A. Prompt Consideration

The requirement for the prompt consideration of grievances is clarified so that each agency's grievance system would include either reasonable overall time frames for processing grievances or time frames assigned to each individual step in the grievance process, or both—as determined appropriate by the agency. OPM is hopeful that establishing time frames in this manner will contribute to more efficient and timely processing of grievances and will help enhance employee perceptions of the AGS as a fair and responsive means for resolving workplace disputes.

B. Fact-finding, Hearings, and Other Means of Gathering and Assessing Dispute-related Information

Employee perceptions of the efficacy and fairness of the AGS can be enhanced by the manner in which the AGS utilizes fact-finding, hearings, and other means of gathering and assessing information pertaining to the dispute at hand. In this regard, the proposed regulations have retained the flexibility for agencies to utilize various means to gather and assess information. OPM believes that agencies are best suited to determine whether, when, and in what manner fact-finding and other information gathering and assessment means should be utilized. In this regard, OPM is clarifying that hearings and other means of gathering and assessing information may be used, but are not required, as part of the fact-finding process.

In addition, OPM proposes to clarify that fact-finders or other persons who are conducting a hearing or utilizing other means for obtaining and assessing dispute-related information cannot be subordinate to an agency official involved in a grievance unless that official is the head of the agency activity concerned. Further, OPM is clarifying that agencies would not be obligated to obtain "outside" fact-finders when a grievance is filed against the head of the agency activity.

C. Grievance Decisions

OPM proposes to retain the current requirement that an agency issue a written decision whenever it received a written grievance from its employees. In addition, OPM believes that employees' perceptions of the AGS's fairness can be enhanced if decisions on whether or not to grant personal relief are not made by individuals against whom the grievance is filed or who have been involved in making or influencing a decision regarding the matter(s) being grieved. Accordingly, OPM proposes to clarify its regulations to require that final written decisions must be made by an individual who is at a higher organizational level than anyone involved in the grievance (unless the individual involved is the head of the agency activity concerned) and who has not previously been involved in making or influencing a decision regarding the matter(s) being grieved. An agency activity in this context would include an organizational entity or geographical subdivision of an agency.

D. Grievance Files

Current regulations require establishing a grievance file only when fact-finding is used. However, OPM believes that files should be established whenever a written grievance is filed, whether or not fact-finding is utilized. This will help ensure that obligations under the Privacy Act calling for agency-specific systems of records covering grievance matters are met, that files are available as resource material for enhancing the fair resolution of individual grievances, and that data is available for the effective review and evaluation of AGS's. Maintenance of appropriate grievance files should also enhance employees' perceptions of fairness and openness regarding the AGS. Accordingly, OPM proposes that grievance files be established in all cases where written grievances are filed by employees. While agencies may choose to establish files in all cases—written or unwritten grievances—OPM believes that a requirement to establish files in all cases, including those where grievances are informally raised, may impose an undue burden on some agencies and may undermine efforts to resolve informally employee-employer disputes.

E. Cancellation/Suspension of Grievance

OPM believes that grievance processing and dispute resolution can be expedited by the timely elimination of duplicative or overlapping grievances, grievances filed over unauthorized matters, grievances not specifying appropriate personal relief, and grievances not actively pursued by the grievant within established time frames and procedures. To help accomplish this, OPM proposes to replace section 771.303 of the current regulations concerning employee obligations to comply with established AGS procedures, timeframes, etc. with a new section, 771.203, which clarifies the conditions under which agencies may cancel or temporarily suspend processing of inappropriate grievances. Elimination of duplicative and unauthorized grievances should enhance the timely and effective resolution of disputes.

IV. Review of Grievance Systems by Agencies and OPM

OPM proposes to add a new § 771.204 concerning the obligation of agencies to periodically evaluate their AGS's. In this regard, the OPM study of AGS's found that most systems had not been evaluated in the last five years and that the lack of periodic evaluation may have contributed, in some cases, to problems with timeliness or perceptions of fairness. OPM believes that such reviews and evaluations are important because they can determine how well grievance systems are working, point to needed changes, and help ensure agency accountability in exercising their considerable discretion in establishing and administering AGS's. As stated in § 771.205, OPM also will continue to monitor AGS's under OPM's general oversight responsibilities for improving personnel management in the Federal sector.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal employees.

List of Subjects in 5 CFR Part 771

Administrative practice and procedure; Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM proposes to revise part 771 of title 5 of the Code of Federal Regulations to read as follows:

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

Subpart A—General

Sec.

771.101 Purpose.
771.102 Definitions.
771.103 Agency coverage.

Sec.
771.104 Employee coverage.
771.105 Grievance coverage.

Subpart B—Establishment and Administration of the Agency Administrative Grievance System

771.201 Establishment and publication.
771.202 Criteria.
771.203 Cancellation/suspension of grievance.
771.204 Review by the agency.
771.205 Review by the Office of Personnel Management.

Authority: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1943–1948 Comp., pp. 606–624; E.O. 11222, 3 CFR 1965–1969 Comp., p. 306.

Subpart A—General

§ 771.101 Purpose.

The purpose of the agency administrative grievance system is to provide a fair, equitable, and timely forum for internal review and resolution of disputes on employment-related matters arising within Federal agencies. This part sets forth requirements for the establishment and administration of agency administrative grievance systems.

§ 771.102 Definitions.

In this part:

(a) *A bargaining unit employee* means an employee included in an appropriate exclusive bargaining unit as determined by the Federal Labor Relations Authority.

(b) An *employee*, as defined by section 2105 of title 5, United States Code, means a current employee of an agency but does not include those employees excluded by § 771.104(b) of this subpart. A former employee of an agency is an employee under this subpart provided the employee can be given a remedy consistent with law.

(c) A *grievance* means a request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction not excluded by § 771.105(b) of this subpart which is subject to the control of agency management and relates to the employment of the employee(s).

(d) A *grievance file* means a separate file which contains all documents or copies of documents related to the grievance, including but not limited to, the written grievance filed by the employee(s), any statements of witnesses, records or copies thereof, the report of a hearing if one is held, the report of a fact-finder when fact-finding is used, statements made by the parties to the grievance, and the agency's decision.

(e) *Personal relief* means a specific remedy benefitting the grievant(s) and may not include disciplinary action or other action affecting another employee.

§ 771.103 Agency coverage.

(a) *Agencies covered.* This part applies to the executive agencies and military departments as defined by sections 102 and 105 of title 5, United States Code, and to those organizational units of the legislative and judicial branches having positions in the competitive service.

(b) *Agencies excluded.* This part does not apply to the Central Intelligence Agency, the Federal Bureau of Investigation, the Defense Intelligence Agency, the National Security Agency, the Nuclear Regulatory Commission, the Tennessee Valley Authority, the Postal Rate Commission, the U.S. Postal Service, and the Administrative Office of the United States Courts.

§ 771.104 Employee coverage.

(a) *Required employee coverage.* This part covers nonbargaining unit employees unless they are excluded by operation of paragraph (b) of this section.

(b) *Employees excluded.* This part does not apply to the following employees:

(1) Noncitizens appointed under Civil Service Rule VIII, § 8.3 of this title;

(2) Aliens appointed under section 1471(5) of title 22, United States Code;

(3) Individuals paid from funds as defined in section 2105(c) of title 5 or section 4202(5) of title 38, United States Code;

(4) Physicians, dentists, nurses, or other employees appointed under chapter 73 of title 38, United States Code;

(5) Members of the Foreign Service of the United States covered under the Foreign Service Grievance System as defined by the Foreign Service Act of 1980; or

(6) Other categories of employees as recommended by the head of the agency concerned and approved by the Office of Personnel Management.

(c) *Discretionary coverage.* An agency may extend coverage of this part to:

(1) Bargaining unit employees under the following circumstances:

(i) Where no negotiated grievance procedure is in effect, or

(ii) Where a negotiated grievance procedure does not cover the matter at issue by operation of law or agreement of the agency and the exclusive bargaining representative;

(2) Reinstatement and transfer eligibles applying for a position under a merit promotion program; and

(3) Employees excluded by paragraph (b) of this section when recommended by the head of the agency concerned and approved by the Office of Personnel Management (when in accordance with law).

§ 771.105 Grievance coverage.

(a) *Matters covered.* Except as provided in paragraphs (b) and (c) of this section, this part applies to any matter of concern or dissatisfaction (grievance) relating to the employment of an employee which is subject to the control of agency management, including any matter on which an employee alleges that coercion, reprisal, or retaliation has been practiced against him or her for filing a grievance under this part. Subject to the approval of OPM, and consistent with law, the head of an agency may request that matters excluded by paragraph (b) of this section be covered by that agency's administrative grievance system.

(b) *Matters excluded.* This part does not apply to the following matters:

(1) The content of established agency regulations and policy;

(2) A matter which the employee may grieve under a negotiated grievance procedure established under section 7121 of title 5, United States Code, or in which the employee is entitled to file an appeal or other formal challenge for which the following organizations have authority to grant a remedy: The U.S. Merit Systems Protection Board, the U.S. Office of Personnel Management, or the Equal Employment Opportunity Commission;

(3) Nonselection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion;

(4) A preliminary warning notice of an action which, if effected, would be covered under the grievance system or excluded by paragraph (b)(2) of this section;

(5) The performance evaluation of a Senior Executive Service (SES) appointee under subchapter II of chapter 43 of title 5, United States Code; the reassignment of an SES appointee following the appointee's receipt of an unsatisfactory rating under section 4314 of title 5, United States Code; the return of an SES career appointee to the General Schedule or another pay system during the one year period of probation or for less than fully successful executive performance under section 3592 of title 5, United States Code, or for failure to be recertified under section 3393a of title 5, United States Code; the conditional recertification of an SES career appointee under section 3393a of title 5, United States Code; or the termination of an SES career appointee

during probation for unacceptable performance under subpart D of part 359 of this title;

(6) A separation or termination of an employee serving in a probationary or trial period;

(7) The substance of elements and performance standards;

(8) The granting of, failure to grant, or the amount of an award granted under part 430, subpart E; the granting of, failure to grant, or the amount of an award granted under part 451; the adoption of or failure to adopt an employee suggestion or invention under Part 451; the granting of or failure to grant an award of the rank of meritorious or distinguished executive to an SES career appointee under section 4507 of title 5, United States Code and part 451, subpart B, of this chapter, the granting of, failure to grant, or the amount of a performance award for an SES career appointee under section 5384 of title 5, United States Code, and part 534, subpart D, of this chapter; or the receipt of or failure to receive a quality salary increase under section 5336 of title 5, United States Code;

(9) A decision to grant or not to grant a general increase, merit increase, or performance award under the Performance Management and Recognition System; a decision to grant or not to grant a Senior Executive Service pay rate increase; a decision to grant or not to grant a pay rate increase under section 5376 of title 5, United States Code, and part 534, subpart E; or a decision on the granting of or failure to grant cash awards or honorary recognition under 5 U.S.C. chapter 54 and part 540 of this chapter;

(10) The payment of, failure to pay, or the amount of a recruitment bonus, a relocation bonus, a retention allowance, or a supervisory differential under part 575 of this title;

(11) The expiration of a temporary or term appointment or promotion, or a Senior Executive Service limited emergency or limited term appointment, on the date specified as a condition of employment at the time the appointment or promotion was made; and

(12) Other matters as recommended by the head of the agency involved and approved by the Office of Personnel Management.

(c) *Discretionary matters.* This part does not apply to the following matters unless the agency extends coverage to any aspect of them:

(1) An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee which:

(i) Assigns the employee from one geographical location to another or

(ii) returns an employee from an overseas assignment;

(2) A separation or termination action not covered by paragraph (b) of this section; and

(3) A matter in which the employee files a complaint or other challenge under another review, reconsideration, or dispute resolution process within the agency.

Subpart B—Establishment and Administration of the Agency Administrative Grievance System

§ 771.201 Establishment and publication.

(a) *Establishment.* Each agency covered by this part shall establish and administer an agency grievance system in accordance with the criteria in § 771.202 of this subpart.

(b) *Publication.* Each agency shall publish and make available to employees copies of its administrative grievance procedure.

§ 771.202 Criteria.

The following criteria shall govern the establishment and administration of an agency administrative grievance system:

(a) Informal and voluntary resolution of employment-related disputes to the extent deemed appropriate by the agency using such means as counseling, mediation, or settlement;

(b) Prompt consideration of individual grievances, including setting of reasonable time frames for overall processing of a grievance and/or for each step in the grievance procedure;

(c) Procedures appropriate for the matter being grieved which provide the employee a reasonable opportunity to present a grievance and receive fair consideration of the matter grieved, including (at the agency's discretion) fact-finding, hearings, and other means of obtaining and assessing information pertaining to the dispute at hearing, or other official responsible for obtaining and/or assessing dispute-related information must be one who has not been involved in the matter being grieved or in the grievance itself, and is not subordinate to any official who recommended, advised, made a decision on, or who otherwise is or was involved in the matter being grieved or the grievance itself, unless the official is the head of the agency activity.

(d) Assurance to the grievant of:

(1) Freedom from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance;

(2) The right to be accompanied, represented, and advised by a representative of his or her own choosing, except that an agency may disallow the choice of an individual as a representative which would result in a conflict of interest or position, which would conflict with the priority needs of the agency, or which would give rise to unreasonable costs to the Government;

(3) A reasonable amount of official time to present the grievance if the employee is otherwise in a duty status; and

(4) The right to communicate with the servicing personnel office or its equivalent.

(e) Assurance to the grievant's representative of:

(1) Freedom from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance; and

(2) A reasonable amount of official time to present the grievance if the representative is an employee of the agency and is otherwise in a duty status.

(f) Establishment of a grievance file whenever a written grievance is filed. Upon request, the grievance file shall be made available to the grievant and/or his or her representative for review.

(g) Whenever a written grievance is filed, an agency official shall issue the grievant a written decision. The written decision shall give the reasons for granting or not granting the personal relief requested.

(h) Issuance of a written decision shall be by an agency official at a higher level than any agency employee involved in making or influencing a decision regarding the matter(s) being grieved or the grievance itself or any agency employee having a direct interest in the outcome of the grievance, except when the official involved is the head of the agency activity.

§ 771.203 Cancellation/suspension of grievance.

An agency, as authorized below, may cancel or temporarily suspend processing of a grievance or a portion of a grievance:

(a) At the grievant's request (cancel the grievance or suspend processing the grievance as requested);

(b) If a grievant is an employee excluded from coverage by operation of § 771.104 of this part or if the matter(s) at issue is excluded from coverage by operation of § 771.105 of this part (cancel the grievance if the employee is excluded, cancel the portion of the grievance containing excluded matters);

(c) For failure of the grievant to provide sufficient detail to clearly identify the matter being grieved or specify the personal relief requested (cancel the grievance or suspend processing the grievance until the deficiency is corrected);

(d) Where the grievant requests that disciplinary or other detrimental action be taken against another employee (cancel the improper portion of the grievance);

(e) For failure of the grievant to comply with the appropriate time frames and procedures provided in the agency's grievance system (cancel the grievance if time frames are not met or, if other procedural deficiency(s), cancel the grievance or suspend processing the grievance until the deficiency is corrected); or

(f) When the grievant has previously filed or later files a formal appeal, complaint, or other challenge on the same matter under another formal dispute resolution process identified in § 771.105(b)(2) or 771.105(c)(4) of this part (cancel that portion of the grievance pending or resolved in another process).

771.204 Review by the agency.

An agency shall periodically evaluate its administrative grievance system to ensure that it is meeting the purpose and requirements of this part.

§ 771.205 Review by the Office of Personnel Management.

The Office of Personnel Management shall review from time-to-time agency administrative grievance systems established and administered under this part to determine whether the systems meet the purpose and requirements of this part. The Office shall require corrective action to bring a system which fails to meet the purpose and requirements into conformity. The Office does not act on a request to review a decision on an individual grievance.

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BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV-91-284]

Kiwifruit Grown in California; Proposed Rule to Revise Size, Pack, and Inspection Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would eliminate the "well filled" requirement for all containers of California kiwifruit except trays. The size designations for kiwifruit packed in volume-filled containers would also be changed. Currently, size designations for volume-filled containers are defined in terms of numerical counts per 8-pound sample. The proposed change would permit the weight of individual samples to be up to 4 ounces less than the specified 8 pounds. This proposed change would also have the effect of relaxing the size requirement. Finally, this proposal would extend the time period for which inspection certificates remain valid from December 1 to December 15 of each year. These proposed actions could result in reduced packing costs.

DATES: Comments must be received by October 28, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2020.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement and Marketing Order No. 920 [7 CFR part 920], regulating the handling of kiwifruit grown in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

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

There are approximately 100 handlers of California kiwifruit subject to regulation under the marketing order, and approximately 850 producers in the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and about 30 to 40 percent of the handlers of California kiwifruit may be classified as small entities.

The 1990 fresh utilized production of California kiwifruit totaled 9.7 million trays and tray equivalents. This was a 5 percent decrease in production from the previous year and 1 million trays less than what was projected for the season. For the past 10 years, kiwifruit production has increased in California and is expected to increase slightly next season to a total of about 10 million trays. Most of the crop is shipped to fresh markets with only a small volume utilized by processors. It is estimated that about 92 percent of the 1991 crop will be consumed in Canada and the United States. Most of the remaining 8 percent is expected to be exported to Hong Kong, Japan, Korea, and Mexico.

Under the terms of the marketing order, fresh market shipments of kiwifruit are required to be inspected and are subject to grade, size, maturity, pack and container requirements. The handling requirements for fresh California kiwifruit are specified in 7 CFR 920.302 [50 FR 36568, September 9, 1985, as amended at 54 FR 41436, October 10, 1989, 55 FR 19717, May 16, 1990, and 55 42179, October 10, 1990]. Current requirements include specifications that such shipments be at least Size 49 and contain a minimum of 6.5 percent soluble solids. Also included in the handling regulations are a minimum grade requirement and a number of pack and container requirements, including minimum net weight requirements for kiwifruit packed in trays, and uniform size requirements for fruit packed in volume-filled containers.

At a meeting held on April 26, 1991, the Kiwifruit Administrative Committee (KAC), the agency responsible for local administration of the marketing order, recommended changes in the existing size, pack, and inspection requirements to become effective on or about

September 15, 1991, when shipments of the 1991 crop are expected to begin.

Upon the basis of the KAC's recommendation, this rule proposes eliminating the "well filled" requirement for volume-filled containers. The size designation provisions for volume-filled containers would also be revised so that a simple average of the weight of all sample units in a lot would have to meet the specified 8-pound weight requirement. Individual samples would be permitted to weigh up to 4 ounces less than the 8 pounds per sample presently required. Additionally, this proposal would increase the time period for which inspection certificates remain effective from December 1 to December 15 of each marketing season.

Currently, all containers of kiwifruit must be "well filled." The KAC recommended by a unanimous vote that this requirement apply only to kiwifruit packed in trays. Trays include containers with compartments, cardboard fillers or molded trays. Volume-filled containers include bags and bulk bins. The "well filled" requirement was issued in 1985 and applies to all containers. However, it was intended to apply primarily to trays. Use of volume-filled containers has increased from 14 percent of shipments during the 1985/86 season to about 50 percent of shipments in 1989/90. Application of the "well filled" requirement to volume-filled containers means that there should be practically no movement of the fruit within the container. This is not consistent with current packing practices and the KAC therefore recommended that the "well filled" requirement be eliminated for volume-filled containers.

Most kiwifruit sold in volume-filled containers, particularly bulk bins, is sold by weight and not volume. Therefore, the "well filled" requirement for volume-filled containers does not necessarily service the needs of the handlers or the consumers. Also, if certain volume-filled containers (e.g., bulk bins) are packed so that there is practically no movement of the fruit within the container, the weight of the fruit on top may crush the fruit on the bottom. Eliminating the "well filled" requirement for volume-filled containers would therefore be consistent with current marketing practices and could result in improved quality of California kiwifruit.

The KAC also voted 10 to 1 to recommend amending the size designations established for kiwifruit packed in volume-filled containers, as shown in subparagraph (a)(4)(iii) of 920.302. These size designations are defined by numerical counts, which establish maximum numbers of fruit per 8-pound sample for each of the 9 established sizes. The recommendation would permit individual samples to be up to 4 ounces below the specified 8-pound sample weight as long as the average weight of all samples from a given lot is at least 8 pounds.

Each size designation has a maximum number of fruit permitted per 8-pound sample. Currently during inspection, the inspector takes from a container the maximum number of fruit permitted for a particular size. For example, Size 30 fruit is defined as having a maximum of 32 pieces of fruit in an 8-pound sample. The inspector takes 32 pieces of fruit as a sample, and weighs the sample. If the sample weighs 8 pounds or more, it is considered to meet the pack requirements; any sample below that weight is considered to fail those requirements. The revision would permit a weight variance of up to 4 ounces below the specified 8 pounds for individual samples. However, the average weight of all samples would have to be at least 8 pounds for the lot to pass.

The effect of this revision is minimal and would provide needed flexibility in the current pack requirements, and reduce additional repacking costs due to slight variances of weight that occur during packing. This revision also has the effect of relaxing size requirements.

Kiwifruit grown in California is typically harvested in late September or early October. The fruit is packed shortly after harvest and placed into storage until shipment. The shipping season generally extends throughout the year.

About 55 percent of the harvested fruit is inspected as it is being packed, prior to storage. While the majority of fruit is inspected prior to storage, some handlers have their fruit inspected after storage just prior to shipment.

When kiwifruit is stored, a black sooty mold sometimes appears on the fruit's surface. This mold, caused by fruit juice on the surface of the fruit, usually begins to show after the kiwifruit has been in storage for over a month. In order to control this problem, a time limit on the validity of inspection certificates was established. The tie limit initially established in 1985 was until January 15 or 21 days from the date of inspection, whichever was later.

In 1985, it appeared that kiwifruit harvested in October maintained its quality through the following mid-January. However, during the 1988/89 season, problems with black sooty mold resulted in the KAC reevaluating this position and the date was changed to December 1, to reduce the likelihood of moldy fruit entering commercial channels.

The KAC has now recommended that the current December 1 certificate life date be changed to December 15. The KAC believes that the December 1 expiration date of the inspection certificate requires shippers to have their fruit inspected a second time too soon after the initial inspection. Since most fruit is harvested during October through December, much of the fruit has not been in storage long enough to develop black sooty mold. For example, a handler may pack and have fruit inspected on November 10. If an inspection certificate remains valid only until December 1, the handler would have to have the fruit inspected 21 days later if it is to be shipped. The mold usually does not appear on fruit which is stored for less than one month.

The December 1 date provides that kiwifruit could be inspected up to 2 months before shipment, as kiwifruit harvest and packing typically begin in late September or October. However, during the last three seasons an estimated 70 to 80 percent of the kiwifruit was shipped after December 15. The KAC therefore believes that a new date of December 15 would sufficiently control the mold problem for most of the kiwifruit that is shipped.

This revision would change the current December 1 certificate life date. It would provide that a certificate remains valid until December 15 or 21 days from the date of inspection, whichever is later. Thus, the current 21-day limitation would remain in effect with respect to the certificate life. This would mean that kiwifruit inspected and packed less than 21 days prior to December 15 would not have to be reinspected until 21 days later, like kiwifruit inspected after December 15.

Although this change would increase the time period during which inspection certificates are valid, it should sufficiently prevent the occurrence of black sooty mold on kiwifruit shipped to fresh markets. It would also reduce inspection costs by adding 2 weeks to the inspection certificate life.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for kiwifruit under a domestic marketing order, imported kiwifruit must meet the same or comparable requirements. The Act does not authorize the imposition of container and pack requirements on imports. However, the proposal to allow a weight variance of up to 4 ounces per individual sample represents, in effect, a modification of size requirements. Thus a corresponding change would be

needed in the kiwifruit import regulation. Such change will be addressed in a separate rulemaking action.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 920

Kiwifruit, marketing agreements.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 920 be amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 920 continues to read as follows:

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

2. Section 920.155 is revised to read as follows:

§ 920.155 Inspection requirement.

Certification of any kiwifruit which is inspected and certified as meeting grade, size, quality, or maturity requirements in effect pursuant to § 920.52 or § 920.53 during each fiscal year shall be valid until December 15 of such year or 21 days from the date of inspection, whichever is later.

3. Section 920.302 is amended by removing paragraph (a)(4)(i), redesignating paragraphs (a)(4)(ii), (a)(4)(iii), and (a)(4)(iv) as (a)(4)(i), (a)(4)(ii), and (a)(4)(iii), respectively, and revising newly redesignated paragraphs (a)(4)(i), (ii) and (iii) to read as follows:

§ 920.302 Grade, size, pack, and container regulations.

(a) * * *

(4) * * *

(i) Kiwifruit packed in containers with cell compartments, cardboard fillers or molded trays shall be well filled. Contents shall be tightly packed but not excessively or unnecessarily bruised by overfilling or oversizing. Fruit in the shown face of the container shall be reasonably representative in size and quality of the contents. Such fruit shall be of proper size for the cells, fillers or molds in which they are packed, and shall be fairly uniform in size. When packed in closed containers the size shall be indicated by marking the container with the numerical count, and the contents shall conform to the marked count. The fruit packed in such containers shall meet the following minimum weight requirements at the time of initial inspection:

Size designation of fruit	Minimum net weight of fruit (lbs.)
34 or larger	7.5
35 to 37	7.25
38 to 40	6.875
41 to 43	6.75
44 and smaller	6.50

The average weight of all sample units in a lot must meet the specified minimum net weight, but no sample unit may be more than 4 ounces less than such weight.

(ii) Kiwifruit packed in bags, volume filled or bulk containers may not vary more than ½-inch (12.7 mm) in diameter if Size 30 or larger; not more than ⅜-inch (9.5 mm) in diameter if Size 33, 36, 39, or 42; and not more than ¼-inch in diameter (6.4 mm) if Size 45/46 or smaller. Such containers shall be marked with a numerical count size designation as shown in Column 1 of the following table, and the number of fruit per 8-pound sample shall not exceed the corresponding number shown in Column 2 of the table:

Column 1, numerical count size designation	Column 2, maximum number of fruit per 8-pound sample
25	37
27/28	30
30	32
33	35
36	40
39	45
42	50
45/46	57
49	60

The average weight of all sample units in a lot must weigh at least 8 pounds, but no sample unit may be more than 4 ounces less than 8 pounds.

(iii) Not more than 10 percent, by count, of the containers in any lot and not more than 5 percent, by count, of kiwifruit in any container may fail to meet the requirements of this paragraph.

* * * * *

Dated: September 19, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–23232 Filed 9–25–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 966

[Docket No. FV–91–429]

Florida Tomatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish an assessment rate under Marketing Order No. 966 for the 1991–92 fiscal period. Authorization of this budget would permit the Florida Tomato Committee (committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Comments must be received by October 7, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during the regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–447–2020.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 125 and Order No. 966 (7 CFR part 966), regulating the handling of tomatoes grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Florida tomatoes under this marketing order, and approximately 250 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Florida tomato producers and handlers may be classified as small entities.

The budget of expenses for the 1991–92 fiscal period was prepared by the Florida Tomato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the committee are producers of Florida tomatoes. They are familiar with the committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of Florida tomatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

The committee met on September 5, 1991, and unanimously recommended a 1991–92 budget of $2,295,000, $331,000 more than the previous year. Major increases are in the office salaries, employee travel, depreciation, employees' health insurance, and social security tax categories, plus the addition of an escrow category under research. The committee anticipates recommending additional research projects later in the season and wanted to have the funds available. These funds will remain in escrow until such projects are recommended by the research subcommittee and approved by the Department.

The committee also unanimously recommended an assessment rate of $0.04 per 25-pound container of tomatoes, an increase from last season's rate of $0.035. This rate, when applied to anticipated shipments of 55,000,000 25-pound containers, would yield $2,200,000 in assessment income. This, along with $40,000 in interest and other income and $55,000 from the committee's authorized reserve, would be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1991–92 fiscal period, estimated at $825,606, were within the maximum permitted by the order of one fiscal period's expenses.

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

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1991–92 fiscal period for the program began on August 1, 1991, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Florida tomatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is found and determined that a comment period of 10 days is appropriate because the budget and assessment rate approval for this program needs to be expedited.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 966 be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

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

2. A new § 966.229 is added to read as follows:

§ 966.229 Expenses and assessment rate.

Expenses of $2,295,000 by the Florida Tomato Committee are authorized, and an assessment rate of $0.04 per 25-pound container of Florida tomatoes is established for the fiscal period ending July 31, 1992. Unexpended funds may be carried over as a reserve.

Dated: September 23, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–23233 Filed 9–25–91; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 981

[FV–91–421PR]

Handling of Almonds Grown in California; Change of Date for Satisfying Inedible Disposition Obligations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the date from July 31 to August 31 each year, by which handlers of California almonds must satisfy their inedible disposition obligations. The action was unanimously recommended by the Almond Board of California (Board), the agency responsible for local administration of the federal marketing order for California almonds. The purpose of this action is to provide handlers with more flexibility in their operations.

DATES: Comments must be received by October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, Marketing Order Administration Branch, room 2525–S, South Building, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–5992.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 981 [7 CFR part 981], both as amended, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

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

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 105 handlers of California almonds subject to regulation under the marketing order for almonds grown in California during the current season. There are approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

This proposed rule would amend § 981.422(a)(5) of the Administrative Rules and Regulations issued pursuant to the order, to allow handlers until August 31 of each year to satisfy their inedible disposition obligation. This proposed action is based on a unanimous recommendation of the Board and upon other available information.

Section 981.42 of the order provides that handlers are required to deliver a quantity of almond kernels equal to their inedible disposition obligation to the Board or Board accepted crushers, feed manufacturers, or feeders. A handler's inedible disposition obligation is the percentage of inedible kernels in lots received by such handler during a crop year, as determined by the Federal-State Inspection Service (inspection agency), less any tolerance in effect for the crop year. Section 981.42 also provides that the Board may establish rules and regulations necessary to the administration of these provisions.

Section 981.442(a)(5) of the regulations provides that each handler's inedible disposition obligation is satisfied when the almond meat content of the material delivered to accepted users equals the inedible disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred. On June 28, 1991, an interim final rule changed the July 31 date to August 31 for handlers' inedible disposition obligation for the 1990–91 crop year only.

At its June 13, 1991, meeting, the Board recommended further amending § 981.442(a)(5), to allow handlers until August 31 to satisfy their inedible disposition obligation for 1991–92 and subsequent seasons. This would provide handlers with sufficient time to process their growers' crop and sort out the inedible material. This action would also allow handlers added flexibility in meeting their inedible disposition obligations. Further, extending the date until August 31 should not interfere with the processing of new crop almonds, as harvest generally begins in early September.

This action would relax restrictions on almond handlers and does not impose any additional burden on costs on handlers.

Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have significant economic impact on a substantial number of small entities.

A 30-day comment period is provided to allow interested persons to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is proposed to be revised as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

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

Subpart—Administrative Rules and Regulations

2. Revise the last sentence in paragraph (a)(5) of § 981.442 to read as follows:

[*This action will appear in the Annual Code of Federal Regulations*].

§ 981.442 Quality control

(a) * * *

(5) * * * Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than August 31 succeeding the crop year in which the obligation was incurred.

* * * * *

Dated: September 23, 1991.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–23237 Filed 9–25–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 287

[INS No: 1242–91]

RIN: 1115–AB63

Powers and Duties; Subpoenas

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends existing regulations concerning subpoenas by renumbering the paragraphs in 8 CFR 287.4. It also amends the regulations by including immigration officers among persons authorized to serve a subpoena and it authorizes additional specified immigration officers to issue subpoenas on behalf of the Immigration and Naturalization Service (Service) in conjunction with any investigation or proceeding. The impact of these changes will be to eliminate some of the confusion that has existed in the past concerning issuance of subpoenas.

DATES: Written comments must be received on or before October 28, 1991.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5304, Washington, DC 20536. To ensure proper and timely handling, please reference INS number 1242–91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Ira L. Frank, Senior Special Agent, Investigations Division, Immigration and Naturalization Service, 425 I Street NW., room 2207, Washington, DC 20536, telephone (202) 514–0747.

SUPPLEMENTARY INFORMATION: Presently, the regulations authorize service of a subpoena by any person over 18 years of age not a party to the case. As a matter of practice, subpoenas have been served by immigration officers. This regulation will explicitly include immigration officers among persons authorized to serve subpoenas. It will also specifically authorize issuance of subpoenas in conjunction with any investigation or proceeding, other than under 8 CFR part 335, by designated immigration officers pursuant to 8 U.S.C. 1225. An immigration officer will not be required to serve a subpoena on behalf of the alien or other party affected. The

regulation will make clear that any immigration officer may request a subpoena from the appropriate authority.

There are various reasons why these clarifications are desirable. For example, a request to an immigration judge in a criminal or civil case, may prejudice investigations of the Immigration and Naturalization Service (Service), may violate an order of secrecy from a grand jury, or may cause the immigration judge to be privy to information not relevant to the proceeding before him/her and possibly cause a lack of impartiality or the appearance of same. A request for a subpoena can still be made to an immigration judge subsequent to the commencement of any proceeding other than under 8 CFR part 335.

These amendments will clarify that demonstrative evidence can be required to be produced by a subpoena. In performing their duties, Service officers may need to examine and produce physical objects as evidence. Presently the regulations limit the issuance of subpoenas to requiring the attendance of witnesses or for the production of books, papers and other documentary evidence, or both.

The Regional Director, Office of Professional Responsibility will be removed from the list of immigration officers who may issue a subpoena and/or designate service of same since the Office of Professional Responsibility is now independent from the Service (Pub. L. 100–504) and has independent authority to obtain subpoenas from the grand jury or from the Office of the Inspector General. Certain categories of investigations for alleged misconduct are directed by Service regional offices. Where a subpoena is needed in such an instance, one could be issued by any designated immigration officer stationed in each regional office.

This rule adds the positions of Director and Assistance Director, Organized Crime Drug Enforcement Task Force (OCDETF), (New York, NY; Houston, TX; Los Angeles, CA; and Miami, FL) to the list of Immigration and Naturalization Service officials who may issue a subpoena and/or designate service of same. The Anti-Drug Abuse Act of 1988, mandates that the Immigration and Naturalization Service now make a larger commitment to the natural drug law enforcement effort by placing INS agents in areas that were underserved previously or where a heavy influx of alien criminals involved in organized narcotics trafficking poses an imminent danger to the safety and welfare of large metropolitan areas. The authorities being granted to the Director and the four Assistant Directors, Organized Crime Drug Enforcement Task Force are necessary to carry out their duties under the provisions of the Organized Crime Drug Enforcement Task Force Pilot Project set forth in subtitle D, section 6151, of the Anti-Drug Abuse Act of 1988, Public Law 100–690.

The proposed amendments to not alter nor affect the powers or duties of immigration judges, but do rearrange or renumber the existing paragraphs for greater clarity and utility. Section 287.4(c) is merely a renumbering of existing § 287.4(a)(2)(ii)(D), without change.

This proposed rule also renumbers the paragraphs of 8 CFR 287.4, concerning subpoenas. The renumbering should help eliminate confusion as to procedures surrounding the issuance of subpoenas.

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

List of Subjects in 8 CFR Part 287

Administrative practice and procedure, Aliens, Deportation, Powers and authority of immigration officers, Proof of official records, Subpoenas.

Accordingly, part 287 of chapter I of title 8 of the Code of Federal Regulations will be amended as follows:

PART 287—FIELD OFFICERS; POWERS AND DUTIES

1. The authority citation for part 287 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1225, 1226, 1251, 1252, 1357; 8 CFR part 2.

2. Section 287.4 is revised to read as follows:

§ 287.4 Subpoena.

(a) *Who may issue.* District Directors, Deputy District Directors, Chief Patrol Agents, Deputy Chief Patrol Agents, Officers-in-Charge, Patrol Agents in Charge, Assistant District Directors for Investigations, Supervisory Criminal Investigators (Anti-Smuggling), Service Center Directors, Assistant District Directors for Examinations, Director and Assistant Directors, Organized Crime Drug Enforcement Task Force (OCDETF), (New York, NY; Houston, TX; Los Angeles, CA; and Miami, FL) of the Service, may issue subpoenas requiring the attendance and testimony of witnesses, the production of records, other documentary evidence, and the production of demonstrative evidence for use in any criminal or civil investigation or any proceeding under this chapter, other than under 8 CFR part 335, or any application made ancillary to a proceeding.

(b) *Subpoena issued by an immigration judge subsequent to commencement of any proceeding.* In any proceeding under this chapter, other than under 8 CFR part 335, and in any proceeding ancillary thereto, the immigration judge having jurisdiction over the matter may, upon his/her own volition or upon application of a trial attorney, the alien, or other party affected, issue subpoenas requiring the attendance of witnesses, or for the production of books, papers and other documentary evidence, or both. A party applying for a subpoena shall be required, as a condition precedent to its issuance, to state in writing or at the proceeding, what he/she expects to prove by such witnesses or documentary evidence, and to show affirmatively that he/she has made a diligent effort, without success, to produce the same. Upon being satisfied that a witness will not appear and testify or produce documentary evidence and that the witness' evidence is essential, the immigration judge shall issue a subpoena.

(c) *Appearance of witness.* If the witness is located more than 100 miles from the place of the proceeding, the subpoena shall provide for the witnesses' appearance at the Service office nearest to the witness to respond to oral or written interrogatories, unless the Service indicates that there is no objection to bringing the witness the distance required to enable him/her to testify in person.

(d) *Form of subpoena.* All subpoenas shall be issued in Form I-138. Every subpoena issued under the provisions of this section shall command the person or entity, to which it is addressed, to appear and to give testimony at a time or place specified. A subpoena shall also command the person or entity, to which it is addressed, to produce the books, papers, documents or other evidence specified in the subpoena at a time and place specified. Demonstrative evidence may be subpoenaed by any official authorized to issue a subpoena as set forth in paragraph (a) of this section. If a subpoena is issued in conjunction with a pending proceeding, it shall state the title of the proceeding. A subpoena may direct the taking of a

deposition before an officer of the Service.

(e) *Service.* A subpoena issued under this section on behalf of any party including the Service may be served by any person, over 18 years of age not a party to the case (except an immigration officer), designated to make such service by a District Director, Deputy District Director, Chief Patrol Agent, Deputy Chief Patrol Agent, Patrol Agent in Charge, Officer-in-Charge, Assistant District Director for Investigations, Supervisory Criminal Investigator (Anti-Smuggling), Service Center Director, Assistant District Director for Examinations, Director or Assistant Director, Organized Crime Drug Enforcement Task Force (OCDETF), (New York, NY; Houston, Texas; Los Angeles, CA; and Miami, FL) in the Service office having administrative jurisdiction over the area in which the subpoena is issued or is to be served. A subpoena issued on behalf of the Service may be served by an immigration officer. A subpoena issued on behalf of a party other than the Service may be served by an immigration officer, if the other party so requests and would be otherwise entitled to a waiver of fees pursuant to § 103.7(c) of this chapter. Service of a subpoena shall be made by delivering a copy thereof to the person named therein, and by tendering to him/her the fee for one day's attendance and the mileage allowed by law by the United States District Court for the district in which the testimony is to be taken. When a subpoena is issued on behalf of the Service, fee and mileage need not be tendered at the time of service. A record of such service shall be made and attached to the original copy of the subpoena.

(f) *Invoking aid of court.* If a witness neglects or refuses to appear and testify or produce evidence as directed by the subpoena served upon him/her in accordance with the provisions of this section, the officer issuing the subpoena shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court, and to request such court to issue an order requiring the witness to appear and testify and to produce the books, papers, documents, demonstrative, or other evidence specified in the subpoena. If the subpoena was issued by an immigration judge, he/she shall request the District Director in the district in which the subpoena was issued to take the action referred to in this paragraph, in the event the witness neglects or refuses to appear and testify as directed by the subpoena served upon him/her.

Dated: May 22, 1991.

Gene McNary,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 91-23177 Filed 9-25-91; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-AGL-9]

Proposed Transition Area Establishment; Belle Fourche, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Belle Fourche, SD, transition area to accommodate a new NDB runway 32 Standard Instrument Approach Procedure (SIAP) to Belle Fourche Municipal Airport. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace. The SIAP is predicated on a non-federal non-directional beacon (NDB) located on the airport. This action would lower the base of controlled airspace to 1200 & 700 feet above the surface in the vicinity of Belle Fourche Municipal Airport. If this rule is adopted, concurrent with the SIAP publication, the operating status of the airport would change from VFR to IFR.

DATES: Comments must be received on or before October 31, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Attch: Rules Docket No. 91-AGL-9, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporing the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AGL-9". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426-8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the

Federal Aviation Regulations (14 CFR part 71) to establish a transition area at Belle Fourche, SD to accommodate a new NDB runway 32 Standard Instrument Approach Procedure (SIAP) to Belle Fourche Municipal Airport. The SIAP is predicated on a non-Federal NDB located on the airport. This action would lower the base of controlled airspace to 1200 and 700 feet above the surface in the vicinity of Belle Fourche Municipal Airport. If this rule is adopted, concurrent with the SIAP publication, the operating status of the airport would change from VFR to IFR.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Belle Fourche, SD [New]

That airspace extending upward from 700 feet above the surface within a 8.3 nautical mile radius of Belle Fourche Municipal Airport (lat. 44°44'28" N., long. 103°51'40" W.) and that airspace extending upward from 1,200 feet above the surface within a 11.3 nautical mile radius of Belle Fourche Municipal Airport; excluding the portion which overlies the Rapid City, South Dakota, 1,200 foot transition area.

Issued in Des Plaines, Illinois on September 11, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91–23187 Filed 9–25–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR PART 71

[Airspace Docket No. 91–AGL–10]

Proposed Modification to Transition Area; Grayling Army Airfield, Grayling, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the existing Grayling Army Airfield, Grayling, MI, transition area to accommodate a new VOR runway 14 Standard Instrument Approach Procedure (SIAP) to Grayling Army Airfield, Grayling, MI. This action is predicated on a non-federal VOR located on the airport. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

DATES: Comments must be received on or before November 5, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Attn: Rules Docket No. 91–AGL–10, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–AGL–10". The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice or Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA–430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 426–8058. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future

NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the designated transition area airspace near Grayling, MI. The present transition area would be modified to accommodate a new VOR runway 14 SIAP to Grayling Army Airfield, Grayling, MI. The modification to the existing airspace would extend the existing Grayling, MI, transition area 8 nautical miles northeast of the Grayling VOR 298 degree radial from the 6.6 nautical mile radius to 15 nautical miles northwest of the airfield.

The development of the procedure requires that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitude for this procedure may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined area which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements. Section 71.181 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

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

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Grayling, MI [Revised]

That airspace extending upward from 700 feet above the surface within a 6.6 nautical mile radius of the Grayling Army Airfield (lat. 44°40'49" N, long. 84°43'49" W), Grayling, MI, and within 4 nautical miles southwest and 8 nautical miles northeast of the Grayling VOR 298 degree radial extending from the 6.6 nautical mile radius to 15 nautical miles northwest of the airfield.

Issued in Des Plaines, Illinois on September 13, 1991.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 91-23188 Filed 9-25-91; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR 117

[CGD2-91-03]

Drawbridge Operation Regulations; Arkansas River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The action proposes changing the drawbridge operating regulations on the Arkansas River to accurately describe the method for requesting opening of the lift spans for the Baring Cross Bridge at Mile 119.6, the Junction Bridge at Mile 118.7, and the Rock Island Railroad Bridge at Mile 118.2. These changes reflect the creation of a Regulated Navigation Area (RNA) encompassing mile 118.2 to mile 125.4 at Little Rock, Arkansas.

DATES: Comments must be received on or before November 12, 1991.

ADDRESSES: Comments should be mailed to Commander(ob), Second Coast Guard District, 1222 Spruce Street, room 2.107B, St. Louis, Missouri 63103-2832, Attention: Docket CGD2-91-03. The comments and other materials referenced in this notice will be available for inspection and copying at this address. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, 314-539-3724.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD2-91-03) and the specific section of the proposal to which their comments pertain, identify the bridges, and give reasons for each comment. Receipt of comments will be acknowledged if the comment so requests. The proposed regulations may be changed in light of comments received. All comments received before the end of the comment period will be considered before final action is taken on this proposal. No public hearing is planned but one may be held if sufficient written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Wanda G. Renshaw, Project Officer, and Lieutenant M.A. Suire, Project Attorney, 1222 Spruce Street, St. Louis, Missouri 63103-2832.

Discussion of Proposed Regulations

The three vertical lift drawbridges in Little Rock Harbor at mile 118.2, mile 118.7, and 119.6 are maintained in the closed position and are remotely operated by a dispatcher in North Little Rock, Arkansas. The regulations must correctly describe the method used for requesting opening of the draws in light of the Notice of Proposed Rulemaking published November 29, 1990 at 55 FR 49538 to establish a new Regulated Navigation Area at 33 CFR 165.203.

Federalism Assessment and Certification

The proposed action is being analyzed in accordance with the principles and criteria outlined in Executive Order 12612. It is expected that the proposed action does not have sufficient federalism implications to warrant preparation of a Federal Assessment. The proposed action simply describes the method to be used for requesting opening of the drawbridges located in the RNA.

Environmental Assessment and Certification

This action is being reviewed by the Coast Guard. Preliminary analysis

indicates that this proposal qualifies as a Categorical Exclusion in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. Interested persons are nonetheless invited to participate in this rulemaking by submitting written views, data, or arguments in accordance with the procedures outlined earlier in this preamble. Copies of all documents being considered will be available on the docket for public inspection.

Economic Assessment and Certification

The proposed action has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, this rulemaking is considered to be nonsignificant under the guidelines of DOT Order 2100.5 dated May 22, 1980, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as the impact of the proposed action is expected to be minimal. Revising the drawbridge regulations to accurately reflect the method to be used to request the opening of a drawbridge in the RNA is justified. Pursuant to 5 U.S.C. 601, et seq., Regulatory Flexibility Act, it is certified that the proposed action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

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

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

2. § 117.123 is amended by revising paragraph (a), introductory text, redesignating paragraph (b) as paragraph (c) and revising the introductory text; and adding a new paragraph (b) to read as follows:

§ 117.123 Arkansas & White Rivers—Automated Railroad Bridges

(a) Across the Arkansas River, the draw of the Cotton Belt Railroad (Rob Roy) Bridge, Mile 67.4, is maintained in the closed position and is remotely operated. The following signals shall be used:

* * * * *

(b) The draws of the Rock Island Railroad drawbridge, Mile 118.2, the Junction Railroad Bridge, Mile 118.7 and the Baring Cross Railroad Bridge, Mile 119.6, Arkansas River, at Little Rock, are maintained in the closed position and are remotely operated. The following procedures apply:

(1) Normal Flow Procedures. Any upbound or downbound vessel requiring opening of the draw of these three bridges shall establish contact by radiotelephone with the remote operator on VHF–FM Channel 13 in North Little Rock, Arkansas. The remote bridge operator will advise the vessel whether the spans can be immediately opened and maintain constant contact with the vessel until the span has opened and the vessel passage has been completed. If any or all of the bridges cannot be opened immediately, the remote bridge operator will notify the calling vessel and provide an estimated time for individual bridge openings.

(2) High Velocity Flow Procedures. The area between mile 118.2 and mile 125.4 has been designated as a regulated navigation area (RNA). During periods of high velocity flow, which is defined as a flow rate of 70,000 cubic feet per second or greater at the Murray Lock and Dam, mile 125.4, downbound vessels shall contact the remote bridge operator on VHF–FM Channel 13 before departing Murray Lock and Dam or the mooring cells at Mile 121.5 to request that the Rock Island, Junction, and Baring Cross Railroad drawbridges be opened. The remote bridge operator shall immediately respond to the vessel's call and open all three bridges and keep them in the open position until the downbound vessel has passed through each bridge. If all of the bridges cannot be opened immediately, the remote bridge operator will immediately notify the downbound vessel and provide an estimated time for bridge openings. Upbound vessels shall request openings in accordance with the normal flow procedures as set forth above. The remote bridge operator shall keep all approaching vessels informed of the position of the drawbridge spans.

(c) The draws of the Burlington Northern Railroad Bridge, Mile 300.8 Arkansas River at Van Buren, and the Missouri Pacific Railroad Bridge, Mile 7.5 White River at Benzal, are maintained in the open position with a minimum vertical clearance of 52 feet except as follows:

* * * * *

Dated: August 28, 1991.

W.J. Ecker,

Rear Admiral (Lower Half), U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 91–23205 Filed 9–25–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 161

[CGD 91–032]

RIN 2115–AD79

Prince William Sound Automated Dependent Surveillance System; Equipment Carriage Requirement

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to section 5004 of the Oil Pollution Act of 1990, the Coast Guard is proposing regulations to require tank vessels of 20,000 DWT or more, operating in Prince William Sound, to carry Automated Dependent Surveillance Shipborne Equipment (ADSSE). The ADSSE would automatically provide the Vessel Traffic Center (VTC) in Valdez, AK, with position information on tank vessels at greater distances than now available, allowing traffic management decisions to be made in a more timely and reliable fashion. The automatic feature would enhance vessel safety by reducing the amount of time the tank ship's officers spend communicating by voice radio with the VTC.

DATE: Comments must be received on or before November 12, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA–2/3406), (CGD 91–032), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at Room 3406, U.S. Coast Guard Headquarters.

A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at Room 3302, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC or the Radio Technical Commission for Maritime Services, 655 15th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bruce Riley, Project Manager,

Navigation Safety Systems Special Projects Staff, Tel. (202) 267–0412.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91–032) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **"ADDRESSES."** If it determines that the opportunity for oral presentations will aid in this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Bruce Riley, Project Manager, and Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purpose

The Oil Pollution Act of 1990 (Pub. L. 101–380) directs the Coast Guard to acquire, install, and operate additional equipment as necessary to provide surveillance of tank vessels throughout Prince William Sound. Under the Act, the VTC display equipment must also have the capability to initiate an alarm to alert the VTC watchstander when a tank ship deviates from a designated navigation route. The VTC in Valdez now relies on limited radar surveillance and periodic voice radio reports to track tank vessels transiting the Sound.

The Coast Guard has investigated various types of surveillance systems, including radar and dependent surveillance systems, which could meet these requirements. Total radar coverage of Prince William Sound is possible, but would be cost prohibitive. Dependent surveillance is a system involving the cooperation of the vessel. This system requires that a vessel have a means to determine its position and communicate this position along with an identification code and a time stamp to a shore station.

The dependent surveillance process can be broken down into two subsystems—navigation and communications. As they relate to dependent surveillance, navigation is the means to determine a vessel's position; and communications is the means by which information on the vessel's position is passed to a shore station.

The Coast Guard reviewed different combinations of navigation and communications equipment that could meet operational performance standards and approach the accuracy requirements for a traffic management system. Many navigation systems cannot be used because the Coast Guard is proposing to require true position accuracy of less than 10 meters. Most communications products were rejected because they could not meet the Coast Guard requirements for latency (less than 10 seconds) or message length.

In the final analysis, the only system that the Coast Guard has identified which meets the stated requirements, without being cost prohibitive, is an Automated Dependent Surveillance system (ADS) using Differential Global Positioning System (DGPS). The ADSSE would include a DGPS receiver, a marine radiobeacon band receiver capable of receiving differential GPS error correction messages, a VHF/FM transceiver using Digital Selective Calling (DSC), and a control unit.

Once the position information is received by the VTC, it would be processed and displayed in the VTC. With all tank ship positions displayed, the VTC operator could make decisions concerning hazardous traffic situations earlier in a tank ship's transit, thereby reducing the potential for a collision or grounding. As part of the VTC display equipment, an alarm indicating that a tank ship has proceeded out of or into a specified area would alert the watchstander in the VTC.

The proposed regulations would provide a requirement for tank vessels of 20,000 DWT or more to carry the ADSSE while transiting Prince William Sound. The proposed rule would allow a one year compliance period with carriage becoming mandatory one year after publication of the final rule.

Discussion of Proposed Amendments

Section 161.376(a) would be amended to include the requirement for tank vessels 20,000 DWT or more to carry the ADSSE. The ADSSE would have to meet specific accuracy, transmission, receiving, and display requirements.

Incorporation by Reference

The following material would be incorporated by reference in § 161.376: RTCM Recommended Standards For Differential NAVSTAR GPS Service, Version 2.0, dated January 1, 1990, published by the Radio Technical Commission for Maritime Services (RTCM) Special Committee 104. RTCM Paper 134–89/SC104–68. Copies of the material are available for inspection in the docket and where indicated under **"ADDRESSES".**

Before publishing a final rule, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979).

This proposed rulemaking is intended to benefit the environment by reducing the potential for catastrophic oil spills which may result from tankers involved in groundings, rammings or collisions.

The only potential cost to VTS users will be the initial purchase price of the ADSSE. The equipment could cost as much as $50,000 per vessel. However, compared to the annual operating costs of the tank vessels required to carry the ADSSE, the Coast Guard considers $50,000 to be a reasonable amount. The Coast Guard estimates that 40 to 50 tank ships will be affected by this proposed rulemaking. The estimated total cost of outfitting all affected tank ships is $2,000,000 to $2,500,000.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

This regulation would affect owners and operators of tank vessels of 20,000 or more DWT operating in Prince William Sound. The construction costs of vessels of this size is such that their owners and operators tend to be major corporations or subsidiaries of major corporations. Business entities with the capital and operating costs of this magnitude do not meet the definition of "small entities."

For the reasons stated above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposed rulemaking contains no information collection requirements. All reports are made automatically via VHF/FM. The automatic reports required by these proposed rules are considered to be operational communications and transitory in nature, and therefore do not constitute the collection of information under the Paperwork Reduction Act.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Paragraph c. of section 2.B.2. which addresses Coast Guard operations in support of statutory authority in the area of maritime safety supports this finding. While this rulemaking may have a positive effect on the environment by minimizing the risk of environmental harm resulting from collisions and groundings, the impact is not expected to be significant enough to warrant further documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "**ADDRESSES**."

List of Subjects in 33 CFR Part 161

Harbors, Navigation (water), Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend part 161 of title 33 CFR as follows:

PART 161—[AMENDED]

1. The authority citation for Part 161 is revised to read as follows:

Authority: 33 U.S.C. 1231, 2734; 49 CFR 1.46.

2. Section 161.376 is amended by adding paragraph (a)(5) to read as follows:

§ 161.376 Tank vessels in the VTS Area.

(a) * * *

(5) Have Automated Dependent Surveillance Shipborne Equipment (ADSSE) consisting of a twelve channel all-in-view Global Positioning System (DGPS) receiver, a marine band Non-Directional Beacon receiver capable of receiving differential GPS error correction messages, a VHF/FM transceiver using Digital Selective Calling (DSC) on channel 70 (156.525 MHz), and a control unit.

(i) The ADSSE must have the following capabilities:

(A) Using DGPS, sense the position of a tank vessel and determine time of the position, Universal Coordinated Time (UTC).

(B) Fully utilize the broadcast type 1, 2, 3, 6, 7, 9, and 16 messages as specified in RTCM Recommended Standards For Differential NAVSTAR GPS Service, Version 2.0, dated January 1, 1990 in determining the required information;

(C) Achieve a position error which is less than ten meters (32.8 feet) 2 distance root mean square (2 drms) from the true North American Datum of 1983 (NAD 83) position as transmitted to the VTC;

(D) Achieve a course error which is less than 0.5 degrees from true course over ground as transmitted to the VTC and a speed error which is less than 0.05 knots from true speed over ground as transmitted to the VTC.

(E) Receive and act upon commands from the VTC broadcast as DSC messages on channel 70 (156.525 MHz);

(F) Transmit the vessel's position which is tagged with the UTC at position solution and the vessel's course over ground, speed over ground, and Lloyd's registration number to the VTC;

(G) Receive and act upon the RTCM messages which are broadcast as minimum shift keying modulated medium frequency signals in the marine radiobeacon band and supply the messages to the GPS receiver;

(H) Display a visual alarm to indicate to shipboard personnel when a failure to receive or utilize the RTCM messages occurs;

(I) Display a separate visual alarm which is triggered by the VTC utilizing a DSC message to indicate to shipboard personnel when the VTS cannot provide the required system accuracy; and

(J) Display two RTCM type 16 messages, one of which must display the position error when it is broadcast.

(ii) The ADSSE will be considered to be non-operational should it fail to:

(A) Respond to the required VTS commands;

(B) Utilize broadcast messages; or

(C) Provide the VTS with the required information at the required accuracies.

* * * * *

Dated: September 23, 1991.

J.W. Lockwood,

Captain, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91-23206 Filed 9-25-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 162

[CGD 85-096]

RIN 2115-AC03

Navigation on Certain Waterways Tributary to the Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise those Inland Waterways Navigation regulations governing the Gulf Intracoastal Waterway (GIWW) and all other waterways tributary to the Gulf of Mexico (except the Mississippi River, its tributaries, South and Southwest Passes, and the Atchafalaya River) from Saint Marks, Florida, to the Rio Grande. Over time those regulations have grown in some ways awkward, redundant, and superfluous. The Coast Guard expects that the rulemaking proposed here will streamline the language, conform the regulations to current practice, and reduce the collection-of-information burden on the public by eliminating the need to seek permits for the commonest configurations of tows.

DATES: Comments must be received on or before December 26, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2, 3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection-of-Information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LCDR John Fidaleo (Project Officer, Eighth Coast Guard District, Aids to Navigation Branch), (504) 589–4686; or Mr. Harry C. Robertson (Project Manager, Coast Guard Headquarters, Short-Range Aids-to-Navigation Division), (202) 267–0405.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking [CGD 85–096] and the specific section of the proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the first address under "**ADDRESSES**". If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Harry C. Robertson, Project Manager, and Mr. Patrick J. Murray, Project Counsel, Office of Chief Counsel.

Background and Purpose

By Memorandum of Understanding signed May 5, 1977, the Army Corps of Engineers transferred certain regulations on the navigation of inland waterways to the Coast Guard under the Ports and Waterways Safety Act [33 U.S.C. 1221, Pub. L. 92–340, 86 Stat. 424, as amended by Pub. L. 95–474, 92 Stat. 1471].

Pursuant to the Ports and Waterways Safety Act and further delegation by the Secretary of Transportation in 49 CFR 1.46(n)(4), the Commandant of the Coast Guard has authority to regulate navigation on certain navigable waters of the United States for purposes of marine safety and environmental protection. Enforcement procedures for these regulations appear at 33 CFR 1.07. Various features of 33 CFR 207 shifted into 33 CFR 162 [42 FR 51758 (September 29, 1977)]. But they shifted with little change in language. In the ensuing years, experience has revealed that the language in 33 CFR 162.75 is in some ways superfluous, redundant, and unduly restrictive. This proposal should streamline the language, conform the regulations to current practice, and reduce the collection-of-information burden of the public by eliminating the need to seek permits for the commonest configurations of tows.

Discussion of Proposed Amendments

The Coast Guard proposes to amend § 162.75 of title 33, Code of Federal Regulations. It would eliminate paragraphs (a)(2), (b)(2), (b)(3)(iii), and (b)(7) of 33 CFR 162.75 because they repeat requirements already and more properly stated in other regulations. It would revise the remaining paragraphs to reflect current practice, and place them in a more logical order. It would also add some exceptions to the general rule of tow width.

There are two standard sizes of barges most commonly used in the waters covered by this regulation: the 35′×190′ general-cargo barge, and the 55′×290′ petroleum barge. In recent years it has become preferred practice among some members of the towing industry to make up double-wide tows of general-cargo barges, each tow 70′ wide. Under current regulations, tows over 55′ wide need permits from the Coast Guard to transit the regulated area. The Coast Guard issues oversize-tow permits upon request in most cases because, in the opinion of the Captain of the Port (COTP), these tows can travel safely and the waterway can accommodate them. Nevertheless, the administrative burden persists on the public and the Coast Guard for processing oversize-tow permits.

There has been much discussion of double-wide tows at professional conferences and Coast Guard—Industry Days. Most members of the towing industry we have heard from believe that a short tow, even if wide, is more maneuverable in sharp bends and high winds than a long tow, even if narrow. Must also believe, with reason, that it is more advantageous financially to make a transit with a 6-barge tow, 2 wide by 3 long, than with a 5-barge tow, 1 wide by 5 long.

The Coast Guard's experience is that tows as wide as 2 35-foot barges can be safely operated on the GIWW if they are no more than 3 barges long. This is supported by data on the large number of transits and the small number of accidents. For example, during Fiscal Year 1990, the Coast Guard received 3261 requests for oversize-tow permits on the GIWW, and approved 3222 of them. During the same period and on the same waterway, it received reports of only 3 casualties for oversize tows. There is a certain degree of risk inherent in any towing, but the Coast Guard has concluded that increasing the allowable width from 55 to 72 feet for tows on the waters subject to this rule does not significantly increase that risk, given a proper degree of care and given observance of other regulations and practices for safety of navigation.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures [44 FR 11040 (February 26, 1979)]. The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. The new tow configurations contemplated by this proposal would be voluntary, and would not affect an operation unless the master preferred to change.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider whether this proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act [15 U.S.C. 632].

To the knowledge of the Coast Guard, most of the towing businesses on the GIWW that would be affected by this proposal do not qualify as "small entities". Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. (Besides, the proposal would not further restrict towing operations, but would authorize a tow configuration that may or may not be used, at the discretion of the operator.) If, however, you think that your business qualifies as a small entity and that this proposal would have a significant economic impact on your business, please submit a comment (see "**ADDRESSES**") explaining why you think your business qualifies and in what way and to what degree this proposal would economically affect your business.

Collection of Information

OMB has approved the collection of information, under the Paperwork Reduction Act and 5 CFR part 1320, through a blanket approval for 33 CFR

subchapter P. It has assigned approval number 2115–0540. The proposed changes to this rule would reduce the collection-of-information requirements for oversize-tow permits by about 3200 requests a year.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and it has determined that this proposal does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

In accordance with the National Environmental Policy Act, the Coast Guard is preparing an environmental assessment to identify potentially significant effects of this proposed rulemaking on the environment. Information available at this time indicates no likely significant adverse effects on the environment. Experience to date with permitting of double-wide tows on the GIWW shows no significant direct or indirect effects on the environment. The Coast Guard would appreciate information, concerns, and comments on these effects by the date stated above under **"DATE"**.

List of Subjects in 33 CFR Part 162

Harbors, Navigation (water), Vessels, Waterways.

For the reasons stated above, the Coast Guard proposes to amend 33 CFR part 162 as follows:

1. The citation of authority for 33 CFR part 162 continues to read as follows: 33 U.S.C. 1231, 49 CFR 1.46.

2. Section 162.75 is revised to read as follows:

§ 162.75 All waterways tributary to the Gulf of Mexico (except the Mississippi River, its tributaries, South and Southwest Passes, and Atchafalaya River) from Saint Marks, Florida, to the Rio Grande.

(a) *Application.* The regulations in this section apply to all navigable waters of the U.S. tributary to the Gulf of Mexico between Saint Marks, Florida, and the Rio Grande, Texas (both inclusive), and apply to the Gulf Intracoastal Waterway (GIWW); except that they do not apply to the Mississippi River, its tributaries, South or Southwest Pass, or the Atchafalaya River above its junction with the Morgan City—Port Allen Route.

(b) *Definitions.* As used in this section:

"Channel" means the deeper part of a body of water, whether natural or dredged available for passage of vessels. In the GIWW, it means the same as project width.

"Charted width" means the breadth of water available for navigation, as shown on a navigational chart.

"COTP" means the Captain of the Port.

"Gulf Intracoastal Waterway" or "GIWW" means the navigation project of the U.S. Army Corps of Engineers extending from Saint Marks, Florida, to the Rio Grande, Texas, including the Morgan City—Port Allen Alternate Route and the Galveston—Freeport Cutoff.

"Projected width" means the designed width of a channel constructed by the Corps of Engineers.

"Tow" means any vessel or vessels being towed or pushed. The length of a tow includes the length of the towing vessel, but excludes that of the towline and of the bow steering-unit. The width of a tow includes that of the towing vessel and includes all overhangs and projections.

"Vessel" means every craft or other artificial contrivance used, or capable of being used, as a means of transportation on the water.

(c) *Anchoring and mooring in channels or waterways not designated for anchoring or mooring.*

(1) No vessel, regardless of size, may anchor for fishing if it obstructs navigation thereby.

(2) No commercial vessel or tow may anchor or moor in any land cut or channel not designated for anchoring or mooring, except in an emergency or with the prior permission of the Coast Guard.

(3) Each request from a commercial vessel or tow to anchor or moor for 24 hours or less must be submitted 12 hours or more in advance to the COTP having jurisdiction over the place of anchoring. Each request from a commercial vessel or tow to anchor or moor for more than 24 hours but less than 60 days must be submitted in writing 12 hours or more in advance to the COTP having jurisdiction over the place of anchoring. Each request from a commercial vessel or tow to anchor or moor for 60 days or more must be submitted in writing 10 days or more in advance to the District Commander. Each request must specify the size and configuration of the vessel or tow to anchor, and must state where, for how long, and why. A request may be submitted by telephone, radio, or telefax or in writing.

(4) When moored to the bank, each vessel or tow must be secured by lines at bow and stern. When so moored, each tow consisting of more than one vessel must also be secured by lines at intervals small enough to ensure the tow's not being drawn away from the bank by winds, currents, or the suction of passing vessels. When so moored, each tow consisting of more than one vessel must shorten its lines so that its vessels will be as close together as possible. When so moored, it shall be only at such a place and under such conditions as will not obstruct or prevent the passage of other vessels.

(5) When moored to the bank or to a mooring buoy, or when anchored, each vessel or tow must remain under constant supervision by a qualified, responsible person to see that proper signals are displayed, that the vessel or tow stays properly moored or anchored, and that cargo security is maintained at all times.

(d) *Limits on navigation.*

(1) Each vessel must, when passing other vessels or structures in or along the waterway, reduce speed so as to prevent wake damage.

(2) Each vessel must obey official speed-limit signs.

(3) Each vessel must at all times leave a clear channel open to permit free and unobstructed navigation by other vessels.

(4) No vessel whose deck load hangs or projects over the side, or whose rigging projects over the side so as to endanger passing vessels, wharves, or other property, may enter or pass through any channel without prior approval of the COTP at the point of origin.

(e) *Assembly of tows.*

(1) In channels 150 feet wide or less, each vessel pulling a tow not equipped with rudders must use two towlines, or a bridle on one towline, shortened as much as safety of the towing vessel admits, to keep complete control at all times. The COTP may require that a tow be broken up, and may require the installation of a rudder or other approved steering device on the tow, to avoid its obstructing navigation or damaging property.

(2) Each vessel in a tow must be securely assembled, with the individual vessels made fast by lines as short as possible. However, towlines and fastenings between vessels in a tow may be slackened enough to accommodate wave surge.

(f) *Handling of tows.*

(1) Each tow wider than half the charted width of the channel or wider than 55 feet must, when meeting or overtaking a narrower tow, vessel, or floating plant, give way as far as necessary by any means necessary—including the disassembly of a tow—to ensure to each user a minimum of half the charted width of the channel and a safe passage.

(2) No tow may be drawn or pushed by a vessel that lacks sufficient power or crew to permit ready maneuverability, safe handling, and full control at all times.

(g) *Size of tows:* Unless granted an exception in this paragraph, only tows not wider than 55 feet and not longer than 1194 feet, and tows wider than 55 feet but not wider than 72 feet and not longer than 750 feet, may transit the GIWW. The following exceptions apply:

(1) *Between the west side of the Mobile Bay Ship Channel and mile 34.2 East of Harvey Lock (EHL):* Double-wide tows wider than 55 feet but not wider than 110 feet and not longer than 750 feet are allowed.

(2) *Between mile 363 West of Harvey Lock (WHL) and mile 670 WHL (Brownsville Channel):* Double-wide tows, made up of empty barges on the starboard side, wider than 55 feet but not wider than 110 feet and not longer than 750 feet are allowed.

(3) *Between mile 238.5 WHL (west side of Calcasieu Lock) and mile 352 WHL (Pelican Island Cut):* Double-wide tows, made up of empty barges on the starboard side, wider than 55 feet but not wider than 110 feet and not longer than 750 feet are allowed. Note: The Brazos River Floodgates and the Colorado River Locks have horizontal clearances of 75 feet. See 33 CFR part 207 for special regulations on floodgates, locks, and navigation applicable to both of these structures.

(h) *On waterways, other than the GIWW, having a charted width of 150 feet or less:* Unless granted an exception in this paragraph, no tow may be wider than 55 feet or one-half the charted width, whichever is less, and no tow may be longer than 1194 feet. The following exceptions apply:

(1) *Apalachicola, Chattahoochee, and Flint Rivers:* No tow may be wider than 55 feet, except that a southbound tow made up of two empty barges may be as wide as 72 feet, and no tow may be longer than 450 feet.

(2) *Upper Escambia Bay and the Escambia River:* No tow may be wider than 55 feet.

(3) *Biloxi East Channel to Back Bay Channel, between the GIWW and the end of Back Bay Channel (300 yards west of Big Island):* No tow wider than 55 feet may be longer than 750 feet.

(4) *Pass Manchac Bridges, Between Lake Maurepas and Lake Pontchartrain:* No tow may be double-wide, consist of more than two barges, or be longer than 450 feet.

(5) *Chocolate Bayou Channel, between the GIWW, mile 376 WHL, and Chocolate Bayou Channel, mile 8.1:* No tow may be wider than 55 feet.

(6) *Victoria Channel, between the GIWW, mile 492 WHL, and upstream in the Victoria Channel to mile 34.6:* No tow made up of laden barges may be wider than 55 feet, and no tow made up of empty barges may be wider than 72 feet or longer than 700 feet.

(i) *Oversize-tow permits.*

(1) Each vessel or tow exceeding applicable size or sizes allowed in paragraphs (d), (g), and (h) of this section must obtain a permit from the COTP at the point of origin before it commences movement.

(2) A request for a permit must reach the COTP at least 12 hours before the tow commences movement.

(3) A separate request must reach the COTP for each permit.

(4) A request for a permit may be submitted by telephone, radio, or telefax or in writing to the COTP, who will notify other COTPs along the route.

(5) The following information must be provided with each request for a permit:

(i) Name and horsepower of towing vessel.

(ii) Operator or operators of towing vessel, and what Coast Guard licenses, if any, they hold.

(iii) Names and cargoes of barges.

(iv) Tow width.

(v) Tow length.

(vi) Nature of overhang, if any.

(vii) Owner or charterer of towing vessel.

(viii) Place and estimated time of departure.

(ix) Route.

(x) Destination and estimated time of arrival.

(xi) Bow steering-units (yes or no).

(xii) Integrated tow (yes or no).

(xiii) Requester's name and phone.

(xiv) Acknowledgement of responsibility not to impede other vessels and to allow passage by clearing the channel or breaking up the tow.

Dated: September 5, 1991.

A. Cattalini,

Acting Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 91-23207 Filed 9-25-91; 8:45 am]

BILLING CODE 4910-14-M

Notices

Federal Register
Vol. 56, No. 187
Thursday, September 26, 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

Forms Under Review by Office of Management and Budget

September 20, 1991.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3)Form number(s), if applicable; (4) How often the information is requested; (5) who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Revision

• Farmers Home Administration
7 CFR 1930–C, Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients
FmHA 444–27A, 1944–8, –25, –27, –29, 1930–5, –7, –8
Recordkeeping; On occasion; Monthly
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 1,860,300 responses; 1,388,215 hours
Jack Holston (202) 382–9736

Extension

• Agricultural Marketing Service
Nectarines Grown in California—Marketing Order No. 916
Recordkeeping; On occasion; Monthly; Semi-annually; Biennially; Every four years
Farms; Businesses or other for profit; Small businesses or organizations; 1,112 responses; 957 hours
Tom Tichenor (202) 475–5464
• Agricultural Marketing Service
Grapefruit and Oranges Grown in the Lower Rio Grande Valley in Texas—Marketing Order No. 906
Recordkeeping; On occasion; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 327 responses; 68 hours
Gary Rasmussen (202) 475–3918
• Agricultural Cooperative Service
Agricultural Cooperative Service Questionnaire: New cooperative Volume and Structure (Producer Survey for New Cooperative Activity)
On occasion
Farms; Businesses or other for-profit; Small businesses or organizations: 245 responses; 245 hours
Gerald E. Ely (202) 245–5350
• Food and Nutrition Service
Affidavit of Return or Exchange of Food Coupons
FNS–135
On occasion
State or local governments; 63,626 responses; 17,408 hours
Ed Speshock (703) 756–3385
• Agricultural Marketing Service
Marketing Agreement for Domestically Produced Peanuts—No. 146
Recordkeeping; On occasion; Weekly; Monthly; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 16,019 responses; 3492 hours
Patrick Packnett (202) 475–3862

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 91–23171 Filed 9–25–91; 8:45 am]

BILLING CODE 3410–01–M

COMMISSION ON CIVIL RIGHTS

District of Columbia State Advisory Committee; Agenda and Notice 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 District of Columbia State Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 2 p.m. on Wednesday, October 9, 1991, at 1050 Connecticut Avenue NW., Washington, DC, Baker & Hosteler conference room. The purpose of the meeting is to plan upcoming program activity.

Persons desiring additional information, or planning a presentation to the Committee, should contact John I. Binkley, Director, Eastern Regional Division at (202) 523–5264, TDD (202) 376–8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division 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, September 18, 1991.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 91–23143 Filed 9–25–91; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke in Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke in part.

SUMMARY: In response to a request by a respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on elemental sulphur from Canada. The review covers one exporter of this merchandise to the United States and the period December 1, 1989 through November 30, 1990. The Department intends to revoke in part the antidumping finding on Canadian

elemental sulphur with respect to Sulco Chemicals, Ltd.

Interested parties are invited to comment on these preliminary results and intent to revoke in part.

EFFECTIVE DATE: September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–3601.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 1991, the Department of Commerce (the Department) published in the Federal Register (56 FR 16068) the final results of its last administrative review of the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973). On December 26 and December 27, 1990, two respondents, Sulco Chemicals, Ltd. (Sulco) and Petro-Canada Resources (Petro-Canada), requested in accordance with 19 CFR 353.22 that we conduct an administrative review of the period December 1, 1989 through November 30, 1990. We published a notice of initiation for both firms on January 30, 1991 (56 FR 3445). In an April 19, 1991 notice we revoked the finding with respect to Petro-Canada (effective December 1, 1989). Therefore, we are terminating this administrative review of Petro-Canada. On April 25, 1991, Sulco requested revocation from the finding. The Department has now conducted the administrative review of Sulco in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of elemental sulphur from Canada. During the review period such merchandise was classifiable under Harmonized Tariff System (HTS) item 2501.01.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of Canadian elemental sulphur to the United States, Sulco, and the period December 1, 1989 through November 30, 1990.

United States Price

We based United States price (USP) on purchase price (PP), in accordance with section 772(b) of the Tariff Act, because all sales were made directly to unrelated parties prior to importation into the United States. We calculated PP based on unpacked, f.o.b. refinery or delivered prices to unrelated customers in the United States. We made adjustments, were appropriate, for foreign inland freight, demurrage, brokerage and handling expenses, and credit costs. No other adjustments were claimed or allowed.

Foreign Market Value

We based foreign market value (FMV) on home market prices to unrelated parties, in accordance with section 773 of the Tariff Act. We calculated FMV based on unpacked, f.o.b. refinery or delivered prices to unrelated customers in the home market. We made adjustments, where appropriate, for inland freight, demurrage, and credit costs. No other adjustments were claimed or allowed.

Preliminary Results of the Review and Intent To Revoke in Part

As a result of our review, we preliminarily determine that no margin exists for Sulco for the period December 1, 1989 through November 30, 1990.

Sulco has had sales at not less than fair value for at least three years. In addition, as provided for in 19 CFR 353.25(a)(2)(iii), Sulco has agreed in writing to an immediate suspension of liquidation and reinstatement in the finding if circumstances develop which indicate that Canadian elemental sulphur exported to the United States by Sulco is being sold at less than fair value. Therefore, we intend to revoke in part the antidumping finding on Canadian elemental sulphur with respect to Sulco. If this partial revocation is made final, it will apply to all unliquidated entries of this merchandise, exported by Sulco to the United States, and entered, or withdrawn from warehouse, for consumption on or after December 1, 1990.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. When the final results of this review are published, the Department will issue appraisement instructions concerning Sulco directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act:

(1) For the subject merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews, the cash deposit rate will continue to be the rate published in the most recent final results for which the manufacturer or exporter received a company-specific rate;

(2) If the exporter is not a firm covered in this review or prior reviews, but the manufacturer is, the cash deposit rate will be that established in the most recent review of that manufacturer;

(3) The cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firm or any previously reviewed firm, will be zero percent. This is the most current non-best-information-available rate for any firm in this proceeding.

Parties to the proceeding may request disclosure within 5 days of publication of this notice and may request a hearing within 10 days of publication. See 19 CFR 353.38. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such comments.

This administrative review, intent to revoke in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675a(a)(1), (c)), 19 CFR 353.22, and 19 CFR 353.25.

Dated: September 16, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–23227 Filed 9–25–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–087]

Postponement of Final Determination of Circumvention of Antidumping Duty Order: Portable Electric Typewriters From Japan (Brother Industries, Ltd. and Brother Industries (USA), Inc.)

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

EFFECTIVE DATE: September 26, 1991.

FOR FURTHER INFORMATION CONTACT: Bradford Ward, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street

and Constitution Avenue, Washington, DC 20230, at (202) 377–5288.

Postponement of Final Determination

On August 27, 1991, the Department published a Postponement of Preliminary Determination of Circumvention of Antidumping Duty Order: Portable Electric Typewriters from Japan (56 FR 12313). In that notice, we indicated that the final determination in this inquiry would be issued on October 25, 1991. Since the September 13, 1991, publication of our Negative Preliminary Determination of Circumvention of Antidumping Duty Order: Portable Electric Typewriters from Japan (Brother Industries, Ltd. and Brother Industries (USA), Inc.) (56 FR 46594), the petitioner, Smith Corona Corporation, has requested a two week postponement for the final determination in this proceeding. Therefore, we have postponed the final determination until November 8, 1991.

Accordingly, the new schedule is as follows:

- Case Hearing Briefs.....October 4, 1991
- Rebuttal Briefs.....October 11, 1991
- Hearing.....October 18, 1991
- Final Determination.....November 8, 1991

If, consistent with section 781(e) of the Act, we refer this matter to the International Trade Commission (ITC), we will issue our final determination within 15 days of receiving advice from the ITC. If referral to the ITC is not necessary, we will issue our final determination by November 8, 1991.

The hearing will be held on October 18, 1991, at 10 a.m. at the U.S. Department of Commerce, room 1414, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to participate in the hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 781(a) of the Act.

Dated: September 20, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–23228 Filed 9–25–91; 8:45 am]

BILLING CODE 3510–DS–M

[A–357–804]

Antidumping Duty Order: Silicon Metal From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 26, 1991.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Stefanie Amadeo, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230: (202) 377–3965 or (202) 377–1174.

Order

Scope of Order

The merchandise covered by this investigation is silicon metal containing at least 96.00 but less than 99.99 percent of silicon by weight. Silicon metal is currently classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor-grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to this investigation. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on August 1, 1991, the Department made its final determination that silicon metal from Argentina is being sold at less than fair value (56 FR 37891, August 9, 1991). On September 19, 1991, in accordance with section 735(d) of the Act, the ITC notified the Department that such imports materially injure the U.S. industry.

Therefore, in accordance with section 736 of the Act, the Department will direct 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 silicon metal from Argentina. These antidumping duties will be assessed on all unliquidated entries of silicon metal from Argentina entered, or withdrawn from warehouse, for consumption on or after March 29, 1991, the date on which the Department published its preliminary determination notice in the **Federal Register** (56 FR 13118). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Producers/manufacturers/exporters	Deposit rate
Electrometalurgica Andina, S.A.I.C., (Andina)	8.65%
All others	8.65%

This notice constitutes the antidumping duty order with respect to silicon metal from Argentina, 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.

Ths order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: September 20, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–23226 Filed 9–25–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Marine Mammals

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

ACTION: Application for Permit; Boudewijnpark—Dolphinarium Brugge (P399A).

SUMMARY: Notice is hereby given that an applicant has applied in due form for a Public Display Permit to obtain the care and custody of marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicant: Boudewijnpark—Dolphinarium Brugge, A. De Baeckestraat 12, 8200 Brugge, St-Michiels, Belgium.

2. Type of Permit Requested: Public Display.

3. Number and Name of Marine Mammals: Ten pinnipeds in an as yet undetermined combination of California sea lions (*Zalophus californianus*) and harbor seals (*Phoca vitulina*).

4. The applicant requests permission to maintain ten pinnipeds, a combination of California sea lions and harbor seals to be obtained from captive or surplus stock being held at institutions in the United States. The themes of the education program associated with the seal exhibits include biology, behavior and conservation.

The arrangements and facilities for transporting and maintaining the marine mammals requested in this application will be concluded consistent with requirements established by the US Department of Agriculture under the Animal Welfare Act. The animals will be under the care of a licensed veterinarian at the Boudewijnpark—Dolphinarium Brugge.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Services, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, room 7330, Silver Spring, Maryland 20910, (301) 427–2289; and

Director, Northeast Region, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, Massachusetts 01930, (508) 281–9300.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 91–23145 Filed 9–25–91; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

September 20, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 27, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, 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) 535–6736. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The 1991 designated consultation levels for Categories 200 and 606 are being increased.

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 55 FR 51756, published on December 17, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 20, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 11, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on September 27, 1991, you are directed to increase to the current limits for the following categories:

Category	Adjusted twelve-month limit [1]
Sublevels in Group II	
200	351,996 kilograms.
606	113,228 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–23229 Filed 9–25–91; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Intention To Prepare An Environmental Impact Statement/ Environmental Impact Report for the Sewage Effluent Compliance Project at Marine Corps Base, Camp Pendleton, Oceanside, California

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare a joint Environmental Impact Statement/

Environmental Impact Report (EIS/EIR) to evaluate the environmental effects of sewage effluent compliance at Marine Corps Base, Camp Pendleton. The proposed action consists of the relocation of percolation ponds and construction of associated pipelines. The ponds and pipelines would support the effluent from seven onbase sewage treatment plants.

The EIS/EIR will assess the relevant environmental issues associated with all government plans and actions regarding relocation of the ponds and construction of the pipelines. Alternative pipeline alignments and percolation pond sites will be evaluated to determine environmentally preferred locations for project components. In accordance with the National Environmental Policy Act (NEPA), The California Environmental Quality Act (CEQA), The Regional Water Quality Control Board (RWQCB), and other applicable regulations, major environmental issues will be addressed to include potential changes in water quality, air quality, hydrology, land use, and biological resources.

The Marine Corps will initiate a scoping process for the purpose of determining the scope of issues to be addressed in the EIS/EIR and for identifying the significant issues relating to this action. The Marine Corps will hold a public scoping meeting on 17 October 1991, from 7 pm to 9:30 pm at the Oceanside Senior Citizens Center, 455 Country Club Lane, Oceanside, California. The meeting will be announced in local newspapers.

A short formal presentation will precede requests for public comment. A Marine Corps representative will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS/EIR. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comment at the public meeting. To be most helpful, scoping comments should clearly describe specific issues on topics which the commentator believes the EIS/EIR should address. Written statements and/or questions regarding the scoping process should be mailed no later than 30 days from the date of this notice to; Southwest Division, Naval Facilities Engineering Command, 1220 Pacific Highway, San Diego, California 92132–5190, (Attn: Mr. Stuart Sunderland, Code 232.SS, Telephone (619) 532–3624).

Dated: September 17, 1991.

Wayne T. Baucino,

Lt, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 91–23156 Filed 9–25–91; 8:45 am]

BILLING CODE 3810–AE–F–M

Notice of Intent To Prepare a Supplemental Environmental Impact Statement for Disposal of Material Dredged from the Naval Air Station, Alameda, California, and Naval Supply Center Oakland, California, at a Proposed Navy Ocean Site

Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare a Supplemental Environmental Impact Statement (SEIS) for disposal of dredged material from Naval Air Station (NAS) Alameda, California, and Naval Supply Center (NSC) Oakland, California, at a proposed Navy ocean disposal site.

Proposed dredging projects at NAS Alameda and NSC Oakland have been authorized under the Fiscal Year 1986 Military Construction Program. The estimated quantity of material to be dredged is 600,000 cubic yards and 1,000,000 cubic yards, respectively. Environmental impacts of these projects have been previously studied in a Final Environmental Impact Statement (FEIS) filed with the U.S. Environmental Protection Agency (EPA) in 1990. The FEIS specifically identified and evaluated the impacts of three types of dredged material disposal; in-bay, upland, and deep ocean disposal. Based on an analysis of these alternatives in the FEIS, the Navy concluded, in a Record of Decision (ROD) signed September 25, 1990, that the dredging action is not likely to result in significant adverse impacts and that deep ocean disposal of the dredge material is the most feasible disposal alternative for this project. A former Navy munitions dumpsite, approximately 42 nautical miles (nm) west/southwest of the Golden Gate Bridge and 16 nm west of the Farallon Island, was selected as the proposed ocean disposal site. The 36 square nm site ranges from 6,600 feet to 10,000 feet in depth. Initial Navy studies (included in the FEIS) led to a conclusion that there are not likely to be significant impacts from disposal at this site.

The Navy, however, agreed in the ROD to prepare an SEIS that would further evaluate this particular deep ocean site as the Navy's ocean disposal site for these projects and to conduct additional studies and physical impact monitoring at this site. Since, then, the Navy has conducted a series of site-specific studies, with the remainder in progress. Interim study results continue to support the initial conclusion that this site will meet ocean disposal criteria. Data from these studies will be incorporated in the SEIS and other related documents required by the U.S. Army Corps of Engineers (COE) and EPA for permitting the ocean disposal of dredged material in accordance with Section 103 of the Marine Protection, Research, and Sanctuaries Act. All site characterization studies to be conducted, especially those that could affect the adjacent Farallon National Marine Sanctuary, will be coordinated with applicable regulatory and resource agencies to assure that all research authorizations required by law are obtained. The SEIS and associated studies have two goals. The first is to resolve remaining issues raised as a result of the previous EIS process, such as sediment quality, predicted plume size, and water quality at the adjacent Farallon National Marine Sanctuary. The second goal is to provide detailed information on the proposed Navy ocean disposal site and the potential and actual environmental effects of the dredge disposal.

Agencies and the public are invited and encouraged to provide written comments regarding issues of concern. To be most helpful, these comments should clearly describe specific issues or topics which the commentator believes the SEIS should address. Written statement and/or questions regarding the SEIS should be mailed no later than 30 days from the date of this publication to Mr. Dean Smith, Code 2032, telephone (415) 244–3728, Western Division, Naval Facilities Engineering Command, P.O. Box 727, San Bruno, California 94066–0720.

Dated: September 13, 1991.

Wayne T. Baucino,

Lt, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 91–23157 Filed 9–25–91; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP91-3016-000, et al.]

Northwest Pipeline Corp., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corp.

[Docket No. CP91-3016-000]

September 18, 1991.

Take notice that on September 9, 1991, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP91-3016-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to partially abandon metering facilities at the Coeur D'Alene East Meter Station in Kootenai County, Idaho and to construct and operate upgraded metering facilities to replace those being abandoned, for service to The Washington Water Power Company (Washington Water Power), under Northwest's blanket certificate issued in Docket No. CP82-433-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest states that it would install the new metering facilities in order to accommodate existing firm delivery obligations to Washington Water Power. It is asserted that the existing meter station has a design delivery capacity of approximately 6,670 Dt equivalent per day, which is inadequate to deliver Northwest's maximum daily sales and transportation volumes of 7,800 dt equivalent, and that the upgrading would result in a maximum station capacity of 9,070 dt equivalent per day. The construction cost of the upgraded facilities is estimated at $32,338, to be paid by Northwest. It is explained that no service would be abandoned, as the abandoned facilities would be replaced.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Questar Pipeline Co.

[Docket No. CP91-3054-000]

September 18, 1991.

Take notice that on September 11, 1991, Questar Pipeline Company (Questar) of 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP91-3054-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service to Bonneville Fuels Marketing Corporation (Bonneville Fuels) at a new delivery point, under the blanket certificate issued in Docket No. CP88-650-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar states that pursuant to a transportation service agreement dated November 30, 1990, as amended, under its Rate Schedule T-2, it seeks authority to add the Rifle Cogeneration delivery point and proposes to transport the equivalent of up to 10,000 MMBtu per day of natural gas for the account of Bonneville Fuels, a marketer, from various receipt points on Questar's system to various delivery points located in Colorado, Utah and Wyoming.

Questar further states that the estimated average daily and annual quantities are 10,000 MMBtu and 3,650,000 MMBtu, respectively, and that service commenced August 1, 1991, under the provisions of 18 CFR 284.223(a), as reported August 28, 1991, in Docket No. ST91-10175-000.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Questar Pipeline Co.

[Docket No. CP91-3053-000]

September 18, 1991.

Take notice that on September 11, 1991, Questar Pipeline Company (Questar) of 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP91-3053-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service to NGC Transportation, Inc. (NGC) at a new delivery point, under the blanket certificate issued in Docket No. CP88-650-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar states that pursuant to a transportation service agreement dated August 29, 1989, as amended, under its Rate Schedule T-2, it seeks authority to add the QPC to Clay Basin delivery point and proposes to transport the equivalent of up to 43,200 MMBtu per day of natural gas for the account of NGC from various receipt points on Questar's system to various delivery points located in Utah and Wyoming.

Questar further states that the estimated average daily and annual quantities are 10,000 MMBtu and 3,650,000 MMBtu, respectively, and that service commenced August 1, 1991, under the provisions of 18 CFR 284.223(a), as reported August 28, 1991, in Docket No. ST91-10176-000.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Co.

[Docket No. CP91-3087-000]

September 18, 1991.

Take notice that on September 13, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-3087-000 a request pursuant to Sections 157.205(b) and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on an interruptible basis for Central Illinois Public Service Company (CIPSCO), a shipper and local distribution company, under its blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act. Additionally, Trunkline requests authorization pursuant to § 157.211(a)(2) to construct and operate a delivery meter in Williamson County, Illinois under its blanket certificate authorization in Docket No. CP83-84-000 to effect transportation, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline states that the maximum daily, average daily and annual quantities that it would transport for CIPSCO would be 30,000 Mcf of natural gas, 30,000 Mcf of natural gas and 10,950,000 Mcf of natural gas, respectively. Trunkline states that it would transport natural gas for CIPSCO from existing points of receipt in Illinois, Louisiana, Tennessee, Texas, Offshore Texas and Offshore Louisiana to Williamson County, Illinois.

Trunkline further states that the transportation service and construction of the new delivery point are proposed to commence immediately upon expiration of the 45-day notice period.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

5. Florida Gas Transmission Co.

[Docket Nos. CP91-3092-000 and CP91-3093-000]

September 18, 1991.

Take notice that on September 16, 1991, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP89-555-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation sevice dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by FGT and is summarized in the attached appendix.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3092-000 (9-16-91)	Gainesville Regional Utilities.	[2]3,331 2,498 1,215,644	OLA, OTX, TX, LA, MS, AL, FL.	FL	11-1-89,[3] PTS-1, Interruptible [4].	ST91-10186-000, 8-1-91.
CP91-3093-000 (9-16-91)	Kissimmee Utility Authority.	[5]706 530 257,614	OLA, OTX, TX, LA, MS, AL, FL.	FL	11-1-90,[3] PTS-1, Interruptible [4].	ST91-10240-000, 8-1-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] The shown quantities are Phase I quantities. Phase II quantities are as follows. Peak day: 2,617 MMBtu; average day: 1,963 MMBtu; and annual: 955,124 MMBtu.
[3] As amended.
[4] Preferred interruptible.
[5] The shown quantities are Phase I quantities. Phase II quantities are as follows. Peak day: 377 MMBtu; average day: 283 MMBtu; and annual: 137,691 MMBtu

6. United Gas Pipe Line Co.

[Docket Nos. CP91-3042-000, CP91-3043-000, CP91-3044-000, CP91-3045-000, and CP91-3046-000]

September 18, 1991.

Take notice that United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3042-000 (9-10-91)	Canadian Occidental of California (marketer).	515,000 515,000 187,975,000	Various	Various	ITS, Interruptible	ST91-10008, 8-5-91.
CP91-3043-000 (9-10-91)	Bishop Pipeline Corporation (intrastate).	41,200 41,200 15,038,000	Various	Various	ITS, Interruptible	ST91-10165, 8-16-91.
CP91-3044-000 (9-10-91)	Laser Marketing Company (marketer).	618,000 618,000 225,570,000	Various	Various	ITS, Interruptible	ST91-10009, 8-6-91.
CP91-3045-000 (9-10-91)	Laser Marketing Company (marketer).	618,000 618,000 225,570,000	Various	Various	ITS, Interruptible	ST91-10187, 8-20-91.
CP91-3046-000 (9-10-91)	Bishop Pipeline Corporation (intrastate).	41,200 41,200 15,038,000	Various	Various	ITS, Interruptible	ST91-10188, 8-20-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

7. Florida Gas Transmission Co.

[Docket Nos. CP91-3107-000, CP91-3108-000, and CP91-3109-000]

September 18, 1991.

Take notice that Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP89-555-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by FGT and is summarized in the attached appendix.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, [1] average day, annual MMBtu	Receipt points [2]	Delivery points	Contract date, rate schedule, service type	Related docket, startup date
CP91-3107-000 (9-17-91)	City of Starke	[2] 118 62 22,650	TX, LA	FL	11-1-90,[3] FTS-1, Firm.	ST91-10182-000, 8-1-91
CP91-3108-000 (9-17-91)	City of Starke	267 200 97,500	OLA, OTX, TX, LA, MS, AL, FL.	FL	11-1-90,[3] PTS-1, Interruptible [4].	ST91-10184-000, 8-1-91
CP91-3109-000 (9-17-91)	City of Starke	510 107 39,060	TX	FL	5-1-91,[3] FTS-1, Firm.	ST91-10185-000, 8-1-91

[1] Offshore Louisiana and offshore Texas are shown as OLA AND OTX.
[2] The shown quantities are Phase I quantities. Phase II quantities are as follows. Peak day: 120 MMBtu; average day: 62 MMBtu; and annual: 22,650 MMBtu.
[3] As amended.
[4] Preferred interruptible.

8. Questar Pipeline Co.

[Docket Nos. CP91-3055-000 and CP91-3056-000]

September 18, 1991.

Take notice that Questar Pipeline Company, 79 South State Street, Salt Lake City, Utah 84111 (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-650-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice request are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, startup date
CP91-3055-000 (9-11-91)	Western Gas Resources, Inc. (shipper).	40,000 40,000 14,600,000	CO, UT, WY	UT	7-30-91, T-2, Interruptible.	ST91-10167-000, 8-21-91
CP91-3056-000 (9-11-91)	Universal Resources Corporation, dba Questar Energy Company (shipper).	30,000 5,000 1,825,000	CO, UT, WY	CO, UT, WY	8-20-91, T-2, Interruptible.	ST91-10213-000, 8-1-91

9. Panhandle Eastern Pipe Line Co.

[Docket Nos. CP91-3082-000, CP91-3083-000, CP91-3084-000, CP91-3085-000, and CP91-3086-000]

September 19, 1991.

Take notice that Panhandle Eastern Pipe Line Company, P.O. Box 1642, Houston, Texas 77251-1642 (Applicant), filed in the above-referenced dockets prior notice requests pursuant to §§ 175.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice request are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual dt	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3082-000 (9-13-91)	Amgas, Inc. (marketer)	120 120 43,800	Various	IL	7-3-91, PT, Interruptible.	ST91-10071 8-1-91
CP91-3083-000 (9-13-91)	Triumph Gas Company (marketer).	30,000 30,000 10,950,000	Various	IN	8-25-88, PT, Interruptible.	ST91-10065 8-1-91

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual dt	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3084-000 (9-13-91)	V.H.C. Gas Systems, L.P. (marketer).	200,000 200,000 73,000,000	Various	IN	5-13-91, PT, Interruptible.	ST91-10067 8-1-91
CP91-3085-000 (9-13-91)	A.P. Green Industries, Inc. (end-user).	3,000 3,000 1,095,000	KS	MO	8-1-91, PT, Interruptible.	ST91-10075 8-1-91
CP91-3086-000 (9-13-91)	Quivira Gas Company (end-user).	10,000 10,000 3,650,000	Various	KS	5-28-91, PT, Interruptible.	ST91-10068 8-1-91

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

10. Northwest Pipeline Corp. and Southern Natural Gas Co.

[Docket Nos. CP91-3095-000 [6], CP91-3096-000, CP91-3097-000, and CP91-3098-000]

September 19, 1991.

Take notice that the above referenced companies (Applicants filed in the above referenced dockets, prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authoriztion to transport natural gas on behalf of various shippers under their blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection and in the attached appendix.

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notices requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day [1] average annual	Points of [2]		Start up date, rate schedule	Related [3] dockets
				Receipt	Delivery		
CP91-3095-000 (9-16-91)	Northwest Pipeline Corporation, 295 Chipeta Way, Salt Lake City, Utah 84108.	CanWest Gas Supply U.S.A. Inc.	300,000 100 36,500	Any on system	Any one system	08-09-91, TI-1, interruptible.	ST91-10350-000 CP86-578-000
CP91-3096-000 (9-16-91)	Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202-2563.	City of Hawkinsville, Georgia.	3,000 550 200,750	OTX, TX, OLA, LA, MS, AL.	GA	07-20-91, IT, interruptible.	ST91-9907-000 CP88-316-000
CP91-3097-000 (9-16-91)	Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202-2563 25314.	Cullman—Jefferson Counties Gas District.	6,551 551 201,115	OTX, TX, OLA, LA, MS, AL.	AL	07-21-91, FT, Firm..	ST91-9905-000 CP88-316-000
CP91-3098-000 (9-16-91)	Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202-2563 Dakota 58501.	Endevco Oil and Gas Company.	50,000 20,000 7,300,000	OTX, TX, OLA, LA, MS, AL.	MS	07-19-91, IT, interruptible.	ST91-9904-000 CP88-316-000

[1] Quantities are shown in MMBtu except for Southern's firm transportation service which is shown in Mcf.
[2] Offshore Louisiana and Offshore Texas are shown as OLA and OTX, respectively.
[3] The CP and RP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

11. Columbia Gulf Transmission Co.

[Docket Nos. CP91-3070-000, CP91-3071-000, and CP91-3072-000]

September 19, 1991.

Take notice that on September 13, 1991, Columbia Gulf Transmission Company, P.O. Box 683, Houston, Texas 77001, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3070-000 (9-13-91)	Eastex Gas Transmission Co. (Intrastate Pipeline).	60,000 48,000 17,520,000	LA, Off LA	LA, Off LA	10-13-88,[1] ITS-2, Int.	ST91-10100, 8-2-91.
CP91-3071-000 (9-13-91)	CNG Trading Co. (marketer).	20,000 16,000 5,840,000	LA, Off LA	LA	10-25-88,[2] ITS-2, Int.	ST91-10103, 8-1-91.
CP91-3072-000 (9-13-91)	Honda of America Manufacturing, Inc. (end-user).	4,500 3,600 1,314,000	LA	LA	6-1-91, FTS-2, Firm.	ST91-10105, 8-1-91.

[1] Amended 2-17-89, 7-13-91 & 8-24-90.
[2] Amended 7-24-91 & 8-24-90.

12. Transwestern Pipeline Co.

[Docket Nos. CP91-3105-000 and CP91-3106-000]

September 19, 1991.

Take notice that Transwestern Pipeline Company, 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88-133-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

[8] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-3105-000 (9-17-91)	Premier Gas Company (producer).	20,000 15,000 7,300,000	AZ, NM, OK, TX	AZ, NM, OK, TX	8-6-91, ITS-1, Interruptible.	ST91-10332, 9-1-91.
CP91-3106-000 (9-17-91)	Centran Corporation (marketer).	25,000 18,750 9,125,000	AZ, NM, OK, TX	AZ, NM, OK, TX	6-22-90, ITS-1, Interruptible.	ST91-10333, 9-1-91.

13. Texas Gas Transmission Corp.

[Docket No. CP91-3032-000]

September 19, 1991.

Take notice that on September 10, 1991, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP91-3032-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Harbert Oil & Gas Corporation, a customer, under the blanket certificate issued in Docket No. CP88-686-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas states that, pursuant to an agreement dated February 13, 1991, under its Rate Schedule IT, it proposes to transport up to 50,000 MMBtu per day equivalent of natural gas. Texas Gas indicates that it would transport 50,000 MMBtu on an average day and 18,250,000 MMBtu annually. Texas Gas further indicates that the gas would be transported from various points of receipt and would be redelivered to various delivery points.

Texas Gas advises that service under § 284.223(a) commenced August 22, 1991,

as reported in Docket No. ST91–10190–000.

Comment date: November 4, 1991, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91–23165 Filed 9–25–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ST91–9858–000 through ST91–10233–000]

Texas Gas Corp.; Self-Implementing Transactions

September 19, 1991

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.*	Transporter/Seller	Recipient	Date filed	Part 284 Subpart	Est. max. daily quantity**	Aff. Y/N	Rate sch.	Date commenced	Projected termination date
ST91–9858	TEJAS Gas Corp.	Texas Gas Transmission Corp.	08–01–91	C	8,500	N	I	07–01–91	Indef.
ST91–9859	Northern Natural Gas Co.	Southern California Gas Co.	08–01–91	B	100,000	N	F/I	07–01–91	Indef.
ST91–9860	Michigan Gas Storage Co.	Consumers Power Co.	08–01–91	B	5,000	Y	I	06–01–91	Indef.
ST91–9861	Michigan Gas Storage Co.	Consumers Power Co.	08–01–91	B	50,000	Y	I	06–01–91	Indef.
ST91–9862	Consumers Power Co.	Michigan Gas Exchange	08–01–91	C	5,000	N	I	06–01–91	Indef.
ST91–9863	Consumers Power Co.	Semco Energy Services, Inc.	08–01–91	C	50,000	N	I	06–01–91	Indef.
ST91–9864	Tennessee Gas Pipeline Co.	Atlanta Gas Light Co.	08–01–91	B	512,500	N	I	07–18–91	Indef.
ST91–9865	Williston Basin Inter. P/L Co.	Union Oil Co. of California	08–01–91	G–S	6,500	N	I	07–01–91	06–30–92
ST91–9866	Williston Basin Inter. P/L Co.	Western Gas Resources, Inc.	08–01–91	G–S	1,200	N	I	07–01–91	06–30–93
ST91–9867	Stingray Pipeline Co.	Tenngasco Corp.	08–02–91	K–S	100,000	N	I	07–01–91	10–29–91
ST91–9868	Natural Gas P/L Co. of America	Bethlehem Steel Corp.	08–02–91	G–S	4,000	N	F	06–01–91	09–29–91
ST91–9869	Natural Gas P/L Co. of America	Coastal Gas Marketing Co.	08–02–91	G–S	50,000	N	I	07–03–91	10–31–91
ST91–9870	Natural Gas P/L Co. of America	North American Resources Co.	08–02–91	G–S	10,000	N	I	07–03–91	10–31–91
ST91–9871	Natural Gas P/L Co. of America	Access Energy Corp.	08–02–91	G–S	3,000	N	F	02–01–91	03–31–91
ST91–9872	Tennessee Gas Pipeline Co.	Kimball Resources, Inc.	08–02–91	G–S	50,000	N	I	07–05–91	11–02–91
ST91–9873	Colorado Interstate Gas Co.	Windsor Gas Processing	08–02–91	G–S	4,000	N	I	07–01–91	10–29–91
ST91–9874	Tarpon Transmission Co.	Natural Gas P/L Co. of America	08–05–91	G	18,000	N	I	06–29–91	Indef.
ST91–9875	Tarpon Transmission Co.	Trunkline Gas Co.	08–05–91	G	30,000	N	I	07–01–91	Indef.
ST91–9876	East Tennessee Natural Gas Co.	Chattanooga Gas Co.	08–05–91	B	45,000	N	I	07–31–91	Indef.
ST91–9877	ANR Pipeline Co.	Natgas U.S. Inc.	08–05–91	G–S	100,000	N	I	07–19–91	11–15–91
ST91–9878	ANR Pipeline Co.	Howard Energy Co.	08–05–91	G–S	100,000	N	I	07–10–91	11–06–91
ST91–9879	ANR Pipeline Co.	Bethlehem Steel Corp.	08–05–91	B	50,000	N	I	07–17–91	Indef.
ST91–9880	ANR Pipeline Co.	West Ohio Gas Co.	08–05–91	B	500,000	N	I	07–17–91	Indef.

Docket No.*	Transporter/Seller	Recipient	Date filed	Part 284 Sub-part	Est. max. daily quantity**	Aff. Y/N	Rate sch.	Date com-menced	Projected termina-tion date
ST91-9881	ANR Pipeline Co.	TPC Pipeline Inc.	08-05-91	B	100,000	N	I	07-24-91	Indef.
ST91-9882	ANR Pipeline Co.	Louisiana Resources	08-05-91	B	75,000	N	I	07-10-91	Indef.
ST91-9883	ANR Pipeline Co.	Illinois Power Co	08-05-91	B	30,000	N	I	07-11-91	Indef.
ST91-9884	United Gas Pipe Line Co.	Shell Gas Trading Co.	08-05-91	G-S	30,900	N	I	07-20-91	11-17-91
ST91-9885	CNG Transmission Corp.	Meridian Marketing	08-05-91	G-S	1,200	N	I	06-01-91	09-29-91
ST91-9886	CNG Transmission Corp.	Meridian Marketing	08-05-91	G-S	1,200	N	I	06-02-91	09-30-91
ST91-9887	CNG Transmission Corp.	Goetz Energy Corp.	08-05-91	G-S	30,000	N	I	07-23-91	11-20-91
ST91-9888	CNG Transmission Corp.	Goetz Energy Corp.	08-05-91	G-S	15,000	N	I	07-22-91	11-19-91
ST91-9889	Natural Gas P/L Co. of America	United Texas Transmission Co.	08-06-91	B	225,000	Y	I	06-29-91	Indef.
ST91-9890	Transwestern Pipeline Co.	Broad Street Oil and Gas Co.	08-06-91	G-S	50,000	N	I	07-23-91	11-20-91
ST91-9891	Transwestern Pipeline Co.	Bridgegas U.S.A., Inc.	08-06-91	G-S	500,000	N	I	07-23-91	11-20-91
ST91-9892	Northern Natural Gas Co.	Graham Energy Marketing Corp.	08-06-91	G-S	70,000	N	F/I	07-10-91	11-07-91
ST91-9893	Florida Gas Transmission Co	City of Vero Beach	08-06-91	G-S	2,835	N	F	08-01-91	11-28-91
ST91-9894	Florida Gas Transmission Co.	City of Vero Beach	08-06-91	G-S	1,178	N	F	08-01-91	11-28-91
ST91-9895	Algonquin Gas Transmission	Colonial Gas Co.	08-06-91	B	20,000	N	I	07-12-91	Indef.
ST91-9896	Algonquin Gas Transmission	Appalachian Gas Sales	08-06-91	G-S	60,000	N	I	07-01-91	10-29-91
ST91-9897	Algonquin Gas Transmission	Energy Marketing Exchange, Inc.	08-06-91	G-S	150,000	N	I	07-13-91	11-10-91
ST91-9898	Algonquin Gas Transmission	Citizens Gas Supply Corp.	08-06-91	G-S	300,000	N	I	07-01-91	10-29-91
ST91-9899	Algonquin Gas Transmission	CNG Producing Co.	08-06-91	G-S	96,000	N	I	07-19-91	10-17-91
ST91-9900	Algonquin Gas Transmission	Polaris Pipeline Corp.	08-06-91	G-S	160,036	N	I	07-05-91	10-03-91
ST91-9901	Algonquin Gas Transmission	Northeast Energy Associates	08-06-91	G-S	1,294,188	N	I	06-02-91	09-30-91
ST91-9902	Algonquin Gas Transmission	Distrigas of Massachusetts Corp.	08-06-91	G-S	66,612	N	F	06-01-91	12-01-91
ST91-9903	Algonquin Gas Transmission	Distrigas of Massachusetts Corp.	08-06-91	G-S	66,612	N	F	06-28-91	12-01-91
ST91-9904	Southern Natural Gas Co.	Endevco Oil & Gas Co.	08-06-91	G-S	50,000	N	I	07-19-91	11-16-91
ST91-9905	Southern Natural Gas Co.	Cullman-Jefferson Counties Gas Dis..	08-06-91	G-S	66,551	N	F	07-21-91	11-18-91
ST91-9906	Southern Natural Gas Co.	Louisiana Municipal Nat. Gas Athor.	08-06-91	B	100,000	N	I	07-26-91	NDEF.
ST91-9907	Southern Natural Gas Co.	City of Hawkinsville	08-06-91	G-S	3,000	N	I	07-20-91	11-17-91
ST91-9908	Southern Natural Gas Co.	Georgia Pacific Corp.	08-06-91	G-S	563	N	F	07-27-91	11-24-91
ST91-9909	South Georgia Natural Gas Co	Georgia Pacific Corp.	08-06-91	G-S	560	N	F	07-27-91	11-24-91
ST91-9910	Natural Gas P/L Co. of America	Total Pipeline Co	08-07-91	B	2,000	N	F	07-01-91	06-30-91
ST91-9911	Northern Natural Gas Co	NGC Transportation, Inc	08-07-91	G-S	12,117	N	F	07-01-91	10-29-91
ST91-9912	Trunkline Gas Co	Natural Gas P/L Co. of America	08-07-91	G	18,000	N	F	06-29-91	INDEF.
ST91-9913	Trunkline Gas Co	Centran Corp	08-07-91	G-S	30,000	N	I	07-25-91	11-22-91
ST91-9914	Transamerican Gas Trans. Corp	Tennessess Gas Pipeline Co	08-08-91	C	25,000	N	I	07-01-91	INDEF.
ST91-9915	Transamerican Gas Trans. Corp	United Gas Pipe Line Co	08-08-91	C	10,000	N	I	06-20-91	INDEF.
ST91-9916	Texas Gas Transmission Corp	Bridgeline Gas Distribution Co	08-08-91	B	50,000	N	I	08-01-91	INDEF.
ST91-9917	Texas Gas Transmission Corp	Dayton Power and Light Co.	08-08-91	B	15,000	N	F	08-01-91	INDEF.
ST91-9918	Texas Gas Transmission Corp	City of Elizabethtown	08-08-91	B	769	N	I	08-05-91	INDEF.
ST91-9919	Tennessee Gas Pipeline Co	East Ohio Gas Co	08-08-91	B	20,000	N	I	08-12-91	INDEF.
ST91-9920	Tennessee Gas Pipeline Co	Shell Offshore, Inc	08-08-91	G-S	10,000	N	I	08-10-91	11-07-91
ST91-9921	Florida Gas Transmission Co	Kissimmee Utility Authority	08-08-91	G-S	1,827	N	F	08-01-91	11-28-91
ST91-9922	Florida Gas Transmission Co	Peoples Gas System, Inc.	08-08-91	G-S	87,977	N	F	08-01-91	11-28-91
ST91-9923	Florida Gas Transmission Co	Peoples Gas System, Inc.	08-08-91	G-S	8,031	N	F	08-01-91	11-28-91
ST91-9924	Texas Eastern Transmission Corp	Bethlehem Steel Corp	08-08-91	G-S	240,000	N	I	07-10-91	11-07-91
ST91-9925	Florida Gas Transmission Co	Union Exploration Partners, Ltd	08-09-91	G-S	60,000	N	I	12-13-91	04-11-91
ST91-9926	Northern Natural Gas Co	Peoples Natural Gas	08-09-91	B	100,000	N	F/I	08-01-91	INDEF.
ST91-9927	Northern Natural Gas Co	Terra International, Inc	08-09-91	G-S	27,000	N	F	08-01-91	11-29-91
ST91-9928	Northern Natural Gas Co	Cibola Corp	08-09-91	G-S	42,250	N	F	08-01-91	11-29-91
ST91-9929	Northern Natural Gas Co	Texaco Gas Marketing, Inc.	08-09-91	G-S	30,000	N	F	08-01-91	11-29-91
ST91-9930	Gas Co. of New Mexico	El Paso Natural Gas Co	08-09-91	G-HT	6,200	N	I	07-08-91	04-30-91
ST91-9931	Midwestern Gas Transmission Co	Tenaska Marketing Ventures	08-12-91	G-HT	250,000	N	I	08-01-91	11-29-91
ST91-9932	Tennessee Gas Pipeline Co	Tenaska Marketing Ventures	08-12-91	G-S	250,000	N	I	08-01-91	11-29-91
ST91-9933	Tennessee Gas Pipeline Co	Nashville Gas Co	08-12-91	B	50,000	N	I	05-01-91	INDEF.
ST91-9934	Tennessee Gas Pipeline Co	East Ohio Gas Co	08-12-91	B	50,000	N	I	07-01-91	INDEF.
ST91-9935	Viking Gas Transmission Co.	Colonial Gas Co	08-12-91	G-S	97,000	N	I	07-12-91	11-09-91
ST91-9936	Natural Gas P/L Co. of America	Anthem Energy Co	08-12-91	G-S	20,000	N	I	07-12-91	11-09-91
ST91-9937	Natural Gas P/L Co. of America	United Texas Transmission Co	08-12-91	B	100,000	N	F	03-01-91	05-01-91
ST91-9938	Natural Gas P/L Co. of America	Channel Industries	08-12-91	B	100,000	N	F	03-01-91	05-01-91
ST91-9939	Natural Gas P/L Co. of America	Neches Pipeline System	08-12-91	B	100,000	N	F	02-01-91	05-01-00
ST91-9940	Natural Gas P/L Co. of America	Vesta Energy Co	08-12-91	G-S	150,000	N	I	07-11-91	11-08-91
ST91-9941	Natural Gas P/L Co. of America	Winnie Pipeline Co	08-12-91	B	100,000	N	F	02-01-91	05-01-00
ST91-9942	Acadian Gas Pipeline System	Trunkline Gas Co	08-12-91	C	50,000	N	F	08-04-91	INDEF.
ST91-9943	Pelican Interstate Gas System	Midcom Marketing Corp	08-12-91	K-S	20,000	N	F	08-01-91	11-01-91
ST91-9944	Transwestern Pipeline Co	Mountain Front Pipeline Co., Inc.	08-12-91	B	30,000	N	I	08-01-91	INDEF.
ST91-9945	Florida Gas Transmission Co	Consolidated Minerals, Inc.	08-12-91	G-S	1,431	N	I	08-01-91	11-28-91
ST91-9947	Florida Gas Transmission Co	Enron Industrial Natural Gas Co	08-12-91	G-S	250,000	N	I	08-01-91	11-28-91
ST91-9948	Northern Natural Gas Co	Lake Park Municipal Utilities	08-12-91	B	5,000	N	F/I	07-01-91	INDEF.
ST91-9949	Northern Natural Gas Co	Aztec Gas and Oil Corp	08-12-91	G-S	3,000	N	F/I	07-01-91	INDEF.
ST91-9950	United Gas Pipe Line Co	Delhi Gas Pipeline Corp	08-12-91	G-S	103,000	N	I	07-25-91	11-22-91
ST91-9951	United Gas Pipe Line Co	International Paper Co.	08-12-91	G-S	103,000	N	I	07-30-91	11-27-91
ST91-9952	United Gas Pipe Line Co	Seagull Marketing Services, Inc.	08-12-91	G-S	515,000	N	I	07-31-91	11-28-91
ST91-9953	United Gas Pipe Line Co	Vesta Energy Co	08-12-91	G-S	103,000	N	I	08-01-91	11-29-91
ST91-9954	United Gas Pipe Line Co	Aquila Energy Marketing Corp	08-12-91	G-S	154,500	N	I	08-01-91	11-29-91
ST91-9955	United Gas Pipe Line Co	CNG Trading Co.	08-12-91	G-S	30,900	N	I	07-31-91	11-28-91
ST91-9956	United Gas Pipe Line Co	Stellar Gas Co	08-12-91	G-S	51,500	N	I	08-01-91	11-29-91
ST91-9957	Arkla Energy Resources	Arkla General Supply Co.	08-12-91	G-S	1,000	Y	F	12-01-91	04-01-91
ST91-9958	Trunkline Gas Co	Transcontinental Gas P/L Corp.	08-12-91	G	7,000	N	I	07-01-91	INDEF.

Docket No.*	Transporter/Seller	Recipient	Date filed	Part 284 Sub-part	Est. max. daily quantity**	Aff. Y/N	Rate sch.	Date com-menced	Projected termina-tion date
ST91-9959	Trunkline Gas Co	Phillips Petroleum Co	08-12-91	G-S	100,000	N	I	07-24-91	11-21-91
ST91-9960	United Gas Pipe Line Co	Laser Marketing Co	08-12-91	G-S	618,000	Y	I	07-23-91	11-20-91
ST91-9961	Tennessee Gas Pipeline Co	Southern Gas Pipeline	08-12-91	B	500,000	Y	I	07-12-91	INDEF.
ST91-9962	Gas Co. of New Mexico	El Paso Natural Gas Co	08-13-91	G-HT	15,000	N	I	08-01-91	10-31-92
ST91-9963	Gas Co. of New Mexico	El Paso Natural Gas Co	08-13-91	G-HT	11,000	N	I	08-01-91	08-31-92
ST91-9964	Transwestern Pipeline Co	Enron Gas Marketing, Inc	08-13-91	G-S	750,000	Y	I	07-19-91	11-16-91
ST91-9965	Tennessee Gas Pipeline Co	TXG Pipeline Co	08-13-91	B	100,000	N	I	08-01-91	INDEF.
ST91-9966	Florida Gas Transmission Co	Orlando Utilities Commission	08-14-91	G-S	11,073	N	I	07-16-91	11-12-91
ST91-9967	Florida Gas Transmission Co	City of Tallahassee	08-14-91	G-S	5,853	N	I	07-16-91	11-12-91
ST91-9968	Black Marlin Pipeline Co	Wilowtex Pipeline Co	08-14-91	B	42,000	N	I	08-01-91	INDEF.
ST91-9969	Arkla Energy Resources	Texaco Gas Marketing, Inc	08-14-91	G-S	50,000	N	I	06-08-91	10-07-91
ST91-9970	Mississippi River Trans. Corp	City of Morganfield	08-14-91	B	50,000	Y	I	12-01-91	INDEF.
ST91-9971	Questar Pipeline Co	Western Gas Resources, Inc	08-15-91	G-S	40,000	N	I	08-01-91	11-28-91
ST91-9972	Questar Pipeline Co	City Utilities of Springfield	08-15-91	B	20,000	N	I	08-08-91	08-07-91
ST91-9973	Questar Pipeline Co	Mountain Fuel Supply Co., et al	08-15-91	B	31,100	N	I	07-24-91	07-23-91
ST91-9974	Tennessee Gas Pipeline Co	Southwest Gas Distributors, Inc	08-15-91	B	500,000	Y	I	07-12-91	INDEF.
ST91-9975	United Gas Pipe Line Co	Champion International Corp	08-15-91	G-S	2,168	N	I	08-01-91	11-29-91
ST91-9976	Mississippi River Trans. Corp	Marathon Oil Co	08-15-91	G-S	10,000	N	I	07-18-91	11-15-91
ST91-9977	Gulf Energy Pipeline Co	Tennessee Gas Pipeline Co	08-15-91	C	1,400	N	I	07-01-91	INDEF.
ST91-9978	Northern Natural Gas Co	Great Plains Natural Gas	08-15-91	B	20,000	N	F/I	07-30-91	INDEF.
ST91-9979	Northern Natural Gas Co	Catex Energy, Inc	08-15-91	G-S	88,457	N	F/I	08-01-91	11-29-91
ST91-9980	El Paso Natural Gas Co	Arizona Electric Power Coop., Inc	08-16-91	G-S	61,800	N	I	08-01-91	11-29-91
ST91-9981	El Paso Natural Gas Co	Midcon Marketing Corp	08-16-91	G-S	309,000	N	I	08-01-91	11-29-91
ST91-9982	Natural Gas P/L Co. of America	Entex	08-16-91	B	40,000	N	I	08-01-91	INDEF.
ST91-9983	Natural Gas P/L Co. of America	Illinois Power Co	08-16-91	B	100,000	N	I	07-25-91	INDEF.
ST91-9984	Natural Gas P/L Co. of America	Enron Industrial Natural Gas Co	08-16-91	B	5,000	N	I	08-01-91	INDEF.
ST91-9985	Natural Gas P/L Co. of America	United Texas Transmission Co	08-16-91	B	25,000	N	I	07-17-91	INDEF.
ST91-9986	Natural Gas P/L Co. of America	Eastex Gas Transmission Co	08-16-91	B	50,000	N	I	08-01-91	INDEF.
ST91-9987	Tennessee Gas Pipeline Co	CNG Transmission Corp	08-16-91	B	701,215	N	I	07-18-91	INDEF.
ST91-9988	Florida Gas Transmission Co	City of Gainesville	08-16-91	B	7,278	N	F	08-01-91	INDEF.
ST91-9989	Transwestern Pipeline Co	American Hunter Exploration Ltd	08-16-91	G-S	200,000	N	I	08-01-91	11-29-91
ST91-9990	Transwestern Pipeline Co	Mock Resources, Inc	08-16-91	G-S	100,000	N	I	08-01-91	11-29-91
ST91-9991	Transwestern Pipeline Co	Eastex Hydrocarbons, Inc	08-16-91	G-S	50,000	N	I	07-21-91	11-18-91
ST91-9993	CNG Transmission Corp	Warren Consolidated Indust., Inc	08-16-91	G-S	30,000	N	I	07-17-91	11-14-91
ST91-9994	Mississippi River Trans. Corp	TXG Gas Marketing Co	08-19-91	B	50,000	Y	I	12-01-91	INDEF.
ST91-9995	Valero Transmission, L.P	Transcontinental Gas Pipeline	08-19-91	C	400	N	I	07-25-91	INDEF.
ST91-9996	Valero Transmission, L.P	Trunkline Gas Co	08-19-91	C	3,500	N	I	07-22-91	INDEF.
ST91-9997*	Natural Gas P/L Co. of America	ORYX Gas Marketing L.P.	08-19-91	G-S	12,591	N	I	10-01-91	10-31-91
ST91-9998	ANR Pipeline Co	Jack D. Hodgden Operating Co	08-19-91	G-S	8,040	N	I	08-16-91	07-29-91
ST91-9999	ANR Pipeline Co	Union Gas Limited	08-19-91	G-S	250,000	N	I	07-02-91	10-29-91
ST91-10000	ANR Pipeline Co	Northern Illinois Gas Co	08-19-91	B	100,000	N	I	06-01-91	INDEF.
ST91-10001	ANR Pipeline Co	Northern Illinois Gas Co	08-19-91	B	150,000	N	I	6-01-91	INDEF.
ST91-10002	ANR Pipeline Co	Northern Indiana Public Service Co.	08-19-91	B	100,000	N	I	06-02-91	INDEF.
ST91-10003	ANR Pipeline Co	TPC Pipeline Inc	08-19-91	B	100,000	N	I	06-25-91	INDEF.
ST91-10004	ANR Pipeline Co	Iowa-Illinois Gas & Electric Co	08-19-91	B	150,000	N	I	06-01-91	INDEF.
ST91-10005	ANR Pipeline Co	Allen-Bradley Co., Inc	08-19-91	G-S	3,000	N	I	07-27-91	11-23-91
ST91-10006	ANR Pipeline Co	Ohio Gas Co	08-19-91	B	20,000	N	F	07-01-91	09-30-09
ST91-10007	United Gas Pipe Line Co	Midcom Marketing Corp.	08-19-91	G-S	72,924	N	I	08-05-91	12-03-91
ST91-10008	United Gas Pipe Line Co	Canadian Occidental of Calif., Inc	08-19-91	G-S	515,000	N	I	08-05-91	12-03-91
ST91-10009	United Gas Pipe Line Co	Laser Marketing Co	08-19-91	G-S	618,000	N	I	08-06-91	12-04-91
ST91-10010	Tennessee Gas Pipeline Co	Unicorp Energy, Inc	08-19-91	G-S	50,000	N	I	07-26-91	11-23-91
ST91-10011	Winnie Pipeline Co	Longhorn Pipe Line Co	08-19-91	C	10,000	N	I	08-01-91	Indef.
ST91-10012	Michigan Gas Storage Co	Central Illinois Public Service Co	08-19-91	B	20,000	Y	I	07-19-91	Indef.
ST91-10013	Northern Natural Gas Co	Anthem Energy Co	08-19-91	G-S	50,000	N	F/I	08-01-91	11-29-91
ST91-10014	Northern Natural Gas Co	Parker & Parsley Development Co.	08-19-91	G-S	30,000	N	F/I	08-01-91	11-29-91
ST91-10015	Columbia Gas Transmission Corp	Energy Marketing Exchange, Inc	08-19-91	G-S	200,000	Y	I	08-09-91	12-07-91
ST91-10016	Columbia Gas Transmission Corp	Appalachian Gas Sales	08-19-91	G-S	100,000	Y	I	07-25-91	11-22-91
ST91-10017	Columbia Gas Transmission Corp	Continental Reserves Oil Co	08-19-91	G-S	5,000	N	I	08-10-91	12-08-91
ST91-10018	Columbia Gas Transmission Corp	Energy Production Co	08-19-91	G-S	10,000	N	I	08-10-91	12-08-91
ST91-10019	Columbia Gas Transmission Corp	Clinton Oil Co	08-19-91	G-S	5,000	N	I	08-01-91	11-29-91
ST91-10020	Columbia Gas Transmission Corp	Quacker State Corp	08-19-91	G-S	400	N	I	08-01-91	11-29-91
ST91-10021	Columbia Gas Transmission Corp	UGI Corp	08-19-91	B	15,000	N	I	08-01-91	Indef.
ST91-10022	El Paso Natural Gas Co	Mercando Gas Services, Inc	08-20-91	G-S	82,400	N	I	08-01-91	11-29-91
ST91-10023	ONG Transmission Co	Phillips Gas Pipeline co	08-20-91	C	100,000	N	I	08-01-91	07-31-93
ST91-10024	ONG Transmission Co	Natural Gas P/L Co. of America	08-20-91	C	200,000	N	I	07-27-91	07-26-93
ST91-10025	Northern Natural Gas Co	Golden Gas Energies, Inc	08-20-91	G-S	10,000	N	F/I	08-07-91	12-05-91
ST91-10026	Northern Natural Gas Co	Coast Energy Group, Inc	08-20-91	G-S	50,000	N	F/I	08-07-91	12-05-91
ST91-10027	Trunkline Gas Co	Centran Corp	08-20-91	G-S	50,000	N	I	08-02-91	09-16-91
ST91-10028	Trunkline Gas Co	Hunt Oil Co	08-20-91	G-S	30,000	N	I	08-01-91	09-15-91
ST91-10029	Trunkline Gas Co	Neste Oy	08-20-91	G-S	50,000	N	I	08-06-91	09-20-91
ST91-10030	Trunkline Gas Co	V.N.C. Gas Systems, L.P	08-20-91	G-S	200,000	N	I	08-01-91	09-15-91
ST91-10031	Trunkline Gas Co	Arcadian Corp	08-20-91	G-S	100,000	N	I	08-03-91	09-17-91
ST91-10032	Trunkline Gas Co	Unicorp Energy, Inc	08-20-91	G-S	200,000	N	I	08-02-91	09-16-91
ST91-10033	Rocky Mountain Natural Gas Co	Northwest Pipeline Corp	08-20-91	G-HT	2,000	N	I	12-05-90	Indef.
ST91-10034	Northern Natural Gas Co	Cibola Corp	08-20-91	G-S	88,159	N	F	07-24-91	11-21-91
ST91-10035	Tennessee Gas Pipeline Co	Brooklyn Union Gas Co	08-20-91	B	143,500	N	I	07-24-91	INDEF.
ST91-10036	ONG Transmission Co	Phillips Gas Pipeline Co	08-20-91	C	100,000	N	I	07-01-91	06-30-93

Docket No.*	Transporter/Seller	Recipient	Date filed	Part 284 Sub-part	Est. max. daily quantity**	Aff. Y/N	Rate sch.	Date com-menced	Projected termina-tion date
ST91-10037	Natural Gas P/L Co. of America	Broad Street Oil & Gas Co	08-20-91	G-S	75,000	N	I	07-23-91	11-20-91
ST91-10038	Natural Gas P/L Co. of America	Unocal Exploration Corp	08-20-91	G-S	20,000	N	I	08-01-91	11-29-91
ST91-10039	Natural Gas P/L Co. of America	Entrade Corp	08-20-91	G-S	4,000	N	F	08-01-91	08-31-91
ST91-10040	DELNI Gas Pipeline Corp	Natural Gas P/L Co. of America	08-20-91	C	10,000	N	I	08-03-91	Indef.
ST91-10041	DELNI Gas Pipeline Corp	Northern Natural Gas Co	08-20-91	C	5,000	N	I	08-06-91	Indef.
ST91-10042	DELNI Gas Pipeline Corp	Natural Gas P/L Co. of America	08-20-91	C	5,000	N	I	08-03-91	Indef.
ST91-10043	DELNI Gas Pipeline Corp	Panhandle Eastern Pipe Line Co	08-20-91	C	5,000	N	I	07-27-91	Indef.
ST91-10044	Columbia Gas Transmission Corp	Energy Production Co	08-21-91	G-S	36,000	Y	I	08-01-91	11-29-91
ST91-10045	Columbia Gas Transmission Corp	Baltimore Gas & Electric Co	08-21-91	B	200	Y	I	08-01-91	Indef.
ST91-10046	Arkla Energy Resources	Red River Pipeline Co	08-21-91	B	25,000	N	F	01-01-91	Indef.
ST91-10047	Natural Gas P/L Co. of America	Total Pipeline Co	08-21-91	B	2,000	N	F	07-01-91	06-30-96
ST91-10048	Panhandle Eastern Pipe Line Co	Central Illinois Public Service Co	08-21-91	B	15,000	N	I	07-23-91	Indef.
ST91-10049	Panhandle Eastern Pipe Line Co	Polaris Pipeline Corp	08-21-91	G-S	50,000	N	I	07-01-91	10-29-91
ST91-10050	United Gas Pipe Line Co	Pennzoil Gas Marketing Co	08-21-91	G-S	2,060	N	F	08-09-91	12-07-91
ST91-10051	Texas Gas Transmission Corp	Tejas Hydrocarbons Co	08-21-91	G-S	250,000	N	I	08-15-91	12-12-91
ST91-10052	Texas Gas Transmission Corp	Tejas Hydrocarbons Co	08-21-91	G-S	250,000	N	I	08-15-91	12-12-91
ST91-10053	Texas Gas Transmission Corp	Williams Gas Marketing Co	08-21-91	G-S	150,000	Y	I	08-01-91	11-28-91
ST91-10054	Texas Gas Transmission Corp	Tejas Hydrocarbons Co	08-22-91	G-S	250,000	N	I	08-15-91	12-12-91
ST91-10055	Texas Gas Transmission Corp	Tejas Hydrocarbons Co	08-22-91	G-S	250,000	N	I	08-15-91	12-12-91
ST91-10056	Williston Basin Inter. P/L Co	Exxon Corp	08-22-91	G-S	25,350	N	I	07-22-91	03-13-92
ST91-10057	Williston Basin inter. P/L Co	Rainbow Gas Co	08-22-91	G-S	67,962	Y	I	07-22-91	08-31-92
ST91-10058	Williston Basin Inter. P/L Co	Amerada Hess Corp	08-22-91	G-S	41,000	Y	I	07-25-91	12-31-92
ST91-10059	Trunkline Gas Co	Clinton Gas Transmission, Inc	08-22-91	G-S	5,000	N	I	08-01-91	11-29-91
ST91-10060	Trunkline Gas Co	Polaris Pipeline Corp	08-22-91	G-S	50,000	N	I	08-01-91	11-29-91
ST91-10061	Trunkline Gas Co	CMS Gas Marketing Co	08-22-91	G-S	75,000	N	I	08-10-91	12-08-91
ST91-10062	Trunkline Gas Co	TXG Gas Marketing Co	08-22-91	G-S	100,000	N	I	08-02-91	11-30-91
ST91-10063	Trunkline Gas Co	Columbia Gas of Kentucky, Inc	08-22-91	B	30,000	N	I	08-01-91	Indef.
ST91-10064	Trunkline Gas Co	Dayton Power and Light Co	08-22-91	B	100,000	N	I	08-01-91	Indef.
ST91-10065	Panhandle Eastern Pipe Line Co	Triumph Gas Marketing Co	08-22-91	G-S	30,000	N	I	08-01-91	11-29-91
ST91-10066	Panhandle Eastern Pipe Line Co	Panhandle Trading Co	08-22-91	G-S	25,000	Y	I	08-01-91	11-29-91
ST91-10067	Panhandle Eastern Pipe Line Co	V.H.C. Gas Systems, L.P	08-22-91	G-S	200,000	N	I	08-01-91	11-29-91
ST91-10068	Panhandle Eastern Pipe Line Co	Quivira Gas Co	08-22-91	G-S	10,000	N	I	08-01-91	11-29-91
ST91-10069	Panhandle Eastern Pipe Line Co	Missouri Public Service	08-22-91	G-S	6,861	N	I	08-01-91	11-29-91
ST91-10070	Panhandle Eastern Pipe Line Co	Borden Chemicals and Plastics Oper.	08-22-91	G-S	2,000	N	F	08-01-91	11-29-91
ST91-10071	Panhandle Eastern Pipe Line Co	Amgas, Inc	08-22-91	G-S	120	N	I	08-01-91	11-29-91
ST91-10072	Panhandle Eastern Pipe Line Co	Access Energy Corp	08-22-91	G-S	100,000	N	I	08-01-91	11-29-91
ST91-10073	Transwestern Pipeline Co	Maxus Exploration Co	08-22-91	G-S	100,000	N	I	08-01-91	11-29-91
ST91-10074	Northern Natural Gas Co	Transok, Inc	08-22-91	B	100,000	N	F/I	08-01-91	Indef.
ST91-10075	Panhandle Eastern Pipe Line Co	A.P. Green Industries, Inc	08-23-91	G-S	3,000	N	F	08-01-91	11-29-91
ST91-10076	Transcontinental Gas P/L Corp	Consolidated Edison Co. of NY, Inc.	08-23-91	B	20,000	N	I	07-24-91	Indef.
ST91-10077	Gas Co. of New Mexico	El Paso Natural Gas Co	08-23-91	G-HT	7,000	N	I	08-01-91	08-31-92
ST91-10078	Natural Gas P/L Co. of America	Caterpillar, Inc	08-23-91	G-S	8,000	N	F	08-01-91	11-29-91
ST91-10079	Wyoming Interstate Co., Ldt	Northern Illinois Gas and Power Co.	08-23-91	B	60,000	N	I	07-23-91	07-23-92
ST91-10080	East Texas Gas Systems	Texas Gas Transmission Corp	08-26-91	C	100,000	N	I	05-02-91	Indef.
ST91-10081	Texas Gas Transmnission Corp	Louisville Gas and Electric Co	08-26-91	B	107,000	N	F	08-06-91	Indef.
ST91-10082	Natural Gas P/L Co. of America	Maxus Exploration Co	08-26-91	G-S	50,000	N	I	08-01-91	11-29-91
ST91-10083	Natural Gas P/L Co. of America	Shell Gas Trading Co	08-26-91	G-S	25,000	N	F	07-01-91	10-29-91
ST91-10084	Natural Gas P/L Co. of America	Torch Energy Marketing, Inc	08-26-91	G-S	25,000	N	I	08-01-91	11-29-91
ST91-10085	Natural Gas P/L Co. of America	Gasmark, Inc	08-26-91	G-S	100,000	N	I	08-01-91	11-29-91
ST91-10086	Natural Gas P/L Co. of America	Mitchell Marketing Co	08-26-91	G-S	50,000	N	I	08-01-91	11-29-91
ST91-10087	Northern Natural Gas Co	Caspen Gas Co	08-26-91	G-S	60,000	N	F/I	08-01-91	11-29-91
ST91-10088	Northern Natural Gas Co	Production Gathering Co	08-26-91	G-S	1,500	N	F/I	08-01-91	11-29-91
ST91-10089	Northern Natural Gas Co	Twister Transmission Co	08-26-91	G-S	20,000	N	F/I	08-01-91	11-29-91
ST91-10090	Northern Natural Gas Co	West Texas Gas, Inc	08-26-91	B	10,000	N	F/I	08-02-91	Indef.
ST91-10091	Northern Natural Gas Co	West Texas Gas, Inc	08-26-91	B	10,000	N	F/I	08-02-91	Indef.
ST91-10092	Colorado Interstate Gas Co	Western Natural Gas & Trans. Corp.	08-26-91	G-S	1,000	N	I	03-01-91	11-29-91
ST91-10093	Colorado Interstate Gas Co	Mobil Natural Gas, Inc	08-26-91	G-S	21,100	N	F	08-01-91	11-29-91
ST91-10094	Panhandle Eastern Pipe Line Co	Entrade Corp	08-26-91	G-S	50,000	N	I	08-01-91	11-29-91
ST91-10095	Panhandle Eastern Pipe Line Co	Dayton Power & Light Co	08-26-91	B	200,000	N	I	08-01-91	Indef.
ST91-10096	Panhandle Eastern Pipe Line Co	Taurus Energy Corp	08-26-91	G-S	5,000	N	I	08-01-91	11-29-91
ST91-10097	Panhandle Eastern Pipe Line Co	Aquila Energy Marketing Corp	08-26-91	G-S	250,000	N	I	08-01-91	11-29-91
ST91-10098	Panhandle Eastern Pipe Line Co	McLeod Farms	08-26-91	G-S	40	N	I	08-01-91	11-29-91
ST91-10099	Panhandle Eastern Pipe Line Co	McLeod Farms	08-26-91	G-S	150	N	I	08-01-91	11-29-91
ST91-10100	Columbia Gulf Transmission Co	Eastex Gas Transmission Co	08-26-91	G-S	60,000	N	I	08-02-91	11-29-91
ST91-10101	Columbia Gulf Transmission Co	Polaris Pipeline Corp	08-26-91	G-S	100,000	N	I	08-17-91	11-13-91
ST91-10102	Columbia Gulf Transmission Co	Transco Energy Marketing Co	08-26-91	G-S	200,000	N	I	08-02-91	11-29-91
ST91-10103	Columbia Gulf Transmission Co	CNG Trading Co	08-26-91	G-S	20,000	N	I	08-01-91	11-28-91
ST91-10104	Columbia Gulf Transmission Co	Louis Dreyfus Energy Corp	08-26-91	G-S	100,000	N	I	08-14-91	12-11-91
ST91-10105	Columbia Gulf Transmission Co	Honda of America Manufacturing	08-26-91	G-S	4,500	N	F	08-01-91	11-28-91
ST91-10106	Columbia Gulf Transmission Co	Bishop Pipeline Corp	08-26-91	G-S	275,000	N	I	07-26-91	11-22-91
ST91-10107	Columbia Gulf Transmission Co	Total Minatone corp	08-26-91	G-S	100,000	N	I	08-02-91	11-29-91
ST91-10108	Columbia Gulf Transmission Co	Neste OY	08-26-91	G-S	300,000	N	I	08-02-91	11-29-91
ST91-10109	Columbia Gulf Transmission Co	Phillips Petroleum Co	08-26-91	G-S	100,000	N	I	08-01-91	11-28-91
ST91-10110	Columbia Gulf Transmission Co	Phillips Petroleum Co	08-26-91	G-S	50,000	N	I	08-01-91	11-28-91
ST91-10111	East Tennessee Natural Gas Co	Atlanta Gas Light Co	08-26-91	B	250,000	N	I	08-14-91	Indef.

Docket No.*	Transporter/Seller	Recipient	Date filed	Part 284 Sub-part	Est. max. daily quantity**	Aff. Y/N	Rate sch.	Date com-menced	Projected termina-tion date
ST91-10112	East Tennessee Natural Gas Co	Chattanooga Gas Co	08-26-91	B	25,000	N	I	08-01-91	Indef.
ST91-10113	East Tennessee Natural Gas Co	United Cities Gas Co	08-26-91	B	1,400	N	I	08-07-91	Indef.
ST91-10114	East Tennessee Natural Gas Co	Jefferson-Cocke County Utility Dis	08-26-91	B	500,000	N	I	08-01-91	Indef.
ST91-10115	East Tennessee Natural Gas Co	City of Etowah	08-26-91	B	10,367	N	I	08-01-91	Indef.
ST91-10116	East Tennessee Natural Gas Co	Atlanta Gas Light Co	08-26-91	B	25,000	N	I	08-09-91	Indef.
ST91-10117	East Tennessee Natural Gas Co	United Cities Gas Co	08-26-91	B	25,000	N	I	08-01-91	Indef.
ST91-10118	East Tennessee Natural Gas Co	Middle Tennessee Utility District	08-26-91	B	200,000	N	I	08-01-91	Indef.
ST91-10119	East Tennessee Natural Gas Co	Atlanta Gas Light Co	08-26-91	B	200,000	N	I	08-02-91	Indef.
ST91-10120	East Tennessee Natural Gas Co	Knoxville Utilities Board	08-26-91	B	200,000	N	I	08-01-91	Indef.
ST91-10121	East Tennessee Natural Gas Co	Middle Tennessee Utility District	08-26-91	B	250,000	N	I	08-01-91	Indef.
ST91-10122	East Tennessee Natural Gas Co	Chattanooga Gas Co	08-26-91	B	4,000	N	I	08-02-91	Indef.
ST91-10123	East Tennessee Natural Gas Co	Atlanta Gas Light Co	08-26-91	B	4,000	N	I	08-02-91	Indef.
ST91-10124	East Tennessee Natural Gas Co	Atlanta Gas Light Co	08-26-91	B	20,000	N	I	08-02-91	Indef.
ST91-10125	East Tennessee Natural Gas Co	Atlanta Gas Light Co	08-26-91	B	100,000	N	I	08-01-91	Indef.
ST91-10126	East Tennessee Natural Gas Co	Middle Tennessee Utility District	08-26-91	B	400,000	N	I	08-01-91	Indef.
ST91-10127	East Tennessee Natural Gas Co	Jefferson-Cocke County Utility Dis	08-26-91	B	400,000	N	I	08-01-91	Indef.
ST91-10128	East Tennessee Natural Gas Co	Sweetwater Utilities Board	08-26-91	B	300,000	N	I	08-01-91	Indef.
ST91-10129	East Tennessee Natural Gas Co	Chattanooga Gas Co	08-26-91	B	3,000	N	I	08-01-91	Indef.
ST91-10130	East Tennessee Natural Gas Co	United Cities Gas Co	08-26-91	B	200,000	N	I	08-02-91	Indef.
ST91-10131	CNG Transmission Corp	Oryx Gas Marketing	08-27-91	G-S	100,000	N	I	08-14-91	12-12-91
ST91-10132	CNG Transmission Corp	Oryx Gas Marketing	08-27-91	G-S	100,000	N	I	08-14-91	12-12-91
ST91-10133	CNG Transmission Corp	Oryx Gas marketing	08-27-91	G-S	100,000	N	I	08-14-91	12-12-91
ST91-10134	CNG Transmission Corp	Goetz Energy Corp	08-27-91	G-S	15,000	N	I	08-01-91	11-29-91
ST91-10135	CNG Transmission Corp	Oryx Gas marketing	08-27-91	G-S	100,000	N	I	08-14-91	12-12-91
ST91-10136	CNG Transmission Corp	Public Service Electric & Gas Corp.	08-27-91	G-S	31,936	N	F	08-01-91	11-29-91
ST91-10137	CNG Transmission Corp	Commonweatlh Gas Co	08-27-91	G-S	9,388	N	F	08-01-91	11-29-91
ST91-10138	Valero Transmission, L.P	Arkla, Inc	08-27-91	C	4,340	N	I	08-02-91	Indef.
ST91-10139	Valero Transmission, L.P	Texas Eastern Transmission Corp	08-27-91	C	3,500	N	I	08-01-91	Indef.
ST91-10140	Northern Natural Gas Co	Centran Corp	08-27-91	G-S	50,000	N	F/I	07-24-91	11-21-91
ST91-10141	Northern Natural Gas Co	Texaco Gas Marketing, Inc D08-27-91.	G-S	200,000	N	F/I	08-01-91	11-29-91	
ST91-10142	Northern Natural Gas Co	MGC Transportion, Inc	08-27-91	G-S	200,000	N	IF/I	08-01-91	11-29-91
ST91-10143	Northern Natural Gas Co	Continental Natural Gas, Inc	08-27-91	G-S	75,000	N	IF/I	08-01-91	11-29-91
ST91-10144	Northern Natural Gas Co	Tenaska Marketing Ventures	08-27-91	G-S	250,000	N	IF/I	08-01-91	11-29-91
ST91-10145	Viking Gas Transmission Co	Boston Gas Co	08-27-91	G-S	100,000	N	I	07-27-91	11-24-91
ST91-10146	Natural Gas P/L Co. of America	Texaco Gas Marketing Inc	08-27-91	G-S	100,000	N	I	08-01-91	11-29-91
ST91-10147	Natural Gas P.L Co. of America	Louis Dreyfus Energy Corp	08-27-91	G-S	100,000	N	I	08-06-91	12-04-91
ST91-10148	Trailblazer pipeline Co	Williams Gas Marketing Co	08-27-91	G-S	100,000	N	I	08-01-91	11-29-91
ST91-10149	Stingray Pipeline Co	Midcom Marketing Corp	08-27-91	G-S	100,000	N	I	08-01-91	11-29-91
ST91-10150	Equitrans, Inc	Equitabl Gas Co	08-27-91	G-S	14,528	N	I	08-01-91	11-28-91
ST91-10151	Equitrans, Inc	Equitable Gas Co	08-27-91	G-S	29,055	N	I	08-01-91	11-28-91
ST91-10152	Equitrans, Inc	Equitable Gas Co	08-27-91	G-S	38,740	N	I	08-01-91	11-28-91
ST91-10153	Tennessee Gas Pipeline Co	Texas-Ohio Gas, Inc	08-27-91	G-S	10,000	N	I	08-06-91	12-04-91
ST91-10154	Natural Gas P/L Co. of America	Union Pacific Fuels, Inc	08-27-91	G-S	20,000	N	F	08-01-91	11-29-91
ST91-10155	Natural Gas P/L Co. of America	Tenaska Marketing Ventures	08-27-91	G-S	250,000	N	I	08-01-91	11-29-91
ST91-10156	Arkla Energy Resources	Boyd Resene & Associates	08-27-91	G-S	30,000	N	I	06-28-91	10-26-91
ST91-10157	Arkla Energy Resources	Arkla Energy Marketing Co	08-27-91	G-S	356	Y	F	08-01-91	11-29-91
ST91-10158	Arkla Energy Resources	Trans Arkoma Gas Corp	08-27-91	G-S	2,000	N	I	08-01-91	11-29-91
ST91-10159	Arkla Energy Resources	Mid Con Marketing Corp	08-27-91	G-S	30,000	N	I	08-01-91	11-29-91
ST91-10160	Arkla Energy Resources	Eagle Gas Marketing	08-27-91	G-S	30,000	N	I	07-25-91	11-22-91
ST91-10161	Panhandle Eastern Pipe Line Co	Bowling Green Gas Co	08-27-91	G-S	2,600	N	I	08-01-91	11-29-91
ST91-10162	Panhandle Eastern Pipe Line Co	North American Resources Co	08-27-91	G-S	20,000	N	I	08-01-91	11-29-91
ST91-10163	Transcontinental Gas P/L Corp	O & R Energy, Inc	08-27-91	G-S	3,400,000	N	I	07-24-91	11-20-91
ST91-10164	Wyoming Interstate Co., LTD	Public Service Co. of Colorado	08-27-91	B	40,000	N	I	07-29-91	INDEF.
ST91-10165	United Gas Pipe Line Co	Bishop Pipeline Corp	08-28-91	G-S	41,200	N	I	08-16-91	12-14-91
ST91-10166	Questar Pipeline Co	Colorado Interstate Gas Co	08-28-91	G	150,000	N	I	07-31-91	INDEF.
ST91-10167	Questar Pipeline Co	Western Gas Resources, Inc	08-28-91	G-S	40,000	N	I	08-21-91	12-18-91
ST91-10168	Columbia Gas Transmission Corp	Enmark Gas Corp	08-28-91	G-S	1,000	N	I	08-10-91	12-08-91
ST91-10169	Mississippi River Trans. Corp	Arkla Energy Marketing Co	08-28-91	G-S	350	Y	F	08-01-91	11-29-91
ST91-10170	Mississippi River Trans. Corp	Transok, Inc	08-28-91	G-S	100,000	N	I	07-31-91	11-28-91
ST91-10171	Mississippi River Trans. Corp	Arkla Energy Marketing Co	08-28-91	G-S	8,000	Y	F	08-01-91	08-31-91
ST91-10172	Arkla Energy Resources	Mountain Front Pipeline Co	08-28-91	B	1,000	N	I	04-01-91	INDEF.
ST91-10173	Arkla Energy Resources	Vesta Energy Co	08-28-91	G-S	210,000	N	I	08-01-91	11-29-91
ST91-10174	Valero Transmission, L.P	Natural Gas P/L Co. of America	08-29-91	C	50,000	N	I	08-01-91	INDEF.
ST91-10175	Questar Pipeline Co	Bonneville Fuels Marketing Corp	08-29-91	G-S	10,000	N	I	08-01-91	11-28-91
ST91-10176	Questar Pipeline Co	NGC Transportation, Inc	08-29-91	G-S	43,200	N	I	08-01-91	11-28-91
ST91-10177	Exxon Gas System, Inc	Sabine Pipeline Co	08-29-91	C	1,300	N	I	08-01-91	INDEF.
ST91-10178	Exxon Gas System, Inc	Amoco Gas Co	08-29-91	C	50,000	N	I	08-01-91	INDEF.
ST91-10179	Natural Gas P/L Co. of America	Entrade Corp	08-29-91	G-S	50,000	N	I	08-01-91	11-29-91
ST91-10180	Natural Gas P/L Co. of America	Lavaca Pipe Line Co	08-29-91	G-S	400	N	F	08-01-91	11-29-91
ST91-10181	Natural Gas P/L Co. of America	Shell Oil Co	08-29-91	G-S	5,000	N	F	08-01-91	11-29-91
ST91-10182	Florida Gas Transmission Co	City of Starke	08-29-91	G-S	118	N	F	08-01-91	11-28-91
ST91-10183	Florida Gas Transmission Co	Tampa Electric Co	08-29-91	G-S	771	N	I	08-01-91	11-28-91
ST91-10184	Florida Gas Transmission Co	City of Starke	08-29-91	G-S	267	N	I	08-01-91	11-28-91
ST91-10185	Florida Gas Transmission Co	City of Starke	08-29-91	G-S	510	N	F	08-01-91	11-28-91
ST91-10186	Florida Gas Transmission Co	Gainesville Regional Utilities	08-29-91	G-S	3,331	N	F	08-01-91	11-28-91
ST91-10187	United Gas Pipe Line Co	Laser Marketing Co	08-29-91	G-S	618,000	N	I	08-20-91	12-18-91
ST91-10188	United Gas Pipe Line Co	Bishop Pipeline Corp	08-29-91	G-S	41,200	N	I	08-20-91	12-18-91

Docket No.*	Transporter/Seller	Recipient	Date filed	Part 284 Sub-part	Est. max. daily quantity**	Aff. Y/N	Rate sch.	Date com-menced	Projected termina-tion date
ST91-10189	United Gas Pipe Line Co	Phoenix Gas Pipeline Co	08-29-91	G-S	103,000	N	I	08-21-91	12-19-91
ST91-10190	Texas Gas Transmission Corp	Harbert Oil & Gas Corp	08-29-91	G-S	50,000	N	I	08-22-91	12-19-91
ST91-10191	Texas Gas Transmission Corp	Harbert Oil & Gas Corp	08-29-91	G-S	50,000	N	I	08-22-91	12-19-91
ST91-10192	Texas Gas Transmission Corp	Harbert Oil & Gas Corp	08-29-91	G-S	50,000	N	I	08-22-91	12-19-91
ST91-10193	Texas Gas Transmission Corp	Harbert Oil & Gas Corp	08-29-91	G-S	50,000	N	I	08-22-91	12-19-91
ST91-10194	Texas Gas Transmission Corp	Harbert Oil & Gas Corp	08-29-91	G-S	50,000	N	I	08-22-91	12-19-91
ST91-10195	Wyoming Interstate Co., LTD	Northern Illinois Gas Co	08-29-91	B	150,000	N	I	07-31-91	INDEF.
ST91-10196	Arkla Energy Resources	Red River Gas Co	08-29-91	G-S	20,000	N	I	08-01-91	11-29-91
ST91-10197	Arkla Energy Resources	Arkansas Louisiana Gas Co	08-29-91	B	2,000	N	I	08-17-91	INDEF.
ST91-10198	Arkla Energy Resources	Natural Gas Clearinghouse, Inc	08-29-91	G-S	100,000	N	I	08-01-91	11-29-91
ST91-10199	ANR Pipeline Co	MGC Transportation, Inc	08-29-91	G-S	100,000	N	I	06-06-91	12-07-91
ST91-10200	ANR Pipeline Co	NML Development Corp	08-29-91	G-S	150,000	N	I	02-10-91	12-03-91
ST91-10201	ANR Pipeline Co.	BASF Corp	08-29-91	G-S	8,500	N	I	08-05-91	12-02-91
ST91-10202	ANR Pipeline Co.	City of Jasper	08-29-91	B	7,500	N	I	08-07-91	Indef.
ST91-10203	ANR Pipeline Co.	Hadson Gas Systems, Inc.	08-29-91	G-S	100,000	N	I	08-07-91	12-04-91
ST91-10204	ANR Pipeline Co.	Bishop Pipeline Corp.	08-29-91	G-S	100,000	N	I	08-06-91	12-03-91
ST91-10205	ANR Pipeline Co.	Nerco Oil and Gas, Inc	08-29-91	G-S	10,000	N	I	08-01-91	11-28-91
ST91-10206	ANR Pipeline Co.	Senco Energy Services, Inc	08-29-91	G-S	30,000	N	I	08-01-91	11-28-91
ST91-10207	ANR Pipeline Co.	Unigas Energy, Inc	08-29-91	B	50,000	N	I	08-01-91	Indef.
ST91-10208	ANR Pipeline Co.	Bishop Pipeline Corp.	08-29-91	G-S	10,000	N	I	08-01-91	11-28-91
ST91-10209	ANR Pipeline Co.	BNP Petroleum (Americas) Inc	08-29-91	G-S	30,000	N	I	08-01-91	11-28-91
ST91-10210	ANR Pipeline Co.	KN Gas Marketing, Inc	08-29-91	G-S	150,000	N	I	08-02-91	11-29-91
ST91-10211	Red River Pipeline	Arkla Energy Resources	08-30-91	C	80,000	N	I	08-01-91	Indef.
ST91-10212	Natural Gas P/L Co. of America	Coastal Gas Marketing Co	08-30-91	B	75,000	N	I	08-01-91	Indef.
ST91-10213	Questar Pipeline Co	Universal Resources Corp.	08-30-91	G-S	30,000	N	I	08-01-91	11-28-91
ST91-10214	Tejas Gas Corp.	Texas Eastern Transmission Corp	08-30-91	C	50,000	N	I	08-01-91	Indef.
ST91-10215	Delhi Gas Pipeline Corp.	Natural Gas P/L Co. of America	08-30-91	C	3,000	N	I	08-03-91	08-31-91
ST91-10216	Delhi Gas Pipeline Corp.	Arkla Energy Resources	08-30-91	C	10,000	N	I	08-22-91	Indef.
ST91-10217	Columbia Gulf Transmission Co.	Panhandle Trading Co.	08-30-91	G-S	150,000	N	I	08-15-91	12-12-91
ST91-10218	Columbia Gulf Transmission Co.	Hadson Gas Systems, Inc.	08-30-91	G-S	121,500	N	I	08-10-91	12-07-91
ST91-10219	Superior Offshore Pipeline Co.	UGI Corp.	08-30-91	B	5,250	N	I	08-01-91	Indef.
ST91-10220	Superior Offshore Pipeline Co.	City of Richmond, Dept. Pub. Util.	08-30-91	B	28,000	N	I	08-01-91	Indef.
ST91-10221	Superior Offshore Pipeline Co.	National Fuel Co.	08-30-91	B	3,000	N	I	08-01-91	Indef.
ST91-10222	Superior Offshore Pipeline Co.	Norcen Explorer, Inc.	08-30-91	G-S	11,150	N	I	08-07-91	12-05-91
ST91-10223	Superior Offshore Pipeline Co.	Norcen Exploner, Inc.	08-30-91	G-S	10,000	N	I	08-07-91	12-05-91
ST91-10224	Superior Offshore Pipeline Co.	Samedan Oil Co.	08-30-91	G-S	28,000	N	I	08-01-91	11-29-91
ST91-10225	Williston Basin Inter. P/L Co.	Koch Hydrocarbon Co.	08-30-91	G-S	61,600	N	I	08-01-91	05-01-93
ST91-10226	Williston Basin Inter. P/L Co.	Chevron USA, Inc.	08-30-91	G-S	17,750	N	I	08-01-91	08-31-92
ST91-10227	Williston Basin Inter. P/L Co.	Texaco Gas Marketing, Inc	08-30-91	G-S	37,100	N	I	08-22-91	09-30-92
ST91-10228	National Fuel Gas Supply Corp	Industrial Energy Services Co.	08-30-91	G-S	2,000	N	I	08-01-91	11-29-91
ST91-10229	Williams Natural Gas Co.	Ford Motor Co.	08-30-91	G-S	7,000	N	F	08-01-91	11-28-91
ST91-10230	Williams Natural Gas Co.	Mountain Iron & Supply Co	08-30-91	G-S	3,300	N	F	08-01-91	11-28-91
ST91-10231	Williams Natural Gas Co.	Panhandle Eastern Pipe Line Co.	08-30-91	G	50,000	N	F	08-01-91	Indef.
ST91-10232	Williams Natural Gas Co.	Kansas Power & Light Co.	08-30-91	G-S	25,000	N	F	08-01-91	11-28-91
ST91-10233	Transwestern Pipeline Co.	Phillips Gas Marketing Co	08-30-91	G-S	100,000	N	I	08-02-91	11-30-91
Below Are Nine ST-Docketed Initial Reports Which Are Noticed Out of Sequence. These Initial Reports Were Not Noticed Previously Because They Required Additional Commission Staff Review									
*ST91-0887	Natural Gas P/L Co. of America	Acadia Gas Corp.	10-19-90	G-S	30,000	N	I	10-01-90	Indef.
*ST91-0889	Natural Gas P/L Co. of America	Abbott Laboratories	10-19-90	G-S	20,000	N	I	10-01-90	Indef.
*ST91-0890	Natural Gas P/L Co. of America	American Central Gas Market. Corp.	10-19-90	G-S	100,000	N	I	10-01-90	Indef.
*ST91-0894	Natural Gas P/L Co. of America	American Central Gas Market. Corp.	10-19-90	G-S	105,000	N	I	10-01-90	Indef.
*ST91-1010	Natural Gas P/L Co. of America	Archer-Daniels-Midland Co.	10-22-90	G-S	30,000	N	I	10-01-90	Indef.
*ST91-1038	Natural Gas P/L Co. of America	Continental Natural Gas, Inc.	10-23-90	G-S	171,000	N	I	10-01-90	Indef.
*ST91-1039	Natural Gas P/L Co. of America	Continental Natural Gas, Inc.	10-23-90	G-S	171,000	N	I	10-01-90	Indef.
*ST91-1043	Natural Gas P/L Co. of America	Enron Gas Marketing, Inc	10-23-90	G-S	100,000	N	I	10-01-90	INDEF.
*ST91-1047	Natural Gas P/L Co. of America	Continental Natural Gas, Inc	10-23-90	G-S	171,000	N	I	10-01-90	INDEF.
*ST91-1052	Natural Gas P/L Co. of America	Continental Natural Gas, Inc	10-23-90	G-S	171,000	N	I	10-01-90	INDEF.
*ST91-1060	Natural Gas P/L Co. of America	Continental Natural Gas, Inc	10-23-90	G-S	171,000	N	I	10-01-90	INDEF.
*ST91-1061	Natural Gas P/L Co. of America	Continental Natural Gas, Inc	10-23-90	G-S	171,000	N	I	10-01-90	INDEF.
*ST91-1062	Natural Gas P/L Co. of America	Continental Natural Gas, Inc	10-23-90	G-S	171,000	N	I	10-01-90	INDEF.
*ST91-1078	Natural Gas P/L Co. of America	American Central Gas Market. Corp.	10-23-90	G-S	20,000	N	I	10-01-90	INDEF.
*ST91-1242	Natural Gas P/L Co. of America	Continental Natural Gas, Inc	10-24-90	G-S	171,000	N	I	10-01-90	INDEF.
*ST91-1243	Natural Gas P/L Co. of America	Continental Natural Gas, Inc	10-24-90	G-S	171,000	N	I	10-01-90	INDEF.
*ST91-1257	Natural Gas P/L Co. of America	Gulf Ohio Corp	10-24-90	G-S	30,000	N	I	10-01-90	INDEF.
*ST91-1260	Natural Gas P/L Co. of America	Continental Natural Gas, Inc	10-24-90	G-S	171,000	N	I	10-01-90	INDEF.
*ST91-1261	Natural Gas P/L Co. of America	Continental Natural Gas, Inc	10-24-90	G-S	171,000	N	I	10-01-90	INDEF.
*ST91-1381	Natural Gas P/L Co. of America	Golden Gas Energies, Inc	10-25-90	G-S	300,000	N	I	10-01-90	INDEF.
*ST91-1382	Natural Gas P/L Co. of America	Golden Gas Energies, Inc	10-25-90	G-S	300,000	N	I	10-01-90	INDEF.
*ST91-1383	Natural Gas P/L Co. of America	Golden Gas Energies, Inc	10-25-90	G-S	300,000	N	I	10-01-90	INDEF.
*ST91-1387	Natural Gas P/L Co. of America	Golden Gas Energies, Inc	10-25-90	G-S	300,000	N	I	10-01-90	INDEF.
*ST91-1392	Natural Gas P/L Co. of America	Golden Gas Energies, Inc	10-25-90	G-S	300,000	N	I	10-01-90	INDEF.
*ST91-1393	Natural Gas P/L Co. of America	Golden Gas Energies, Inc	10-25-90	G-S	300,000	N	I	10-01-90	INDEF.
*ST91-1396	Natural Gas P/L Co. of America	Citizens Gas Supply Corp	10-25-90	G-S	100,000	N	I	10-01-90	INDEF.
*ST91-1400	Natural Gas P/L Co. of America	Citizens Gas Supply Corp	10-25-90	G-S	100,000	N	I	10-01-90	INDEF.
*ST91-1410	Natural Gas P/L Co. of America	Mega Natural Gas Co	10-25-90	G-S	80,000	N	I	10-01-90	INDEF

Docket No.*	Transporter/Seller	Recipient	Date filed	Part 284 Sub-part	Est. max. daily quantity**	Aff. Y/N	Rate sch.	Date com-menced	Projected termina-tion date
*ST91-1501	Natural Gas P/L Co. of America	Texican Natural Gas Co	10-26-90	G-S	20,000	N	I	10-01-90	INDEF.
*ST91-1511	Natural Gas P/L Co. of America	Crescent Gas Corp	10-26-90	G-S	5,000	N	I	10-01-90	INDEF.
*ST91-1522	Natural Gas P/L Co. of America	Quivira Gas Co	10-26-90	G-S	150,000	N	I	10-01-90	INDEF.
*ST91-1523	Natural Gas P/L Co. of America	Pontchartrain Natural Gas System	10-26-90	G-S	220,000	N	I	10-01-90	INDEF.
*ST91-1531	Natural Gas P/L Co. of America	Marathon Oil Co	10-26-90	G-S	180,000	N	I	10-01-90	INDEF.
*ST91-1532	Natural Gas P/L Co. of America	Intercom Gas, Inc	10-26-90	G-S	51,000	N	I	10-01-90	INDEF.
*ST91-1533	Natural Gas P/L Co. of America	Hayes-Albion Pipeline Co	10-26-90	G-S	10,000	N	I	10-01-90	INDEF.
*ST91-1786	Natural Gas P/L Co. of America	TXO Gas Marketing Corp	10-29-90	G-S	150,000	N	I	10-01-90	INDEF.
*ST91-1792	Natural Gas P/L Co. of America	Wabash Alloys, Div. Connell L.P.	10-29-90	G-S	10,000	N	I	10-01-90	INDEF.
*ST91-1799	Natural Gas P/L Co. of America	Venture Pipeline Co	10-29-90	G-S	15,000	N	I	10-01-90	INDEF.
*ST91-1957	Natural Gas P/L Co. of America	Midcon Marketing Corp	10-30-90	G-S	250,000	N	I	10-01-90	INDEF.
*ST91-1965	Natural Gas P/L Co. of America	Gulf Energy Marketing Co	10-30-90	G-S	500,000	N	I	10-01-90	INDEF.
*ST91-1966	Natural Gas P/L Co. of America	Gulf Energy Marketing Co	10-30-90	G-S	500,000	N	I	10-01-90	INDEF.
*ST91-1976	Natural Gas P/L Co. of America	Gulf Energy Marketing Co	10-30-90	G-S	500,000	N	I	10-01-90	INDEF.
*ST91-1991	Natural Gas P/L Co. of America	Gulf Energy Marketing Co	10-30-90	G-S	500,000	N	I	10-01-90	INDEF.
*ST91-1992	Natural Gas P/L Co. of America	Gulf Energy Marketing Co	10-30-90	G-S	500,000	N	I	10-01-90	INDEF.
*ST91-2000	Natural Gas P/L Co. of America	Gulf Energy Marketing Co	10-30-90	G-S	500,000	N	I	10-01-90	INDEF.
*ST91-2001	Natural Gas P/L Co. of America	Gulf Energy Marketing Co	10-30-90	G-S	500,000	N	I	10-01-90	INDEF.
*ST91-2002	Natural Gas P/L Co. of America	Gulf Energy Marketing Co	10-30-90	G-S	500,000	N	I	10-01-90	INDEF.
*ST91-2412	Natural Gas P/L Co. of America	TXO Gas Pipeline Corp	10-31-90	G-S	105,000	N	I	10-01-90	INDEF.
*ST91-2416	Natural Gas P/L Co. of America	Midcon Marketing Corp	10-31-90	G-S	1,726,000	N	I	10-01-90	INDEF.
*ST91-2432	Natural Gas P/L Co. of America	Gulf Energy Marketing Co	10-31-90	G-S	500,000	N	I	10-01-90	INDEF.
*ST91-2446	Natural Gas P/L Co. of America	Natural Gas Clearinghouse, Inc	10-31-90	G-S	550,000	N	I	10-01-90	INDEF.
*ST91-2457	Natural Gas P/L Co. of America	H & H Energy Services, Inc	10-31-90	G-S	75,000	N	I	10-01-90	INDEF.
*ST91-2458	Natural Gas P/L Co. of America	H & H Energy Services, Inc	10-31-90	G-S	75,000	N	I	10-01-90	INDEF.
*ST91-2459	Natural Gas P/L Co. of America	H & H Energy Services, Inc	10-31-90	G-S	75,000	N	I	10-01-90	INDEF.
*ST91-2473	Natural Gas P/L Co. of America	Lavaca Pipe Line Co	10-31-90	G-S	300	N	I	10-01-90	INDEF.
*ST91-2494	Natural Gas P/L Co. of America	TXO Gas Marketing Corp	10-31-90	G-S	100,000	N	I	10-01-90	INDEF.
*ST91-2521	Natural Gas P/L Co. of America	Midcon Marketing Corp	10-31-90	G-S	1,726,000	N	I	10-01-90	INDEF.
*ST91-2542	Natural Gas P/L Co. of America	Midcon Marketing Corp	10-31-90	G-S	1,726,000	N	I	10-01-90	INDEF.

** Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

[FR Doc. 91-23170 Filed 9-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-161-000, RP89-172-000, CP90-2275-000, and CP91-687-000]

ANR Pipeline Co.; Informal Settlement Conference

September 19, 1991.

Take notice that an informal settlement conference will be convened in this proceeding on October 1 and 2, 1991, at 10 a.m., at the Bellevue Hotel, 15 E Street NW. Washington, DC 20001 for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Michael D. Cotleur at (202) 208-1076 or James A. Pederson at (202) 208-2158.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23169 Filed 9-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-222-000]

CNG Transmission Corp.; Proposed Changes In FERC Gas Tariff

September 19, 1991.

Take notice that CNG Transportation Corporation ("CNG") on September 13, 1991, pursuant to section 4 of the Natural Gas Act, part 154 and § 2.104 of the Commission's Regulations, Order Nos. 500 and 528, as amended, and sections 12.9 and 12.10 of the General Terms and Conditions of CNG's FERC Gas Tariff, filed the following revised tariff sheets to First Revised Volume No. 1 of CNG's FERC Gas Tariff:

Twelfth Revised Sheet No. 31
Sixth Revised Sheet No. 32
Seventh Revised Sheet No. 34
Fourth Revised Sheet No. 35
Third Revised Sheet No. 38
Fifth Revised Sheet No. 45

CNG requests an October 1, 1991, effective date for Fifth Revised Sheet No. 45. The proposed effective date for the remaining tariff sheets is October 14, 1991.

CNG states that the purposes of this filing is to enable CNG to recover 75 percent of $526,433 in take-or-pay costs paid to its producer suppliers, consistent with CNG's settlement in Docket No. RP88-217, *et al.*, as approved by Commission order on October 6, 1989.

CNG states that copies of the filing were served upon CNG's customers and as well as interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23167 Filed 9-25-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-227-028]

Paiute Pipeline Co.; Compliance Filing

September 19, 1991

Take notice that on September 16, 1991, Paiute Pipeline Company (Paiute) submitted a filing to the Commission concerning Paiute's clearance of its

Account No. 191 balance following the implementation of full conversions by its sales customers to firm transportation service under a settlement approved by the Commission in Docket Nos. RP88–227, et al. (Settlement). Paiute states that its filing is being submitted pursuant to sections 8.2 and 8.3 of the Stipulation and Agreement contained in the Settlement, and in compliance with the Commission's orders approving the Settlement.

Paiute states that under the Settlement, Paiute's four firm sales customers fully converted their firm sales entitlements to firm transportation service effective June 1, 1991, and that Paiute's sales tariff volume was deemed to be cancelled as of that date. Paiute further states that sections 8.2 and 8.3 of the Stipulation and Agreement contained in the Settlement set forth the procedures to be followed by Paiute in clearing its Account No. 191 following the implementation of the conversions. According to Paiute, the Commission approved these provisions of the Settlement subject to a requirement that Paiute submit a specific filing concerning the clearing of the Account No. 191 amounts.

Paiute states that on July 31, 1991, it estimated that its Account No. 191 reflected a credit balance of $271,548. Paiute indicates that it proceeded on that date to make a distribution of the credit balance to its four former sales customers by means of lump sum payments, consistent with the provisions of sections 8.2 and 8.3 of the Stipulation and Agreement. Paiute further states, however, that because distribution was made prior to closing the account for July 1991 activity, the amount that was distributed was an estimate of the July 31, 1991 account balance. Paiute indicates that it has since determined that its Account No. 191, following the distributions to the customers, still reflected a credit balance of $15,214 as of July 31, 1991. Paiute states that it intends to distribute this remaining amount, along with appropriate interest, upon the Commission's approval of its filing.

Paiute requests that the Commission approve Paiute's distribution of its Account No. 191 balance as set forth in its filing, including the levels of the amounts already distributed and the level of the remaining amount which Paiute proposes to distribute upon Commission approval of the filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before September 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–23168 Filed 9–25–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–221–000

Southern Natural Gas Co.; Proposed Changes to FERC Gas Tariff

September 19, 1991.

Take notice that on September 15, 1991, Southern Natural Gas Company ("Southern") tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective November 1, 1991:

Sixteenth Revised Sheet No. 61
Second Revised Sheet No. 61.01
Sixth Revised Sheet No. 61A
First Revised Sheet No. 61A.01
Fifteenth Revised Sheet No. 62
Second Revised Sheet No. 62.01
Sixth Revised Sheet No. 62A
First Revised Sheet No. 62A.01
Eighteenth Revised Sheet No. 63
Second Revised Sheet No. 63.01
Ninth Revised Sheet No. 63A
First Revised Sheet No. 63A.01
Seventeenth Revised Sheet No. 64
Second Revised Sheet No. 64.01
Ninth Revised Sheet No. 64A
Second Revised Sheet No. 64A.01
Fifteenth Revised Sheet No. 65
First Revised Sheet No. 65.01
Tenth Revised Sheet No. 65A
First Revised Sheet No. 65A.01
Eighteenth Revised Sheet No. 66
Second Revised Sheet No. 66.01
Eleventh Revised Sheet No. 66A
Second Revised Sheet No. 66A.01
Nineteenth Revised Sheet No. 67
Eleventh Revised Sheet No. 67A
Ninth Revised Sheet No. 68
Second Revised Sheet No. 68.01
Sixth Revised Sheet No. 68A
First Revised Sheet No. 68A.01
Eleventh Revised Sheet No. 69
First Revised Sheet No. 69.01
Fifth Revised Sheet No. 69A
First Revised Sheet No. 69A.01
Eleventh Revised Sheet No. 70
First Revised Sheet No. 70.01
Fifth Revised Sheet No. 70A
First Revised Sheet No. 70A.01
Eighteenth Revised Sheet No. 71
Tenth Revised Sheet No. 71A
Fifteenth Revised Sheet No. 72
Second Revised Sheet No. 72.01
Sixth Revised Sheet No. 72A
First Revised Sheet No. 72A.01
Fourteenth Revised Sheet No. 73
Second Revised Sheet No. 73.01
Sixth Revised Sheet No. 73A
First Revised Sheet No. 73A.01
Seventeenth Revised Sheet No. 74
Second Revised Sheet No. 74.01
Ninth Revised Sheet No. 74A
First Revised Sheet No. 74A.01
Sixteenth Revised Sheet No. 75
Second Revised Sheet No. 75.01
Ninth Revised Sheet No. 75A
Second Revised Sheet No. 75A.01
Fifteenth Revised Sheet No. 76
First Revised Sheet No. 76.01
Tenth Revised Sheet No. 76A
First Revised Sheet No. 76A.01
Nineteenth Revised Sheet No. 77
Second Revised Sheet No. 77.01
Eleventh Revised Sheet No. 77A
Second Revised Sheet No. 77A.01
Nineteenth Revised Sheet No. 78
Eleventh Revised Sheet No. 78A
Ninth Revised Sheet No. 79
Second Revised Sheet No. 79.01
Sixth Revised Sheet No. 79A
First Revised Sheet No. 79A.01
Eleventh Revised Sheet No. 80
First Revised Sheet No. 80.01
Fifth Revised Sheet No. 80A
First Revised Sheet No. 80A.01
Eleventh Revised Sheet No. 81
First Revised Sheet No. 81.01
Fifth Revised Sheet No. 81A
First Revised Sheet No. 81A.01
Eighteenth Revised Sheet No. 82
Tenth Revised Sheet No. 82A
Third Revised Sheet No. 83

Southern states that the purpose of this filing is to update its Index of Requirements set forth in Southern's FERC Gas Tariff pursuant to the Commission's directive in its Order Denying Rehearing and Granting in Part and Denying in Part Clarification issued on July 27, 1988, in Docket No. RP88–17–012. Accordingly, Southern has submitted the revised tariff sheets listed above and has requested that the Commission make these sheets effective November 1, 1991.

Southern states that copies of the filing will be served upon its jurisdictional purchasers, shippers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 26, 1991. Protests will be considered by the Commission in determining the parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available

for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-23166 Filed 9-25-91; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4012-8]

Open Meeting of the Mining Waste Policy Dialogue

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Mining Waste Policy Dialogue.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the next meeting of the Advisory Committee on EPA's mining waste policy. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss in further detail the issue papers being generated by workgroups on the issues of enforcement, regulatory mechanisms, implementation procedures, public participation and technical standards.

DATES: The meeting will be held on October 22 and 23, 1991. On October 22, workgroups will meet from 8:30 a.m. to 3 p.m., the public may observe but not comment. The Committee will meet in plenary session from 3:30 to 5:30. On October 23, 1991 the Committee will meet in plenary session from 8 a.m. to 12 p.m. Public comment will be taken at the end of each day's plenary session.

As an advance notice, the Committee will meet December 9 and 10 in Washington, DC. A location will be announced shortly.

ADDRESSES: The October meeting will be held at the Hotel Park Tucson, 5151 East Grant Road, Tucson, Arizona.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive matters being considered by the Committee should call Stephen Hoffman, Office of Solid Waste, at (703) 308-8413. Summaries of previous meetings will be made available upon written request to Patricia Whiting, Office of Solid Waste, Environmental Protection Agency, 401 M Street, SW., (OS-323W), Washington, DC 20460. Persons needing further information on Committee procedural matters should call Deborah Dalton, Consensus and Dispute Resolution Programs, at (202) 260-5495.

Dated: September 20, 1991.

Deborah Dalton,

Designated Federal Official Deputy Director, Consensus and Dispute Resolution Programs, Office of Policy, Planning and Evaluation.

[FR Doc. 91-23221 Filed 9-25-91; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4011-4]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), notice is hereby given that a proposed administrative cost recovery settlement concerning the Resource Services, Inc. Superfund site (the Site) in Springfield, Missouri was issued by the EPA on May 2, 1991. The settlement resolves an EPA claim under section 107 of CERCLA against A & H Electric Company of Wichita, Kansas (the Settling Party). The settlement requires the Settling Party to pay response costs in the amount of approximately $11,676.00 to the Hazardous Substances Superfund.

For thirty (30) days following the date of the publication of this Notice, the Agency will accept written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the EPA Region VII Office, located at 726 Minnesota Avenue in Kansas City, Kansas 66101, and at the local repository for site information: Deborah Anderson, Assistant City Clerk, City Offices, City of Springfield, 830 Booneville Avenue, Springfield, Missouri 65802.

DATES: Comments must be submitted on or before October 28, 1991.

ADDRESSES: Comments on the proposed settlement should reference the Resource Services Superfund Site, Springfield, Missouri, and EPA Docket No. VII-91-F-0017, and should be addressed to Ms. Cobbs at the above address. The proposed settlement and additional background information relating to the settlement are available for public inspection during weekday business hours at the EPA Region VII office at 726 Minnesota Avenue in Kansas City, Kansas 66101. A copy of the proposed settlement may be obtained from Venessa Cobbs, Regional Docket Clerk, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number (913) 551-7477.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Rowland, Assistant Regional Counsel, EPA Region VII, Office of Regional Counsel, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone number (913) 551-7279.

Dated: September 4, 1991.

David A. Wagoner,

Director, Waste Management Division, U.S. EPA Region VII.

[FR Doc. 91-23216 Filed 9-25-91; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-400058; FRL-3939-1]

Notice Regarding Revisions to Toxic Chemical Release Inventory Reporting Forms under Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986

AGENCY: Environmental Protection Agency (EPA or Agency).

ACTION: Notice.

SUMMARY: This notice informs the public of EPA's administering of the data management aspects of the Toxic Release Inventory (TRI) program which was established pursuant to section 313 of the Emergency Planning and Community-Right-to-Know Act (EPCRA), 42 U.S.C. 11001, 11023, also known as the Superfund Amendments and Reauthorization Act of 1986 (SARA) or Title III. First, interested parties are given notice that the Agency must receive voluntary revisions to Toxic Chemical Release Inventory Reporting Forms (Form R or report) from facilities on or before November 30th, in order for the revisions to be included in the initial annual release of TRI. This notice is effective beginning November 30, 1991, and continuing in each year thereafter. Also, notice is given that certain types of data which are identified in this notice should not be revised.

FOR FURTHER INFORMATION CONTACT: Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 313 of EPCRA and the Toxic Chemical Release Reporting: Community Right-to-Know Rule, 40 CFR part 372, covered facilities legally are required to submit annually by July 1, to EPA and to the State, complete and accurate Form R reports. Form Rs must contain estimated releases into the environment of certain listed toxic chemicals which were manufactured, processed, or used by the facility during the previous calendar year. The data reported by each July 1 are processed by EPA into a national Toxic Release Inventory computer data base and are first made available to the public during the following year. EPA disseminates the data to the public through the National Library of Medicine's TOXNET system, as well as by other formats such as CD-Rom, microfiche, computer diskette, computer tape, and a hardcopy national report. Each year the Agency processes over 80,000 Form Rs.

Since the inception of reporting under TRI, EPA has continuously received voluntary submissions from facilities of revisions to the data reported on Form Rs which they have filed with the Agency. Facilities have revised and continue to revise all types of data reported on Form Rs filed for all years of required reporting. Revisions have been made to both latest year reports and prior year reports. The number of revisions and the amount of data revised have steadily increased with the passage of each new reporting deadline. During the period December 15, 1989 to July 11, 1991, EPA received revisions to more than an estimated 6,400 reports covering reporting year 1988. During the period June 8, 1990 to July 11, 1991, EPA received revisions to more than an estimated 4,400 Form R reports covering reporting year 1989 and 2,100 reports covering reporting year 1987.

Pursuant to EPCRA section 313, facilities are legally required to submit complete and accurate Form Rs on or before July 1st and, therefore, the Agency has no legal obligation to accept or enter any revisions which are submitted. Nevertheless, the Agency has received and processed revisions to Form Rs in order to provide the public with presumably more accurate TRI data, and to account for companies' increased knowledge of the reporting requirements. As a result, EPA has had to dedicate additional time and resources to process revised data, while continuing to devote the time and the resources needed to process and disseminate the initially reported Form R data. The additional time and resources occupied in processing the large volume of revisions have hampered the Agency's ability to speedily process and disseminate the TRI data from latest year reports. In order to reduce delays, the Agency is setting a time-frame during which revisions should be submitted in order for the revisions to appear in the initial annual release of TRI data.

Also, the Agency has identified certain kinds of changes to prior year reports that facilities should not submit to EPA. If submitted, these revisions will not be processed by the Agency. These data changes do not provide the public with useful information; therefore, this notice aims to reduce the volume of unnecessary revisions, facilitate timely public access to TRI data, save Agency resources, and reduce needless efforts by submitters. Further, facilities are reminded of their obligation to submit one timely, accurate, and complete Form R report annually for each chemical, and that penalties may be assessed for incorrect or inaccurate reporting. Finally, facilities are instructed on the steps to follow to submit a revision.

II. Definition of Terms

The meanings of terms, as those terms are used in this notice, are set forth in the definitions below.

Revision to report: any type of voluntarily submitted change or correction to data reported on a previously filed Form R, regardless of the reason for the data correction or the data change.

Correction to report: a revision to a Form R report that corrects data that was incorrect or inaccurate.

Change to report: a revision to a Form R report that proposes to update data that was accurately reported, and that has changed since the time the initial report was submitted (e.g., name of technical contact).

Latest year report: a Form R report which covers the most recent full reporting year that has passed. For example, during 1991, latest year reports are reports that cover reporting year 1990, and which were due by July 1, 1991 (see Table 1). The group of reports which are called latest year reports will change from year-to-year. For example, during 1992, latest year reports will become the reports which cover reporting year 1991, and which are due by July 1, 1992 (see Table 2).

Latest year data: data reported on latest year reports.

Prior year report: a Form R report which covers any reporting year that occurred prior to the latest reporting year. All reports that were required to have been filed with EPA, and that are not the latest year reports are prior year reports. For example, during 1991, prior year reports include: Reports covering reporting year 1989 which were due July 1, 1990; reports covering reporting year 1988 which were due July 1, 1989, and; reports covering reporting year 1987 which were due July 1, 1988 (see Table 1). As each year passes, prior year reports will be expanded to include data covering an additional reporting year. For example, during 1992, prior year reports will be expanded to include reports covering the reporting year 1990 which were due by July 1, 1991 (see Table 2).

Prior year data: data reported on prior year reports.

Current year report: a Form R report which will cover the current reporting year, and which is required to be filed next year. For example, during 1991, current year reports are the reports covering reporting year 1991 which are due by July 1, 1992 (see Table 1). The group of reports called current year reports will change from one year to the next. For example, during 1992, current year reports will become the reports which will cover reporting year 1992 which are due by July 1, 1993 (see Table 2).

Current year data: data reported on current year reports.

TABLE I.—CATEGORIZING REPORTS DURING 1991

Report Type	Reporting Year Covered	Date Due
Prior year report	1989	July 1, 1990
	1988	July 1, 1989
	1987	July 1, 1988
Latest year report	1990	July 1, 1991
Current year report	1991	July 1, 1992

TABLE 2.—CATEGORIZING REPORTS DURING 1992

Report Type	Reporting Year Covered	Date Due
Prior year report	1990	July 1, 1991
	1989	July 1, 1990
	1988	July 1, 1989
	1987	July 1, 1988
Latest year report	1991	July 1, 1992
Current year report	1992	July 1, 1993

III. Deadline for the Submission of Revisions to Form R Reports

A revision to a report should be submitted as soon as a facility becomes aware that a correction or a change to a

previously submitted Form R is necessary. However, revisions to Form R reports must be received by EPA no later than November 30th each year in order for the revised data to be publicly disclosed at the time that latest year data are first annually released to the public. Each year, EPA releases a new set of the latest year data which are reported on Form Rs filed by the previous July. The latest year data are made available in TOXNET as well as in all other formats. When the initial release of the latest year data occurs, the Agency also releases a revised set of data for each of the previous reporting years. Revised data for prior years are made available in TOXNET, CD-Rom, computer tape, and the national report. The November 30th revision deadline will apply to revisions to any report already submitted to EPA, regardless of the reporting year covered by the report. EPA must receive revisions by November 30 each year in order to disclose revised data for either latest year reports or prior year reports when the latest year data are first released to the public. The November 30th revisions deadline is effective beginning November 30, 1991, and continuing in each year thereafter.

Revisions to either latest year or prior year reports received by the Agency *after* November 30 each year, cannot be expected to be incorporated in the initial annual release of the latest year data. Revisions to latest year reports which are not included in the initial release of latest year data will not be disseminated to the public in microfiche or computer diskette. Revisions to latest year reports or to prior year reports that do not make it into the initial data release will only be disclosed to the public periodically thereafter in TOXNET, (not more frequently than quarterly) until the next annual data release occurs. Further, late revisions to latest year or to prior year reports will not be available for another year in CD-Rom, computer tape, or in the national report, because these data sources are only updated and released once a year after the annual release occurs.

As an example, revisions to 1990 reports which are received by EPA by November 30, 1991, will be processed and publicly released in TOXNET and all other data formats in 1992 when latest year data covering reporting year 1990 are publicly released (see Table 3). Also, revisions to prior year reports covering 1987, 1988 or 1989, which are received by EPA by November 30, 1991, will be processed and publicly released during 1992 in TOXNET, CD-Rom, computer tape, and in the national report when 1990 data are released (see Table 3). However, revisions to reports covering 1990 or any prior year which are received after November 30, 1991 and by November 30, 1992, will only be available periodically in TOXNET (not more often than quarterly) following the 1992 annual release of 1990 data (see Table 4). Further, these later revisions will not be released in CD-Rom, computer tape, or factored into the national report until these data sources are updated sometime after the next annual release occurs in 1993 of 1991 data (see Table 4). Finally, revisions to 1990 reports which are not received until after November 30, 1991, will not be disseminated to the public in microfiche or computer diskette (see Table 4).

TABLE 3.—PUBLIC AVAILABILITY OF REVISED DATA FOR 1990 AND PRIOR YEARS RECEIVED BY EPA ON OR BEFORE NOVEMBER 30, 1991

Source	Time Initially Available
TOXNET	1992 initial release of 1990 and prior year data
CD-ROM	1992 issue of 1990 and prior year data
Computer tape	1992 issue of 1990 and prior year data
National Report	1992 report for 1990 and prior year data
Microfiche	1992 issue of 1990 data only
Computer diskette	1992 issue of 1990 data only

TABLE 4.—PUBLIC AVAILABILITY OF REVISED DATA FOR 1990 AND PRIOR YEARS RECEIVED BY EPA AFTER NOVEMBER 30, 1991 AND BY NOVEMBER 30, 1992

Source	Time Initially Available
TOXNET	Periodically following 1992 initial release of 1990 data
CD-ROM	Included in 1993 issue of 1991 data
Computer tape	Included in 1993 issue of 1991 data
National Report	Included in 1993 report of 1991 data
Microfiche	never revised
Computer diskette	never revised

Facilities that seek to revise their reports are strongly encouraged to submit their revisions prior to November 30 each year in order to ensure that their revised data are readily accessible to the public in all formats by which TRI data are publicly disseminated.

IV. Facilities Should Not Submit Revisions Based Upon Changes to Certain Types of Data in Prior Year Reports

Facilities have been revising 10 different types of data in prior year reports to account for changes that have occurred since the time those reports were filed. EPA believes that these revisions are unnecessary. The data that are being revised are purported to have been correctly reported in the initial Form R submissions, and are being changed only for the purpose of updating the information. Since updating these types of data for prior year reports does not provide the public with useful information, EPA has decided not to process the revisions. Therefore, facilities should not revise their prior year reports to change the 10 types of data identified below to reflect changes which have transpired since the reports were filed. Instead, changes to these data should be either reported in the Form R covering the time period during which the change occurred or should be submitted as a revision only to the most recent report, depending on the type of data that have changed.

However, if any of the 10 types of data identified below were reported incorrectly in prior year reports, facilities should correct the data by filing a revision to their prior year reports.

The following types of data generally should not be revised for prior year reports if the change occurred after the report was filed:

(1) Name of certifying official.
(2) Facility name.
(3) Facility address.
(4) Zip code.
(5) Dun Bradstreet Number.
(6) Parent company name.
(7) Technical contact name.
(8) Technical contact telephone number.
(9) Public contact name.
(10) Public contact telephone number.

Changes to data identified in (1) through (6) above, should be reported in the Form R covering the calendar year during which the change occurred. Changes to data identified in (7) through (10) above, should be submitted as revisions to latest year reports or if none have been filed, then to only the most recent prior year reports.

Revisions should never be submitted for latest year and prior year reports when there has been a change to: (1) Name of certifying official; (2) facility name; (3) facility address; (4) zip code; (5) Dun and Bradstreet number, and; (6) parent company name. Instead, changes

to this data should be submitted in the report which covers the calendar year during which the data change occurred. The first opportunity to report changes to this information will be in the current year report.

As an example, a facility reports a correct zip code in four Form R reports covering reporting year 1987, reporting year 1988, reporting year 1989, and reporting year 1990. During calendar year 1991 the zip code changes for the same facility location. The facility should not revise the zip code in its four earlier reports covering the reporting years 1987, 1988, 1989, or 1990, to reflect the new zip code. Instead, the facility should only report the new zip code in the report covering the calendar year during which the change in the zip code occurred. In this example, the facility should report the new zip code in the current year report covering calendar year 1991 which will be filed by July 1, 1992.

Whenever there has been a change to: technical contact name; technical contact telephone number; public contact name, or public contact telephone number revisions should immediately be submitted for only the most recently filed reports. The most recently filed report will either be a latest year report or if a latest year report has not yet been submitted, then the most recent prior year report. In general, prior year reports should never be revised to reflect changes to either the technical or the public contact data; except that, in the absence of a latest year report the most recent prior year report should be revised.

As an example, a facility has reported the same public contact name in a latest year report filed July 1, 1991, which covers reporting year 1990, and in prior year reports which cover reporting year 1989, and reporting year 1988. The name of the public contact changes during 1991 after the July submission of the latest year 1990 report. The facility should immediately revise the latest year 1990 report, and should not revise any of the prior year reports. If instead, the public contact name changed during 1991 before the July submission of the latest year 1990 report was made, then the facility should revise only the prior year 1989 report. Since the latest year report has not yet been filed, the 1989 report would be the most recent prior year submission. However, the facility should not revise any preceding prior year reports such as the one covering reporting year 1988. The facility should also submit the new contact name in the next report covering reporting year 1991 which will be filed by July 1, 1992.

V. Form R Errors May Result in Agency Enforcement and Penalties

Facilities are reminded that there is a legal obligation to file an accurate and complete Form R report for each chemical by July 1 each year. EPA may take enforcement action and assess civil administrative penalties regarding corrections to errors in Form R reports that are not changes based on previously unavailable information or procedures which improve the accuracy of the data initially reported. The kinds of errors which may result in enforcement and in penalties include but are not limited to the following: (1) Errors caused by not using the most readily available information, for example, not using monitoring data collected for compliance with other regulations in calculating releases; (2) omitting a major source of emissions; (3) a mathematical or transcription or typographical error which seriously compromises the accuracy of the information, and; (4) other errors which seriously effect the utility of the data, particularly errors in release reporting for which the facility has no records showing the derivation of the release calculation, and cannot provide a sufficient explanation of the report. EPA believes that errors in reporting which can result in enforcement and penalties can be avoided by using a minimal level of prudence and due diligence in completing the Form R including, following the Reporting Instructions accompanying the Form R on emissions estimation techniques, and checking for typographical and mathematical errors in release reporting.

Generally, an enforcement action may not be taken regarding changes to reports that reflect improved information or improved procedures that were not available when the facility was completing its initial report. Thus, a facility may seek to change its Form R chemical release data if it becomes aware of improved information or improved procedures for calculating chemical releases which were not available to the facility at the time that its initial report was submitted.

Further, falsifying information submitted to the United States Government is a criminal offense under 18 U.S.C. section 1001. Facilities should use care when completing their initial Form R report to ensure that their initial submission is accurate and complete.

VI. Instructions for Submitting Revisions to Form R Reports

Failure to follow the instructions below when submitting revisions may result in processing delays which may prevent revisions that are received by November 30th from being included in the next yearly release of TRI. Revisions that are not submitted in accordance with the instructions below will not be processed by EPA until deficiencies are resolved through Agency contact with the submitter or resubmission of the revision by the facility. Also, failure to follow these instructions when submitting a revision may result in duplicative chemical report data pertaining to your facility in TRI, and identification of revisions as untimely initial reports.

A facility must revise a report by submitting a copy of the original Form R report which is marked as follows. The term "VOLUNTARY REVISION" and the Document Control Number (DCN), if available, must be entered in the space on the Form marked "This space is for your optional use." This information must be entered on each page of the copied report in the optional use space. Next, corrections to data must be clearly made, preferably in red ink. Then, the revised report must be resigned and redated in the certification statement on page 1.

EPA will not accept revisions to data submitted in magnetic media format. All revisions must be filed with EPA using a hard copy Form R report. If a facility wishes to revise data which were reported initially in magnetic media format, the facility must submit its revised data on a hardcopy Form R report.

Once completed, the entire revised Form R report must be sent to both EPA and to the appropriate State agency or the designated official of an Indian tribe.

A revision that is sent to EPA by mail must be addressed as follows: EPCRA Reporting Center, P.O. Box 23779, Washington, DC 20026–3779, Attn: Toxic Chemical Release Inventory Revision.

A revision that is hand-delivered or sent by certified mail to EPA must be addressed as follows: EPCRA Reporting Center, 470 L'Enfant Plaza Center, SW., suite 7103, Washington, DC 20024, Attn: Toxic Chemical Release Inventory Revision.

In addition, your facility must send a copy of the revised report to: The State in which the facility is located ("State" refers to: State of the U.S., the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Northern Mariana Islands, and any other territory or possession over which the U.S. has jurisdiction). Refer to Appendix G in the latest Toxic Release Inventory Reporting Package for the appropriate State address for your submission.

If your facility is located on Indian land: Send a copy of the revision to the Chief Executive Officer of the applicable Indian tribe. Some tribes have entered into a cooperative agreement with the State, in which case, revisions to Form R submissions should be sent to the entity designated in the cooperative agreement.

Dated: September 20, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-23217 Filed 9-25-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: Revision of a currently approved collection.

Title: Appraisal standards.

Form Number: None.

OMB Number: 3064-0103.

Expiration Date of OMB Clearance: April 30, 1993.

Frequency of Response: Recordkeeping, on occasion.

Number of Respondents: 7,751.

Number of Responses per Respondent: 50.85.

Total Annual Responses: 394,169.

Average Number of Hours per Response: 0.417.

Total Annual Burden Hours: 164,237.

OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project (3064-0025), Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before November 25, 1991.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") mandates that the Federal financial institutions regulatory agencies and the Resolution Trust Corporation establish appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each agency. This proposal would raise the dollar threshold of transactions requiring an appraisal from $50,000 to $100,000, and would permit regulated institutions to use appraisals prepared for loans insured or guaranteed by a federal agency if the appraisal conforms to the requirements of the federal insurer or guarantor.

Dated: September 20, 1991.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 91-23201 Filed 9-25-91; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Carnival Cruise Lines Incorporated, 3655 NW 87th Avenue, Miami, FL 33178-2428.

Vessel: SENSATION.

Dated: September 20, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-23191 Filed 9-25-91; 8:45 am]

BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Carnival Cruise Lines Incorporated, 3655 NW 87th Avenue, Miami, FL 33178-2428.

Vessel: SENSATION.

Dated: September 20, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-23192 Filed 9-25-91; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Information Resources Management Service; Federal Telecommunications Standards

ACTION: Notice of adoption of standard.

SUMMARY: The purpose of this notice is to announce the adoption of a Federal Telecommunications Standard (FED-STD). FED-STD 1002A, "Telecommunications: Time and Frequency Information in Telecommunications Systems" is approved by the General Services Administration and will be published.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Bodson, Office of Technology and Standards, National Communications System, telephone (703) 692-2124.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible, under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of GSA designated the National Communications System (NCS) as the responsible agent for the development of telecommunications standards for NCS interoperability and the non-computer communication interface.

2. On August 6, 1990, a notice was published in the **Federal Register** (55 FR 31910) that a proposed Federal Telecommunications Standard FED-STD 1002 entitled "Telecommunications.

Time and Frequency Information in Telecommunications Systems" was being amended for Federal use.

3. The justification package as approved by the Director, Office of Science and Technology Policy (OSTP), Executive Office of the President was presented to GSA by NCS with a recommendation for adoption of the standard. These data are a part of the public record and are available for inspection and copying at the Office of Technology and Standards, National Communications System, Washington, DC 20305–2010.

4. Interested parties may purchase the standard from GSA, acting as agent for the Superintendent of Documents. Copies are for sale at the GSA Specifications Unit (WFSIS), room 6039, 7th and D streets, SW. Washington, DC 20407; telephone (202) 708–9205.

Dated: September 3, 1991.

Thomas J. Buckholtz,

Commissioner, Information Resources Management Service.

[FR Doc. 91–23155 Filed 9–25–91; 8:45 am]

BILLING CODE 6850-25-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 176]

STD Professional Education for Initiatives to Evaluate Current Versus Enhanced HIV Counseling

Introduction

The Centers for Disease Control (CDC), the nation's prevention agency, announces the availability of cooperative agreement funds for a two-phased project to compare and evaluate two models of human immunodeficiency virus (HIV) counseling and testing. The models to be compared and evaluated are the current approach to counseling (i.e., a single session pretest and usually a single session posttest) and an enhanced model, the protocol for which will be determined during the first phase of the project.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objective of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Human Immunodeficiency Virus (HIV) Infection and Clinica' Prevention Services. (For ordering a copy of Health People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**

Authority

This program is authorized under the Public Health Service Act, Sections 301(a) [42 U.S.C. 241(a)], as amended; 317(k) [42 U.S.C. 247b(k)], as amended; and 318(b), [42 U.S.C. 247c(b)], as amended.

Eligible Applicants

Due to: (1) The requirement to operate a "model" sexually transmitted diseases (STD) clinic according to published CDC standards; (2) the need for formal linkages with a university school of medicine offering access to a wide range of research expertise; (3) the adaptability necessary for smoothly balancing patient service demands with potentially disruptive training obligations; and (4) in many instances, recognized experience in effectively integrating research activities into a busy schedule of client services and clinical training, eligibility is limited to the current recipients of Sexually Transmitted Diseases Prevention/Training (STD P/T) Centers (Baltimore, Maryland; Birmingham, Alabama; Chicago, Illinois; Cincinnati, Ohio; Dallas, Texas; Denver, Colorado; Long Beach, California; Newark, New Jersey; San Francisco, California; San Juan, Puerto Rico; an Seattle, Washington.)

Availability of Funds

Approximately $2,400,000 will be available in fiscal year 1991 to fund one to five cooperative agreements for a 4-year project period. Awards will range from $400,000 to $560,000 with an average award of $480,000. Funds are expected to be awarded on or about September 30, 1991. Future year support is dependent upon the availability of funds and the successful performance of required study activities.

Requests for direct assistance (i.e., "in lieu of cash") for personnel, supplies and other forms of direct assistance will be considered.

Use of Funds

Funds may be used to support personnel, the orientation and travel of such personnel, to lease operating space, to equip operating space through lease or purchase as dictated by efficiency and economics, and to purchase supplies and services directly related to planning, organizing, and conducting the study. Where it will enhance initiation and operation of the study, applicants may contract with agencies, organizations, or individuals for personnel services, space, or to meet any combination of needs.

Funds shall not be used for the purchase and ownership of space. Funds shall not be used for the renovation of existing or rented space unless specifically approved.

Purpose

The purpose of this study is to increase the efficacy of HIV counseling and testing. Social science theory and research in other health prevention behaviors provide a firm basis for the hypothesis that a counseling model that goes beyond an information-based, single pre- and post-test counseling session will be more effective in initiating and sustaining behavior change.

Program Requirements

Enhancements to counseling will be identified and tested during the pilot phase, or Phase I, of this study, and may include the following: Multiple counseling sessions; group sessions; skills training; peer-led counseling; and computer-assisted counseling. Phase I will also be a period for observing current single session counseling to identify what should be standardized for Phase II operations, which is the experimental phase.

Phase I of the study will last 12 months from the date of award. The recipients selected will have major input in identifying the appropriate interventions to test in Phase I. In Phase I, the number of subjects needed will depend upon the interventions being tested; but time constraints in this phase make it somewhat improbable that recipients will be able to involve more than approximately 200 persons each.

Based on the findings of Phase I, a single enhanced intervention will be designed and implemented by all recipients in Phase II. As with Phase I, recipients will have a major role in determining the selection of that single intervention. The comparison in Phase II will be with current counseling which will be standardized across all of the study recipients in a randomized clinical trial. The trial will measure differences in reinfection with specific STDs and specific behavioral markers between the two randomized arms of the study. Phase II will consist of three one-year budget periods (years 02, 03 and 04) which involves subject enrollment in year 2 and follow-up in years 3 and 4. In Phase II, each recipient will need to enroll approximately 1,000 subjects, 500 in each of the two intervention groups. Both phases will involve periodic testing for biological and behavioral markers and will thus require the follow-up of participants.

Persons who turn out to be seropositive for HIV also will have been randomly assigned to the two

intervention groups. It is recognized, however, that the scope of services provided to seropositive persons following post-test counseling is currently expanding far beyond what is made available to seronegative individuals. Ethics require assurance that HIV seropositive patients assigned to the "current counseling" group receive all psychosocial counseling and support services to which they would otherwise be referred. Documentation of the services they receive will be necessary to help in analyzing any behavioral differences from HIV seropositive persons in the study's "enhanced counseling" group.

The study should be conducted at a location(s) convenient to the majority of the study participants. Since the enrollment of study subjects will occur in the clinic, dedicated space there or very close by will be essential. Current counseling and testing activities will continue to occur in the clinic and should not require additional space. Office space for staff to conduct the study's enhanced counseling activities does not need to be in the clinic.

In addition, to effectively carry out this study, applicants must make a commitment to designate at least one room in the clinic and/or immediately adjacent to it dedicated to study enrollment. Immediately adjacent means within a reasonable walk of the clinic area. Preferably, this should be in the same building, but may be next door or across the street such that a participant could be chaperoned to reach it and reaching it would not require transportation.

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities under A., and CDC will be responsible for conducting activities under B.:

A. Recipient Activities

1. Collaborate With CDC on Defining and Initiating Phase I Activities

Shorty after award, recipients will meet with CDC to help describe potential interventions for Phase I. The recipient and CDC will collaborate to determine the intervention to be tested during Phase I. Recipients will develop their programs beginning September 30, 1991 through December 31, 1991, and begin actual operations on or before January 1, 1992.

2. Maintain Liaison With Involved State and Local Programs

Study management staff will maintain close liaison with the project area level and local-level STD and HIV prevention programs to ensure a minimal disruption to their service activities. Since the present STD or HIV prevention program staff who perform HIV pre- and post-test counseling will play a key role during the study by providing a standardized version of this counseling for study subjects, maintaining a smooth working relationship with these programs will be essential. Study management will also need to work with the STD P/T Center Coordinator to ensure that the study is conducted in harmony with the STD P/T Center to avoid disruptions to its basic STD and HIV training mission.

3. Collaborate with CDC Through Phase I into Phase II

Recipient study management staff will work closely with CDC during Phase I. Collaboration will begin on the approaches to enhanced counseling that will be incorporated into a common protocol for Phase II and on the composition of current counseling activity with which it will be compared. Collaboration with CDC will also occur in producing a Phase II evaluation plan which will measure biological and behavioral components. The biological component will measure the differences in reinfection with specific STDs. The behavioral component will measure changes in sexual behaviors (for example, condom use), health care behaviors, drug/alcohol use, intentions to use condoms, and in attitudes and beliefs related to HIV and sexual behaviors. Recipient study management staff will work closely with CDC in the transition between Phases I and II to minimize the disruption to staffing and activity patterns of the study that will result from a shift in emphasis.

4. Conduct Phase II Activities

Recipients will recruit, enroll, and follow a large number of subjects from the following populations: injecting drug users; women; adolescents; racial and ethnic minorities; and men who have sex with men.

5. Communicate and Collaborate on Publication of Results

Recipient study management staff must maintain frequent communications with CDC. Each recipient will be required to submit a description of progress and activities of the study in a quarterly narrative report. In addition, study staff will work closely with CDC to develop one or more multi-center articles for peer-reviewed journals on the findings of the study.

6. Analyze Study Data and Coordinate Publication

Recipients will analyze data gathered over the course of the study and, in collaboration with CDC, develop one or more papers for publication describing Phase II results.

B. CDC Activities

1. Provide Coordination

In collaboration with the recipients, determine the specific enhanced counseling activities to be assigned for testing in each phase of the study and the composition of "current counseling" to be used during Phase II. Shortly after award, CDC will collaborate with recipients to describe potential interventions of Phase I and to negotiate with each recipient about the intervention it will test during that phase. Determine individual recipient activities and design the protocol to be used by all recipients in Phase II.

2. Provide Scientific Expertise

CDC staff will provide current scientific information relevant to the interventions to be tested in Phase I and the single intervention to be developed for Phase II. CDC personnel will also work closely with recipients to ensure that the study benefits from the soundest possible application of principles for scientific research.

Review and Evaluation Criteria

Each application will be reviewed and evaluated individually according to the following criteria:

A. The capacity to begin Phase I operations on or before January 1, 1992, or:

1. The capacity to promptly bring on staff for implementing the evaluation initiative; and (15 Points)

2. The capacity to identify and obtain, through lease or other provisions, office and operating space for the study; (10 Points)

B. The capacity to recruit and retain evaluation initiative participants in sufficient numbers to conduct a statistically valid study from which credible conclusions can be drawn. This will be evidenced by the following data items for the past 6 months:

1. The average number of patients per month served by the STD clinic; (5 Points)

2. The average number of clinic patients per month who accept HIV antibody testing; (5 Points)

3. The average number of seropositive persons; (5 Points)

4. The number of diagnosed cases of early syphilis, gonorrhea, nongonococcal urethritis, and chancroid; (5 Points)

C. The capacity to participate in a long-term study without unduly disrupting the ongoing delivery of STD clinical services or STD clinical and HIV-related training as evidenced by a general plan for carrying out both phases of the study that notes the areas of interface with the existing program and specific plans to prevent disruption; (10 Points)

D. The capacity to effectively manage the study as evidenced by the proposed organizational structure, and documentation of matrix and support arrangements with the STD and HIV Prevention Programs, and university, community-based or other affiliated organizations, etc.; (10 Points)

E. The capacity to perform research as evidenced by past efforts within the P/T Center clinic or the research experience of those who would be involved in the management or operation of this initiative such as the project officer, principal investigator, or other relevant personnel; (15 Points)

F. The capacity to provide access to potential study participants who are not otherwise involved in current clinic research, including nonblinded seroprevalence studies, and the practicality of plans for integrating the study into the current array of research being conducted in the clinic and coordinating these various activities; (10 Points)

G. The capacity to standardize HIV pre- and posttest counseling according to the CDC Guides for such activities and to ensure the quality of the process through direct observation by supervisory personnel as evidenced by the documentation of current efforts or specific plans and commitments to carry out such standardization and quality assurance. (10 Points)

In addition, consideration will be given to the extent to which the budget request and proposed use of project funds is consistent with the purpose of this program.

Other Requirements

Recipients must comply with the document titled Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (January 1991), a copy of which is included in the application kit.

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.978, Sexually Transmitted Disease Research, Demonstrations, and Public Information and Education Grants.

Application Submission and Deadline

The original and two copies of the application, using form PHS 5161–1, must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, MS E14, Atlanta, GA 30305, on or before September 27, 1991.

A. Deadline

Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

B. Late Applications

Applications which do not meet the criteria in A.1. or 2. are considered late applications. Late applications shall not be considered for funding and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Linda Long, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., MS E14, Atlanta, GA 30305, (404) 842–6640 or FTS 236–6640.

Programmatic technical assistance may be obtained from Marvin Bailey, National Center for Prevention Services, DSTD/HIVP, MS E27, Centers for Disease Control, Atlanta, GA 30333, (404) 639–1235 or FTS 236–1235.

Potential applicants may obtain a copy of Healthy People 200 (Summary Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Dated: September 20, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–23181 Filed 9–25–91; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91N–0331]

Bioproducts, Inc., and I.M.S., Inc.; Withdrawal of Approval of NADA's

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new animal drug applications (NADA's), one held by Bioproducts, Inc., and the other held by I.M.S., Inc. The NADA's provide for the manufacture of Type B Medicated feed containing lincomycin. The firms requested the withdrawal of approval. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing those portions of the regulations that reflect approval of the NADA's.

EFFECTIVE DATE: October 7, 1991.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center for Veterinary Medicine (HFV–216), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8749.

SUPPLEMENTARY INFORMATION: Bioproducts, Inc., 8221 Brecksville Rd., Cleveland, OH 44141, and I.M.S., Inc., 13619 Industrial Rd., Omaha, NE 68137 are the sponsors of NADA's 132–659 and 133–034, respectively, which provide for the manufacture of Type B medicated feed containing lincomycin. The firms have requested that FDA withdraw approval of the NADA's because an NADA approval is no longer required to manufacture or distribute the Type B medicated feed (see 51 FR 7382, March 3, 1986, and 55 FR 23423, June 8, 1990).

Therefore, under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with

§ 514.115 Withdrawal of Approval of Applications (21 CFR 514.115), notice is given that approval of NADA's 132–659 and 133–034 and all supplements and amendments thereto is hereby withdrawn, effective October 7, 1991.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 558.325 by revising paragraph (a)(5) to reflect the withdrawal of approval of the NADA's.

Dated: September 19, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91–23194 Filed 9–25–91; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

Hearing: Reconsideration of Disapproval of Maryland State Plan Amendment (SPA)

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 6, 1991, in room 9020, 3535 Market Street, Philadelphia, Pennsylvania to reconsider our decision to disapprove Maryland SPA 91–20.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by October 11, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (301) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Maryland State Plan amendment (SPA) number 91–20.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Maryland SPA 91–20 contains a list of Medicaid obstetrical and pediatric payment rates. It also includes a comparison of ratios of obstetrical and pediatric practitioners for the general population to the ratios of Medicaid participating obstetrical and pediatric practitioners for the Medicaid population. Finally, it includes data relating to how rates established for payments to health maintenance organizations (HMOs) under section 1903(m) of the Act take into account fee-for-service payment rates.

The issue here is whether the plan amendment meets the statutory provisions of section 1926(a) of the Act and thus, also complies with section 1902(a)(30)(A) of the Act.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). In addition, States must submit data to document that payments to HMOs take into account payment rates for fee-for-service obstetrical and pediatric services.

HCFA is developing its final policy concerning what data and information are required to determine that the State is in compliance with section 1902(a)(30)(A) of the Act. HCFA has, however, determined that for obstetrical and pediatric rate SPAs to be approvable, they must include the following:

1. Payment rates for this year and next year (i.e., 1991 and 1992) for those obstetrical and pediatric services covered under the State's plan. Pediatric rates must be specified by procedure; we recommend the same format for obstetrical services;

2. Data that document that payment rates for obstetrical and pediatric services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

3. Data that document that payment rates to HMOs under section 1903(m) of the Act take into account the payment rates given in number 1 above.

HCFA has also developed several guidelines, that if met by the State, would evidence that the State meets the statutory requirements of section 1926 of the Act. These guidelines are set forth in a draft State Medicaid manual (SMM) revision dated March 26, 1990.

Based upon the data submitted, HCFA has determined that Maryland's amendment does not comply with the statutory requirements of section 1926 of the Act and, thus, also does not comply with section 1902(a)(30)(A) of the Act. The State argues that it met the statutory requirements under Guideline 3 of the March 26 draft SMM issuance. It permits the State to document its compliance with the statute by "other appropriate means."

The State has attempted to prove equal access for Medicaid individuals by showing that the ratio of Medicaid participating practitioners to the Medicaid population is no less than that of non-participating practitioners to the general population. However, the State's ratio has not shown that access by Medicaid participating practitioners to Medicaid recipients is equal to or greater than access by non-participating practitioners to the non-Medicaid population.

HCFA believes the State's documentation would be acceptable if the data showed at least 50 percent of the obstetrical/pediatric practitioners in the State provided services to Medicaid recipients (and no ratio would be needed). The State's ratio here attempts to show that access to a practitioner is equivalent for Medicaid and non-Medicaid individuals. However, this ratio assumes that participating practitioners only treat Medicaid patients and non-participating practitioners only treat non-Medicaid patients. While this assumption is valid for non-participating practitioners (as that is how they are defined), it is not necessarily true for participating providers. The ratio is only valid if the State specifies the percentage of time that the participating practitioner provided services to Medicaid and non-Medicaid recipients.

In addition, the State's obstetrical and pediatric fee-for-service payment rates do not appear to be the product of the

State's efforts to ensure access. The rates are the result of the State's recently passed Provider Tax Bill. Under the tax program, the fees were substantially inflated, but the increases are taxed in their entirety and the tax is withheld before payment is made to the provider. Specifically, the fees, while ostensibly being paid to the provider, are never actually received by the providers. Instead, the fees are first decreased by the tax, and the remainder is then paid to the provider. The providers receive none of the increases in fees. The State will claim the increased amounts in the Federal match. Since the State has not specified the actual payment rates (amount actually received by the provider), HCFA believes it does not meet the requirements of section 1926(a)(1) and 1926(a)(2) of the Act.

The notice to Maryland announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Nelson Sabatini
Deputy Secretary
Health Care Policy, Finance and Regulation
Department of Health and Mental Hygiene
201 West Preston Street, room 200
Baltimore, Maryland 21201.

Dear Mr. Sabatini: I am responding to your request for reconsideration of the decision to disapprove Maryland State Plan Amendment (SPA) 91–20. Maryland submitted SPA 91–20 to establish the State's compliance with section 1926 of the Social Security Act (the Act).

Section 1926 of the Act, as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (Section 1902(a)(30)(A) of the Act). In addition, States must submit data to document that payments to Health Maintenance Organizations take into account payment rates for fee-for-service obstetrical and pediatric services.

The issue in this matter is whether the plan amendment meets the statutory provisions of section 1926(a) of the Act and thus, also complies with section 1902(a)(30)(A) of the Act.

I am scheduling a hearing on your request for reconsideration to be held on November 6, 1991, in Room 9020, 3535 Market Street, Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 597–3013.

Sincerely,

Gail R. Wilensky, Ph.D.,

Administrator.

Authority: Section 1116 of the Social Security Act; 42 U.S.C. section 1316); 42 CFR section 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program).

Dated: September 19, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–23202 Filed 9–25–91; 8:45 am]
BILLING CODE 4120–03–M

Hearing: Reconsideration of Disapproval of Texas State Plan Amendment (SPA)

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

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 7, 1991, on the 15th Floor, 1200 Main Tower, Dallas, Texas 75202 to reconsider our decision to disapprove Texas SPA 90–42.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by October 11, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd., Baltimore, Maryland 21207, Telephone: (301) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Texas State Plan amendment (SPA) number 90–42.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Texas submitted SPA 90–42 to cover services it refers to as "school health and related services" to handicapped Early and Periodic, Screening, and Diagnosis Treatment recipients. The freedom of choice provisions of section 1902(a)(23) of the Act, and regulations at 42 CFR 431.51 require the State to assure that recipients may obtain Medicaid services from any institution, agency, pharmacy, person, or organization that is qualified to perform the services. The freedom of choice provisions, in part, ensure that all qualified providers willing to undertake to provide the services may participate in the program. Texas proposes to allow only independent school districts and school district cooperatives to be qualified providers of these services. The services at issue include such services as: Occupational, physical, and speech therapy, psychological services; counseling services; and audiology services. The State's proposal to allow only independent school districts and school district cooperatives to be qualified providers clearly precludes any other qualified provider, like clinics or independent practitioners, from delivering these services. As such, the Texas proposal violates the freedom of choice provisions. Although Federal regulations relating to school health and related services require a "public agency" to develop and implement a recipient's Individual Education Program, providers of school health and related services need not be restricted to public agencies, as indicated in the State's explanation.

In addition, some of the services proposed by Texas do not meet any of the statutory or regulatory requirements for covered Medicaid services, namely: Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews and behavioral observation; health services routinely provided to all students; and emergency care training for staff and parents. (See section 1905(a) (1) through

(24) and implementing regulations at 42 CFR 440 subpart B.) Finally, the plan does not clearly define the reimbursement methodology for these services as required by regulations at 42 CFR 447.200 et. seq. The proposal is lacking specificity, a clear methodology of rate-setting, and a definition of unallowable costs that would be excluded from the Medicaid payment rate.

Thus, the issues in the matter are: (1) Whether Texas' proposal violates the freedom of choice provisions allowing only independent school districts and school district cooperatives to be qualified providers; (2) whether certain services proposed by Texas fail to meet any of the statutory or regulatory requirements for covered Medicaid services; and, (3) whether the plan amendment clearly defines the reimbursement methodology for these services in accordance with 42 CFR 447.200ff.

Attached in a letter to the State advising it of our decision. The notice to Texas announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Donald L. Kelley, M.D., F.A.C.S.
State Medicaid Director
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714–9030.

Dear Dr. Kelley: I am responding to your request for reconsideration of the decision to approve Texas State Plan Amendment (SPA) 90–42.

Texas submitted SPA 90–42 on February 25, 1991 requesting to cover services it refers to as "school health and related services" to handicapped Early and Periodic, Screening, and Diagnosis Treatment recipients. The State is requesting these provisions under the freedom of choice provisions of section 1902(a)(23) of the Social Security Act and in accordance with regulations at 42 CFR 431.51.

Thus, the issues in the matter are: (1) Whether Texas' proposal violates the freedom of choice provisions allowing only independent school districts and school district cooperatives to be qualified providers; (2) whether certain services proposed by Texas fail to meet any of the statutory or regulatory requirements for covered Medicaid services; and, (3) whether the plan amendment clearly defines the reimbursement methodology for these services in accordance with 42 CFR 447.200ff.

I am scheduling a hearing on your request for reconsideration to be held on November 7, 1991, at 10 a.m. on the 15th Floor, 1200 Main Tower, Dallas, Texas 75202. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR Part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 597–3013.

Sincerely,

Gail R. Wilensky, Ph.D.
Administrator

Authority: Section 1116 of the Social Security Act; 42 U.S.C. section 1316); 42 CFR section 430.18.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program).

Dated: September 19, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

[FR Doc. 91–23203 Filed 9–25–91; 8:45 am]

BILLING CODE 4120–03–M

Public Health Service

Agency for Toxic Substances and Disease Registry; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HT (Agency for Toxic Substances and Disease Registry) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (50 FR 25129–25130, dated June 17, 1985, as amended most recently at 54 FR 38743, September 20, 1989) is further amended to reflect recently approved organizational changes. Specific changes include establishing within the Office of the Assistant Administrator the Office of Federal Programs and the Office of Regional Operations.

Section HT–B, Organization and Functions, is hereby amended as follows:

After the functional statement for the Office of the Assistant Administrator (HTB) insert the following:

Office of Federal Programs (HTBB). (1) Plans, recommends, manages, and coordinates the policy and procedures under which ATSDR works with Federal agencies in the development of toxicological profiles for unregulated hazardous substances found at Federal facilities and the conduct of health assessments and other related health activities such as surveillance, registries, health surveys, pilot studies, health education, health studies, and related research; (2) reviews the effectiveness and efficiency of all ATSDR Federal programs operations; (3) maintains liaison, negotiates and coordinates with the Federal departments where ATSDR is involved in Federal programs; (4) provides management of budgetary and human resources of all ATSDR Federal program operations; (5) monitors and prepares reports on all ATSDR Federal programs.

Office of Regional Operations (HTBC). (1) Plans, manages, directs, and conducts the regional operations of the Agency; (2) recommends and coordinates the policy and procedures under which ATSDR works in the regions; (3) assists in implementing all facets of ATSDR programs; (4) provides liaison, technical advice, and consultation to the Environmental Protection Agency, other Federal, State, and local agencies, private organizations, community groups, and individuals on eliminating or mitigating health problems resulting from the release of hazardous substances into the environment.

Dated: September 18, 1991.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 91–23185 Filed 9–25–91; 8:45 am]

BILLING CODE 4160–70–M

Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records 09–25–0166, "Administration: Radiation Safety Information, HHS/NIH/ORS". This new system of records will assimilate records from two existing systems 09–25–0003, "Radiation Radionuclide Users File" and 09–25–0008, "Radiation Workers Monitoring". These records will be maintained by the Radiation Safety Branch in a computer database. Following the establishment of the new system of records, these two existing systems will be deleted. We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposed internal and routine uses on or before October 28, 1991. PHS has sent a report of a New System to the Congress and to the Office of Management and Budget (OMB) on September 16, 1991. This system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESSES: Comments should be addressed to the National Institutes of

Health (NIH) Privacy Act Officer at the address listed below. Comments received will be available for inspection from 9 a.m. to 3 p.m., Monday through Friday, in Room 3B03, Building 31, at that address.

FOR FURTHER INFORMATION CONTACT: NIH Privacy Act Officer, Building 31, Room 3B307, 9000 Rockville Pike, Bethesda, MD 20892 or Call 301–496–2832. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The National Institutes of Health (NIH) proposes to establish a new system of records: 09–25–0166 "Administration: Radiation Safety Information, HHS/NIH/ORS." This system of records will be used by NIH staff to maintain the required records associated with the NIH Radiation Safety Program. The records in this system include records of radioactive materials received for use and radiation producing machinery used in the NIH research program; records of the individuals (i.e. employees, volunteers, contractors, visitors, etc.) who use and/or are potentially exposed to radiation or radioactivity during the use of these materials or machines; records of the surveys performed by the program, either directly or under contract, to determine compliance with regulations; regulatory required monitoring of personnel and environmental discharges; records of radioactive waste generated and disposed of; records of incidents and the actions taken to resolve them; and any such records that would be required in order to respond to future regulatory requirements.

Records in this system will be obtained directly from individuals through interview, via telephone collection of data or by the submission of documents which request appropriate data. In addition, records may be obtained directly from contractors who provide service to the Radiation Safety Program. Contractor supplied records may be provided as documents or reports or in computer assimilable formats such as disks or magnetic tape. Records from two existing systems will be assimilated into this new system. These records are similar to the records described herein. NIH is treating the separate set of records as a single system under the Privacy Act (1) to show that all of the sets of records serve the same purposes and contain similar data, (2) to apply consistent policies and practices in the maintenance of such records, and (3) to make it easier for subject individuals to obtain notification of, or access to, their records.

Individuals will be required to supply Social Security numbers in order to comply with the requirements of the United States Nuclear Regulatory Commission, 42 U.S.C. 2201, and implementing regulations, 10 CFR part 20. Refusal to provide a Social Security Number may result in an individual not being permitted to work with radioactive materials or radiation sources.

The records in this system will be maintained in a secure manner compatible with their content and use. Contractors and NIH staff will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. The System Managers, the NIH Project Officers, and the Contract and/or Project Directors will control access to the data. The staff of the Radiation Safety Branch, DS, ORS and its contractors will have regular access to records in this system. Records will be stored in file cabinets in secured areas of Building 21 and in a computer database maintained by the radiation Safety Branch. Data stored in the computer will be accessed through the use of keywords known only to persons authorized for such access. Certain commonly requested data will be accessible to NIH research investigators upon request over telephone lines or through the campus wide computer network. The computer database system is capable of security at the data field level; i.e. the "view" of the data for a given user or type of user can be controlled to individual data fields. In addition, the operating system of the RSB computer has extensive security controls available to restrict such access to only that allowable by the Radiation Safety Branch.

The particular safeguards implemented in each project will be developed in accordance with the standards of Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, and the Department's Automated Information System Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

The routine uses proposed for this system are compatible with the stated purposes of the system.

The first routine use, permitting disclosure to a congressional office, is proposed to allow subject individuals to obtain assistance from their representatives in Congress, should they so desire. Such disclosure would be made only pursuant to a request of the individual.

The second routine use of this system allows disclosure to the Department of Justice to defend the Federal Government, the Department, or employees of the Department in the event of litigation.

The third routine use allows disclosure to contractors for the purpose of providing services to the Radiation Safety Program or for processing or refining the records which will permit NIH to administer the system efficiently. Contracting for such services is advisable because the agency lacks necessary internal resources and because processing or refining the records under contract will be cost effective. Contracted services may include transcription, collation, computer input, and other records processing.

The fourth routine use allows disclosure to officials of the United States Nuclear Regulatory Commission which licenses NIH for the use of radioactive byproduct materials and has, by law, an audit, inspection and enforcement function with regard to such licenses.

The fifth routine use allows disclosure of an individual's radiation exposure and/or radiation safety training history to a new employer.

The sixth routine use allows disclosure for a research purpose.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: September 19, 1991.

Wilford J. Forbush,

Director, Office of Management.

09–25–0166

SYSTEM NAME:

Administration: Radiation Safety Information, HHS/NIH/ORS.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Radiation Safety Branch, Division of Safety, Office of Research Services, NIH. Building 21, 9000 Rockville Pike, Bethesda, MD. 20892.

Write to System Manager at the address below for the address of the contractor or the Federal Records Center where records from this system may be stored.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NIH employees using radioactive materials or radiation producing

machinery, contractor employees who provide service to the Radiation Safety Branch and any other individuals who could potentially be exposed to radiation or radioactivity as a result of NIH operations and who, therefore, must be monitored in accordance with applicable regulations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names, birth dates, Social Security Numbers, titles, training data, exposure data, materials usage data, incident data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 241, regarding the general powers and duties of the Public Health Service relating to research and investigation; 5 U.S.C. 7902 regarding agency safety programs; and 42 U.S.C. 2201, regarding general duties of the Nuclear Regulatory Commission including the setting of standards to cover the possession and use of nuclear materials in order to protect health.

PURPOSE(S) OF THE SYSTEM:

1. To provide adequate administrative controls to assure compliance with NIH radiation safety policies and all appropriate regulations governing the use of radiation sources by NIH.

2. To assure legal compliance with requirements of Nuclear Regulatory Commission to maintain internal and external radiation exposure data and any radiation incident follow-up reports.

3. To monitor personnel exposures in order that they be maintained at the lowest levels reasonably achievable.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. Disclosure may be made to the Department of Justice or to a court or other tribunal from this system of records, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States of any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to contractors to provide services to the Radiation Safety Program, for the purpose of processing or refining the records. Contracted services may include transcription, collation, computer input, and other records processing. The contractor shall be required to maintain Privacy Act safeguards with respect to such records.

4. Disclosure may be made to officials of the United States Nuclear Regulatory Commission which, by Federal regulation, licenses, inspects and enforces the regulations governing the use of radioactive materials.

5. Radiation exposure and/or training and experience history may be transferred to new employer.

6. A record may be disclosed for a research purpose, when the Department: (A) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (B) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (C) has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (a) in emergency circumstances affecting the health or safety of any individual, (b) for use in another research project, under these same conditions, and with written authorization of the Department, (c) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (d) when required by law; (D) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

Records are maintained in file cabinets or in a computer database maintained by the Radiation Safety Branch (RSB). Records may be stored in file folders, magnetic tapes, magnetic disks, optical disks and/or other types of data storage devices.

RETRIEVABILITY:

Records are retrieved by name, unique RSB assigned identification number, or social security number.

SAFEGUARDS:

1. Authorized Users: Employees who maintain this system are instructed to grant regular access only to RSB staff, authorized contractor personnel, U.S. Nuclear Regulatory Commission Inspectors, Radiation Safety Committee Members, other appropriate NIH administrative and management personnel with a need to know. Access to information is thus limited to those with a need to know.

2. Physical Safeguards: Rooms where records are stored are locked when not in use. During regular business hours, rooms are unlocked but are controlled by on-site personnel. Individually identifiable records are kept in locked file cabinets or rooms under the direct control of the Project Director.

3. Procedural Safeguards: Names and other identifying particulars are deleted when data from original records are encoded for analysis. Data stored in computers is accessed through the use of keywords known only to authorized users. The computer terminals are in secured areas and keywords needed to access data files will be changed frequently.

4. Technical Safeguards: Computerized records are accessible only through a series of code or keyword commands available from and under direct control of the Project Director or his/her delegated representatives. The computer records are secured by a multiple level security system which is capable of controlling access to the individual data field level. Persons having access to the computer database can be restricted to a confined application which only permits a narrow "view" of the data. Data on computer files is accessed by keyword known only to authorized users who are NIH or contractor employees involved in work for the program.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, supplementary Chapter PHS hf: 45–13, the Department's Automated Information Systems Security Program Handbook, and the National Institute of Standards and Technology Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31).

RETENTION AND DISPOSAL:

Records are retained and disposed of under the authority of the NIH Records Control Schedule contained in NIH Manual Chapter 1743, Appendix 1—"Keeping and Destroying Records" (HHS Records Management Manual, Appendix B–361): Item 1300–B–9 for exposure incident files, which allows records to be destroyed after 10 years; and item 1300–B–10 for radiation exposure records, which does not allow disposal at this time. Refer to the NIH Manual Chapter for specific retention and disposition instructions.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Support Services Unit, Radiation Safety Services Section, Radiation Safety Branch, DS, ORS, Building 21, Room 104, 9000 Rockville Pike, Bethesda, Maryland 20892.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the system manager as listed above.

The requestor must also verify his or her identity by providing either a notarization of the request or a written certification that the requestor is whom he or she claims to be. The request should include: (a) Full name, and (b) appropriate dates of participation.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requestors should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosure of their records, if any.

CONTESTING RECORD PROCEDURE:

Contact the official under notification procedures above, reasonably identify the record, specify the information to be contested, and state the corrective action sought with supporting information. The right to contest records is limited to information which is incomplete, irrelevant, incorrect, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individual, previous employers and educational institutions, contractors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91–23160 Filed 9–25–91; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–41–5700; WYW99414]

Proposed Reinstatement of Terminated Oil and Gas Lease

September 16, 1991.

Pursuant to the provisions of Public Law 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW99414 for lands in Niobrara County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW99414 effective June 1, 1991, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly J. Poteet,

Supervisory Land Law Examiner.

[FR Doc. 91–23154 Filed 9–25–91; 8:45 am]

BILLING CODE 4310–22–M

[NM–030–01–4760–13]

Access Road to the Holloman Lake Wildlife Observation Area in Otero County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: Notice is hereby given that effective September 26, 1991, approximately 1¼ miles of the access road immediately north from U.S. Highway 70 to the Holloman Lake Wildlife Observation Area is open for use. The Road is located in T. 17 S., R 8 E., Section 28, NE¼SE¼; SE¼NE¼; Section 22, SW¼SW¼, NW¼SW¼ originating from U.S. Highway 70.

The area was previously closed to prevent public contact with an unknown liquid, disposed of in three, white plastic, 55-gallon drums and to allow for an Emergency Response Contractor to sample liquid contained in the drums to determine if hazardous materials were present.

FOR FURTHER INFORMATION CONTACT: Richard T. Watts at the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005 or at (505) 525–8228.

Dated: September 20, 1991.

C.D. Sykes,

Acting District Manager.

[FR Doc. 91–23196 Filed 9–25–91; 8:45 am]

BILLING CODE 4310–FB–M

[G–010–4920–10–4403/GI–0129; NM 83357]

Realty Action; Exchange of Lands in New Mexico

AGENCY: Bureau of Land Management, Albuquerque District, Interior.

ACTION: Notice of realty action for a proposed land exchange NM 83357. Exchange of withdrawn public land and private land in McKinley and San Juan Counties, New Mexico.

SUMMARY: The following described withdrawn public lands have been determined to be suitable for disposal by exchange under the authority of the Chaco National Historic Park Act of 1980 (Public Law 96–550), 16 U.S.C. 410ii.

New Mexico Principal Meridian

T. 11 N., R. 19 W.,	
Sec. 5: SW/4	160.00
Sec. 7: Lots 1, 2, E/2NW/4, NE/4	317.81
T. 11 N., R. 20 W.,	
Sec. 1: Lots 1, 2, S/2NE/4, SW/4	320.14
Sec. 5: SE/4	160.00
Sec. 9: NW/4, SE/4	320.00
Sec. 11: N/2	320.00
T. 12 N., R. 18 W.,	
Sec. 1: Lots 1–4, S/2N/2, S/2	641.72
Sec. 3: Lots 1, 2, S/2NE/4, SE/4	314.63
Sec. 11: N/2, SE/4	480.00
Sec. 13: All	640.00
Sec. 15: S/2, N/2N/2	480.00
Sec. 23: All	640.00
Sec. 25: N/2, N/2S/2	480.00
Sec. 27: E/2, NW/4	480.00
Sec. 35: All	640.00
T. 12 N., R. 20 W.,	
Sec. 33: SE/4	160.00
T. 12 N., R. 21 W.,	
Sec. 11: E/2	320.00
T. 13 N., R. 11 W.,	
Sec. 11: N/2	320.00
T. 13 N., R. 17 W.,	
Sec. 5: S/2N/2, S/2	480.00
T. 13 N., R. 20 W.,	
Sec. 5: Lots 1, 2, S/2NE/4	159.74

Sec. 9: N/2	320.00
Sec. 19: Lots 1, 2, E/2NW/4	159.87
Sec. 23: All	640.00
Sec. 27: NE/4	160.00
T. 13 N., R. 21 W.,	
Sec. 1: SE/4	160.00
Sec. 3: Lots 1, 2, 3 & 4	131.31
Sec. 13: S/2, SE/4NE/4	360.00
Sec. 15: Lots 2, 3, & 4	97.20
T. 14 N., R. 18 W.,	
Sec. 3: S/2	320.00
Sec. 7: Lots 1–4, E/2W/2, E/2	640.60
Sec. 9: N/2	320.00
Sec. 13: SW/4	160.00
Sec. 15: N/2, N/2S/2	480.00
Sec. 17: All	640.00
Sec. 19: E/2	320.00
Sec. 21: SE/4	160.00
Sec. 23: S/2	320.00
Sec. 27: N/2	320.00
Sec. 33: SW/4	160.00
T. 14 N., R. 19 W.,	
Sec. 1: SE/4	160.00
Sec. 3: Lots 1–4, S/2N/2, S/2	638.12
Sec. 11: All	640.00
Sec. 15: W/2W/2	160.00
Sec. 17: NE/4, S/2	480.00
Sec. 23: All	640.00
Sec. 25: SW/4	160.00
Sec. 27: NE/4	160.00
T. 14 N., R. 20 W.,	
Sec. 17: All	640.00
Sec. 19: Lots 1–4, E/2W/2, E/2	638.56
Sec. 21: N/2SW/4	80.00
T. 14 N., R. 21 W.,	
Sec. 35: S/2, SW/4NW/4, S/2NE/4, NE/4NE/4	480.00
T. 15 N., R. 11 W.,	
Sec. 1: Lots 1–4, S/2N/2, SE/4	476.60
Sec. 3: Lots 1–4	153.32
Sec. 9: NW/4	160.00
Sec. 19: Lots 1–4, E/2W/2	297.08
Sec. 21: All	640.00
Sec. 25: S/2	320.00
Sec. 29: S/2	320.00
Sec. 31: E/2	320.00
T. 15 N., R. 17 W., NMPM	
Sec. 14: Lots 2, 3, 4, 6	155.34
T. 15 N., R. 20 W.,	
Sec. 1: Lots 1–4, S/2N/2, S/2	639.68
Sec. 3: Lots 1, 2, S/2NE/4	159.28
Sec. 5: S/2	320.00
T. 15 N., R. 21 W.,	
Sec. 11: S/2	320.00
Sec. 13: NE/4	160.00
Sec. 15: Lots 1, 2, 3, & 4	122.00
T. 16 N., R. 11 W.,	
Sec. 1: Lots 3, 4, S/2NW/4	162.58
Sec. 3: Lots 1–4, S/2N/2	330.88
Sec. 11: NW/4	160.00
Sec. 13: SW/4	160.00
Sec. 21: SE/4	160.00
Sec. 23: NW/4	160.00
Sec. 25: All	640.00
Sec. 31: SE/4	160.00
Sec. 35: W/2	320.00
T. 17 N., R. 5 W.,	
Sec. 1: Lots 1–4, S/2N/2, S/2	640.64
Sec. 3: SW/4	160.00
T. 17 N., R. 6 W.,	
Sec. 17: Lots 1–4, W/2E/2, W/2	586.88
Sec. 19: Lots 1–4, E/2W/2, E/2	639.00
Sec. 29: Lots 1–4, W/2E/2, W/2	591.42
Sec. 31: Lots 1–4, E/2W/2, E/2	639.72
T. 17 N., R. 8 W.,	
Sec. 17: SW/4	160.00
Sec. 19: NE/4	160.00
T. 17 N., R. 11 W.,	
Sec. 3: Lots 1, 2, S/2NE/4	161.08
Sec. 11: All	640.00
Sec. 13: All	640.00
Sec. 15: All	640.00
Sec. 19: Lots 3, 4, E/2SW/4	160.08
Sec. 21: NW/4	160.00
Sec. 27: SE/4	160.00
Sec. 31: Lots 1–4, E/2W/2, E/2	639.20
Sec. 33: SE/4	160.00
T. 17 N., R. 13 W.,	
Sec. 1: Lots 3, 4, S/2NW/4, S/2	480.41
Sec. 3: Lots 1, 2, S/2NE/4, SE/4	320.24
Sec. 5: Lots 3, 4, S/2NW/4, S/2	479.89
Sec. 7: Lots 1–4, E/2W/2, NE/4	479.78
Sec. 9: NW/4	160.00
Sec. 13: NE/4	160.00
Sec. 15: SE/4	160.00
Sec. 21: NW/4	160.00
Sec. 25: NE/4	160.00
Sec. 27: SE/4	160.00
Sec. 31: Lots 1–4, E/2W/2, E/2	640.70
T. 18 N., R. 6 W.,	
Sec. 19: NE/4	160.00
Sec. 21: SE/4	160.00
Sec. 25: SW/4	160.00
T. 18 N., R. 7 W.,	
Sec. 13: N/2	320.00
Sec. 17: SE/4	160.00
T. 18 N., R. 8 W.,	
Sec. 3: Lots 3, 4, S/2NW/4, SW/4	318.84
Sec. 5: Lots 1, 2, S/2NE/4	158.11
Sec. 7: Lots 1, 2, E/2NW/4, SE/4	318.09
Sec. 9: S/2, NW/4	480.00
T. 18 N., R. 12 W.,	
Sec. 3: Lots 1, 2, S/2NE/4, SE/4	324.27
Sec. 5: Lots 1–4, S/2N/2, S/2	642.40
Sec. 7: Lots 1–4, E/2W/2, E/2	631.64
Sec. 9: All	640.00
Sec. 15: All	640.00
Sec. 17: All	640.00
Sec. 19: Lots 1–4, E/2W/2, E/2	635.48
Sec. 21: All	640.00
Sec. 27: All	640.00
Sec. 29: All	640.00
Sec. 33: N/2	320.00
Sec. 35: All	640.00
T. 19 N., R. 8 W.,	
Sec. 19: E/2	320.00
Sec. 21: S/2SE/4	80.00
Sec. 29: N/2	320.00
Sec. 33: All	640.00
Sec. 35: All	640.00
T. 19 N., R. 9 W.,	
Sec. 3: SE/4	160.00
Sec. 11: All	640.00
Sec. 13: All	640.00
Sec. 15: NE/4	160.00
Sec. 25: All	640.00
Sec. 35: SE/4	160.00
T. 19 N., R. 12 W.,	
Sec. 5: Lots 1–4, S/2N/2, S/2	651.36
Sec. 7: Lots 1–4, E/2W/2, E/2	634.56
Sec. 9: S/2, NW/4	480.00
Sec. 15: SW/4	160.00
Sec. 17: All	640.00
Sec. 19: Lots 3, 4, E/2SW/4	157.95
Sec. 27: NE/4	160.00
Sec. 29: S/2, NW/4	480.00
Sec. 31: Lots 1–4, E/2W/2, E/2	636.52
Sec. 35: E/2	320.00
T. 19 N., R. 13 W.,	
Sec. 1: Lots 1–4, S/2N/2, S/2	640.48
Sec. 3: Lots 1–4, S/2N/2, S/2	642.40
Sec. 11: N/2, SW/4	480.00
Sec. 13: Lots 1–16	688.87
Sec. 23: SW/4, E/2	480.00
Sec. 25: Lots 1–16	667.54
Sec. 27: S/2	320.00
Sec. 35: Lots 1–16	673.16
T. 20 N., R. 7 W.,	
Sec. 5: S/2	320.00
Sec. 11: NE/4, SW/4	320.00
Sec. 19: Lots 3, 4, E/2SW/4	163.92
Sec. 21: E/2	320.00
Sec. 29: S/2	320.00
Sec. 33: SW/4	160.00
T. 20 N., R. 8 W.,	
Sec. 9: All	640.00
Sec. 11: W/2	320.00
Sec. 13: All	640.00
Sec. 15: SE/4	160.00
Sec. 23: All	640.00
Sec. 25: E/2	320.00
Sec. 27: N/2	320.00
T. 21 N., R. 13 W.,	
Sec. 11: NW/4	160.00
Sec. 15: All	640.00
Sec. 27: All	640.00
Sec. 33: All	640.00
T. 22 N., R. 13 W.,	
Sec. 1: Lots 3, 4, S/2NW/4	160.60
Sec. 3: SW/4	160.00
Sec. 11: S/2	320.00
Sec. 13: N/2SE/4, NE/4, NE/4SW/4	280.00
Sec. 23: NE/4	160.00
Sec. 35: All	640.00
T. 23 N., R. 13 W.,	
Sec. 27: NW/4	160.00
Sec. 31: Lots 1–4, E/2W/2	261.20
Sec. 35: SE/4, NW/4	320.00

Comprising 67,622.89 acres of withdrawn public land.

In Exchange for these lands, the United States will acquire all of the following described lands from the Navajo Tribe (Tribe) under the authority of the Indian Land Consolidation Act, 25 U.S.C. 2201.

New Mexico Principal Meridian

T. 17 N., R. 18 W.,	
Sec. 33: SW/4SE/4SE/4	10.00
T. 19 N., R. 11 W.,	
Sec. 27: W/2SW/4, S/2NW/4	160.00
Sec. 28: SE/4, S/2NE/4	240.00
Sec. 29: SW/4SE/4	40.00
Sec. 33: N/2N/2NE/4	40.00
T. 20 N., R. 10 W., NMPM	
Sec. 3: That portion lying north-easterly from the 6400 foot contour line	50.20
Sec. 11/12: That portion lying north-easterly from the 6400 foot contour line	192.40
T. 20 N., R. 11 W.,	
Sec. 22: NE/4NE/4	40.00
Sec. 23: W/2NW/4NW/4	20.00
T. 20 N., R. 12 W., NMPM	
Sec. 5: Lots 3, 4, S/2NW/4, SW/4, W/2SE/4	401.23

Sec. 6: Lot 8	47.07
Sec. 8: SW/4	160.00
Sec. 17: NW/4NE/4, N/2NW/4	120.00
T. 20 N., R. 13 W.,	
Sec. 7: S/2NW/4, W/2SW/4NE/4	100.00
T. 21 N., R. 9 W.,	
Portions of Sections 3 and 4	131.00
T. 21 N., R. 10 W.,	
Sec. 4: Lots 3, 4, S/2N/2, S/2	558.65
Sec. 5: Lots 1, 3, E/2SW/4, SE/4	319.01
Sec. 9: All	640.00
Sec. 30: Lots 1, 2, 3, 4, E/2W/2, E/2	636.56
Sec. 33: Portion lying NE from the 6400 foot contour line	135.40
Sec. 34: Portion lying NE from the 6400 foot contour line	254.00
T. 21 N., R. 11 W., NMPM	
Sec. 15: All	640.00
Sec. 21: All	640.00
Sec. 22: All	640.00
Sec. 23: All	640.00
Sec. 25: All	640.00
Sec. 26: NE/4	160.00
T. 21 N., R. 12 W., NMPM	
Sec. 24: NW/4	160.00
Sec. 25: All	640.00
Sec. 31: E/2SE/4	80.00

Comprising 8,537.52 acres of private and trust lands.

The public interest will be served by the completion of this exchange. Benefits to be derived include:

1. Portions of the lands to be acquired (7,756 acres) are within the boundaries of the expanded Chaco Culture National Historic Park and will be managed by the National Park Service (NPS) as part of the Park upon acquisition. The lands will greatly enhance the ability of the NPS to manage the Park and provide visitors with a more complete and unique Chacoan experience.

2. Some of the lands to be acquired (781 acres) are Chacoan outliers identified in Public Law 96–550 for protection. These lands will come into Federal ownership and be managed by the Bureau of Land Management (BLM) for the enjoyment and education of future generations.

3. All of the parcels that the Tribe will be acquiring have been withdrawn and administered by the Bureau of Indian Affairs for many years. They are located in areas with a high percentage of Indian ownership. This exchange will help fulfill the purpose of the withdrawals and block up Indian ownership.

The exchange will be made on other than equal values as allowed by Public Law 96–550. Appraisals will not be made on the properties.

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions.

1. All mineral deposits shall be reserved to the United States along with the right to prospect for, mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1890 (43 U.S.C. 945).

3. All valid existing rights (e.g., rights-of-way and leases of record).

Publication of this notice in the Federal Register will not further segregate the already withdrawn public lands.

SUPPLEMENTARY INFORMATION:

FOR FURTHER INFORMATION CONTACT: Bob Moore, Farmington Resource Area (505) 327–5344. Information relating to the exchange is available for review at the Farmington Resource Area Office, 1235 La Plata Highway, Farmington, New Mexico 87401.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the Area Manager, Farmington Resource Area, Bureau of Land Management at the above address. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: September 20, 1991.

Robert T. Dale,

District Manager.

[FR Doc. 91–23182 Filed 9–25–91; 8:45 am]

BILLING CODE 4310–FB–M

[G–010–4920–10–4403/GI–0128; NM83247]

Realty Action; Exchange of Lands in New Mexico

AGENCY: Bureau of Land Management, Albuquerque District, Interior.

ACTION: Notice of realty action on proposed land exchange NM 83247. Exchange of public land and private land in McKinley, Sandoval and San Juan Counties, New Mexico.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under the authority of section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716.

New Mexico Principal Meridian

T. 13 N., R. 19 W., NMPM	
Sec. 2: SW/4	160.00
T. 14 N., R. 13 W., NMPM	
Sec. 20: SW/4	160.00
T. 14 N., R. 18 W.,	
Sec. 9: S/2	320.00
Sec. 26: SW/4	160.00
T. 15 N., R. 11 W.,	
Section 29: N/2	320.00
T. 16 N., R. 11 W., NMPM	
Sec. 22: SW/4	160.00
T. 16 N., R. 12 W., NMPM	
Sec. 26: SE/4	160.00
T. 16 N., R. 15 W., NMPM	
Sec. 14: SW/4	160.00
T. 16 N., R. 17 W., NMPM	
Sec. 14: NW/4	160.00
T. 17 N., R. 4 W., NMPM	
Sec. 7: NE/4	160.00
Sec. 17: NW/4	160.00
T. 17 N., R. 6 W., NMPM	
Sec. 11: NW/4	160.00
Sec. 23: NW/4	160.00
Sec. 25: NW/4	160.00
Sec. 27: SW/4	160.00
Sec. 32: Lots, 1, 2, 5, 6, W/2NE/4	159.39
T. 17 N., R. 13 W., NMPM	
Sec. 28: SW/4	160.00
T. 18 N., R. 3 W., NMPM	
Sec. 21: SW/4	160.00
Sec. 28: NW/4	160.00
Sec. 29: SE/4	160.00
T. 18 N., R. 4 W., NMPM	
Sec. 20: NW/4	160.00
Sec. 24: SE/4	160.00
T. 18 N., R. 5 W., NMPM	
Sec. 8: SW/4	160.00
Sec. 9: NW/4	160.00
Sec. 14: NE/4	160.00
Sec. 18: NE/4	160.00
T. 19 N., R. 3 W., NMPM	
Sec. 28: NW/4	160.00
T. 19 N., R. 4 W., NMPM	
Sec. 6: Lots 1, 2, S/2NE/4	141.93
Sec. 7: Lots 2, 3, SE/4NW/4, NE/4SW/4	156.56
Sec. 9: SE/4	160.00
Sec. 24: N/2	320.00
T. 19 N., R. 5 W., NMPM	
Sec. 3: S/2	320.00
T. 19 N., R. 6 W., NMPM	
Sec. 6: SE/4	160.00
T. 20 N., R. 5 W., NMPM	
Sec. 4: SW/4	160.00
Sec. 27: N/2	320.00
Sec. 30: Lots 3, 4, E/2SW/4	161.80
Sec. 34: NW/4	160.00
Sec. 36: N/2SW/4, S/2NW/4	160.00
T. 20 N., R. 7 W., NMPM	
Sec. 2: SW/4	160.00
Sec. 6: Lots 3, 4, 5, SE/4NW/4	165.40
T. 20 N., R. 8 W., NMPM	
Sec. 12: E/2	320.00
T. 21 N., R. 5 W., NMPM	
Sec. 8: NE/4	160.00
Sec. 9: NW/4	160.00
T. 21 N., R. 7 W., NMPM	
Sec. 32: NW/4	160.00
T. 21 N., R. 8 W.,	
Sec. 22: SW/4	160.00
Sec. 34: Lots 5, 6, 7, 8	166.41
T. 22 N., R. 6 W., NMPM	
Sec. 6: SE/4	160.00
Sec. 7: NE/4	160.00
T. 22 N., R. 9 W., NMPM	
Sec. 27: W/2	320.00
Sec. 28: S/2	320.00
Sec. 32: NE/4	160.00
Sec. 33: NW/4	160.00

T. 22 N., R. 10 W., NMPM	
Sec. 17: SW/4	160.00
Sec. 19: Lots 3, 4, E/2SW/4	158.65
Sec. 23: SE/4	160.00
Sec. 24: W/2	320.00
Sec. 30: Lots 1, 2, E/2NW/4, NE/4	318.53
T. 22 N., R. 11 W., NMPM	
Sec. 22: NE/4	160.00
T. 23 N., R. 6 W., NMPM	
Sec. 21: N/2SE/4NE/4	20.00
T. 23 N., R. 8 W., NMPM	
Sec. 2: Lots 1, 2, S/2NE/4	161.17
Sec. 5: Lots 1, 2, S/2NE/4	159.96
T. 23 N., R. 13 W., NMPM	
Sec. 28: SW/4	160.00
T. 24 N., R. 9 W., NMPM	
Sec. 31: Lots 3, 4, E/2SW/4	161.33
T. 24 N., R. 11 W., NMPM	
Sec. 1: Lots 5, 6, 7, 8	172.48
T. 25 N., R. 9 W., NMPM	
Sec. 29: SE/4	160.00
T. 25 N., R. 10 W., NMPM	
Sec. 21: NE/4	160.00
Sec. 35: SE/4	160.00
T. 25 N., R. 12 W., NMPM	
Sec. 24: NE/4	160.00

Comprising 12,343.64 acres of public land.

In exchange for these lands, the United States will acquire some or all of the following described lands from the Navajo Tribe (Tribe) under the authority of the Indian Land Consolidated Act, 25 U.S.C. 2201.

New Mexico Prime Meridian	
T. 19 N., R. 7 W.,	
Sec. 27: SE/4	160.00
Sec. 29: All	640.00
Sec. 31: Lots 1–14, NE/4, E/2NW/4	692.02
Sec. 33: Lots 1–12, N/2	682.88
T. 24 N., R. 12 W.,	
Sec. 3: Lots 8, 9, 16, 17	170.59
Sec. 4: Lots 5–20	679.37
Sec. 5: Lots 5, 6, 7, 10–15, 18–20	509.24
Sec. 8: Lots 1–16	679.08
Sec. 9: Lots 3–6, 12, 13	254.65
Sec. 17: Lots 1–16	680.54
Sec. 18: Lots 5–20	672.39
Sec. 19: Lots 5–19	630.80
Sec. 20: Lots 2–6	212.94
Sec. 30: Lots 6–11 & 14–19	503.60
Sec. 31: Lots 6–11 & 14–16, 18, 19	465.40
T. 24 N., R. 13 W.,	
Sec. 13: NE/4, S/2NW/4, S/2	560.00
Sec. 14: S/2SW/4, SE/4	240.00
Sec. 15: S/2S/2	160.00
Sec. 21: S/2NE/4, S/2SW/4, SE/4	320.00
Sec. 22: All	640.00
Sec. 23: All	640.00
Sec. 24: All	640.00
Sec. 25: All	640.00
Sec. 26: All	640.00
Sec. 27: E/2, NW/4	480.00
Sec. 28: N/2	320.00
Sec. 29: E/2NE/4, SW/4NE/4, S/2NW/4	200.00
Sec. 35: All	640.00
Sec. 36: N/2, SW/4, N/2SE/4	560.00
T. 25 N., R. 12 W.,	
Sec. 32: All	640.00
Sec. 33: SW/4NW/4, SE/4, SW/4SE/4	240.00

Comprising 15,193.5 acres of private and trust lands.

The public interest will be served by this exchange. Benefits to be derived include:

1. A large block of the lands to be acquired from the Tribe form a link between the Bisti and De-Na-Zin wilderness areas. The acquisition of these lands will enhance the management potential of both areas.

2. Part of the lands to be acquired from the Tribe are within the designated Chacra Mesa Special Management Area and their acquisition will increase the ability of the Bureau to manage the area for the protection of the numerous cultural sites found within it.

3. Most of the lands being transferred to the Tribe are currently occupied by members of the Navajo Tribe without authorization. Tribal ownership of the parcels will help secure rights for the occupants to remain and will also make it legal to have utilities (water, electricity, etc.) installed and have home improvements done.

4. All the parcels that the Tribe will be acquiring are located in areas with high Indian ownership. The exchange will help in blocking up land ownership.

The value of the lands being exchanged will be approximately equal. Equalization will be achieved by a cash equalization payment not to exceed 25 percent of the total value of lands to be transferred out of Federal ownership or by adjusting the acreages transferred. If an acreage adjustment is used to equalize the values, the authorized officer may waive the cash equalization payment if it is less than three percent of the value of the lands being transferred out of Federal ownership or $15,000, whichever is less, in accordance with section 9 of the Federal Land Exchange Facilitation Act of 1988 (Public Law 100–409).

Lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. All mineral deposits shall be reserved to the United States along with the right to prospect for, mine and remove such deposits under applicable law.

2. The right to construct ditches and canals across said lands under authority of the Act of August 30, 1890 (43 U.S.C. 945).

3. All valid existing rights (e.g., rights-of-way and leases of record).

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the public land laws and the general mining laws, but not the mineral leasing laws. The segregative effect will and upon issuance of patent or two years from the date of publication, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Bob Moore, Farmington Resource Area (505) 327–5344. Information relating to the exchange is available for review at the Farmington Resource Area Office, 1235 La Plata Highway, Farmington, New Mexico 87401.

For a period of 45 days from the date of first publication of this notice interested parties may submit comments to the Area Manager, Farmington Resource Area, Bureau of Land Management at the above address. Objections will be reviewed by the State Director, who may sustain, vacate or modify this realty action. In the absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: September 20, 1991.

Robert T. Dale,

District Manager.

[FR Doc. 91–23183 Filed 9–25–91; 8:45 am]

BILLING CODE 4310–FB–M

Bureau of Reclamation

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Price-San Rafael Rivers Unit, Utah

AGENCY: Bureau of Reclamation (Interior) and Soil Conservation Service (Agriculture).

ACTION: Notice of availability and notice of public hearings on the planning report/draft environmental impact statement (PR/DEIS): INT–DES 91–25.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended), the Bureau of Reclamation (Reclamation) and the Soil Conservation Service (SCS) have prepared the PR/DEIS for the Price-San Rafael Rivers Unit, Utah, of the Colorado River Water Quality Improvement Program/Colorado River Basin Salinity Control Program. The preferred plan would reduce or curb the increase of salt contributed to the Colorado River from agricultural lands in the project area in east-central Utah by a system of irrigation improvements, eliminate the use of canals for winter livestock water, and replace this water with stock ponds and domestic system delivery. Under the preferred plan,

Reclamation would be responsible for the construction of winter water facilities and off-farm pressurized laterals. The SCS would be responsible for onfarm irrigation improvements including installation of sprinkler systems and management.

DATES: A 90-day review period commences with the publication of this notice. Written comments on the PR/DEIS may be submitted to the Regional Director, Bureau of Reclamation, Upper Colorado Region, or the Utah State Conservationist, Soil Conservation Service, at the addresses provided below within the 90-day review period.

Public hearings on the PR/DEIS will be held on the following dates at the locations indicated.

Session 1: Tuesday, November 12, 1991; 7 p.m., Carbon County Courthouse; 185 East Main, Price, Utah.

Session 2: Wednesday, November 13, 1991; 7 p.m., Emery County Courthouse, 75 East Main, Castle Dale, Utah.

ADDRESSES: Copies of the PR/DEIS may be obtained on request to the following:

- Regional Director, Bureau of Reclamation, 125 South State Street or PO Box 11568, Salt Lake City, UT 84147, Telephone: (801) 524–5580;
- Utah Projects Office, Bureau of Reclamation, 302 East 1860 South, Provo, UT 84603, Telephone: (801) 379–1000;
- State Conservationist, Soil Conservation Service, 125 South State Street, room 4012, Salt Lake City, UT 84147, Telephone: (801) 524–5050.

Copies of the PR/DEIS are available for inspection at the following locations:

- Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, room 167, Denver, Colorado.
- Soil Conservation Service, 125 South State Street, Salt Lake City, Utah.
- National Agricultural Library Building, Beltsville, Maryland.
- Bureau of Reclamation, Technical Liaison Division, U.S. Department of the Interior, 1849 C Street, NW., room 7456, Washington, DC 20240; telephone: (202) 208–4662.

Libraries

American Fork Library, 64 South 100 East, American Fork, Utah.

National Agricultural Library Building, Beltsville, Maryland.

Southern Utah State College Library, 351 West Center Street, Cedar City, Utah.

Merrill Library, Utah State University, Logan, Utah.

Weber State College Library, Ogden, Utah.

Price City Library, Price, Utah.

Orem City Library, 56 N. State, Orem, Utah.

Provo City Library, 13 N. 100 E., Provo, Utah.

Harold B. Lee Library, Brigham Young University, Provo, Utah.

Salt Lake City Public Library, 209 East 500 South, Salt Lake City, Utah.

Marriott Library, University of Utah, Salt Lake City, Utah.

Nightingale Memorial Library, Westminster College, 1840 South 1300 East, Salt Lake City, Utah.

Sprague Library, 2131 South 1100 East, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Mr. Harold Sersland, (Regional Environmental Officer, Upper Colorado Region, Salt Lake City, Utah), (801) 524–5580; Francis T. Holt, (State Conservationist, Salt Lake City, Utah), (801) 524–5050.

SUPPLEMENTARY INFORMATION: Increased levels of salinity in the Colorado River have made it necessary to study alternatives of salt reduction in the Colorado River basin. Reclamation and the SCS were given a charge in Public Law 96–375 to investigate salinity reduction measures within the Price and San Rafael River basins. Studies of the Price-San Rafael area included analysis of existing irrigation practices and salt loading mechanisms, development of alternatives for reducing the salt contribution, identification of potential beneficial uses of saline water, effects of no salinity reduction measures, evaluation of alternatives, and selection of a preferred plan.

The selected preferred plan would reduce the area salt contribution to the Colorado River by about 161,000 tons annually. Under the preferred plan, improvements would include a system of onfarm and off-farm irrigation delivery. These improvements would be jointly implemented by Reclamation and the SCS. Other alternatives include a modified irrigation improvement plan without improved surface irrigation and a no action alternative that would entail no improvements or changes in irrigation.

Environmental effects due to implementation of the preferred plan would include a loss of wetland and other wildlife habitat which would be fully mitigated under the off-farm portion of the plan and voluntarily replaced under onfarm measures. Impacts to area endangered fishes would result from depletion of flows to the Green River basin and be offset by contributions to the Recovery Implementation Program for Endangered Fish Species in the Upper Colorado River Basin.

HEARING PROCESS INFORMATION: Organizations and individuals wishing to present statements at the hearings should contact the SCS Field Office, 350 North 400 East, Price, UT 84501, Telephone (801) 637–0041, to announce their intention to participate. Requests for scheduled presentations will be accepted through 4 p.m. on November 8, 1991.

Oral comments at the hearing will be limited to 10 minutes. The hearing officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. Whenever possible, speakers will be scheduled according to the time preference mentioned in their letter or telephone requests. Speakers not present when called will lose their privilege in the scheduled order and will be recalled at the end of the scheduled speakers.

Written comments from those unable to attend or those wishing to supplement their oral presentations at the hearing should be received by Reclamation's Upper Colorado Regional Office, Utah Projects Office, or the SCS State Office at the above addresses by the end of the 90-day comment period for inclusion in the hearing record.

Dated: August 21, 1991.

Joe D. Hall,

Deputy Commissioner.

Ronald R. Nichols,

Public Affairs Specialist.

[FR Doc. 91–23225 Filed 9–25–91; 8:45 am]

BILLING CODE 4310–09–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 10, 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 October 11, 1991.

Carol D. Shull,

Chief of Registration, National Register.

KANSAS

Franklin County

Wellsville Bank Building, 418 Main St., Wellsville, 91001519

MAINE

Cumberland County

Mallett Hall, Rt. 9, E side, N of Dyer Rd., Pownal Center, 91001511

Hancock County

Stonington Opera House, NW corner of Main St. and Russ Hill Rd., Stonington, 91001509
West Gouldsboro Village Library, ME 186, E side, between Jones Cove and Jones Pond, West Gouldsboro, 91001512

Kennebec County

Wing Family Cemetery, Pond Rd., E side, N of jct. with ME 133, Wayne vicinity, 91001514

Knox County

Wharf House, SE of jct. of Main and Smith Sts., North Haven, 91001508

Waldo County

Greer's Corner School, SE corner of Back Belmont and Greer's Corner Rd., Belmont Corner vicinity, 91001513
Mortland Family Farm, E side Mortland Rd. N of Searsport, Searsport vicinity, 91001510

York County

Hedden Site, Address Restricted, Kennebunk vicinity, 91001515

MISSOURI

Christian County

Southwest Missouri Prehistoric Rock Shelter and Cave Sites Discontiguous Archeological District [Prehistoric Rock Shelter and Cave Sites in Southwestern Missouri MPS], Address Restricted, Chadwick vicinity, 91001517

Cole County

Missouri State Penitentiary Warden's House, 700 E. Capitol Ave., Jefferson City, 91001518

NORTH CAROLINA

Alleghany County

Jarvis House, N end NC 1439, N of jct. with NC 18, Sparta vicinity, 91001506

Buncombe County

Gunston Hall, 324 Vanderbilt Rd., Biltmore Forest, 91001505

Stokes County

Hanging Rock State Park Bathhouse, End of NC 2015 S of jct. with NC 1001, Hanging Rock State Park, Danbury vicinity, 91001507

Wake County

Royall Cotton Mill Commissary, Jct. of Brick and Brewer Sts., Wake Forest, 91001504

WASHINGTON

Thurston County

South Capitol Neighborhood Historic District, Roughly bounded by Capitol Lake, US 5 and 16th Ave., Olympia, 91001516

The commenting period has been waived for the following properties:

NEVADA

Clark County

Desert Valley Museum, 31 W. Mesquite Blvd., Mesquite, 91001527

Pershing County

Vocational—Agriculture Building, 1170 Elmhurst St., Lovelock, 91001528

[FR Doc. 91-23151 Filed 9-25-91; 8:45 am]

BILLING CODE 4310-70-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meeting Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of Meeting/Public Hearing.

SUMMARY: In according with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming of the Commission.

Dates/Times

September 29, 1991—Full Commission Meeting Atlanta Georgia. Time: 5 p.m.–7 p.m.
October 9, 1991—Public Hearing, Cleveland, Ohio. Time: 9:30 a.m.–3 p.m.
October 11, 1991—Public Hearing, Detroit, Michigan. Time: 9:30 a.m.–3 p.m.
October 14, 1991—Public Hearing, Columbus, Ohio. Time: 9:30 a.m.–3 p.m.
October 16, 1991, 1991—Public Hearing, Boston, Massachusetts. Time: 9:30 a.m.–3 p.m.
October 18, 1991—Public Hearing, Baltimore, Maryland. Time: 9:30 a.m.–3 p.m.
October 21, 1991—Full Commission Meeting and Public Hearing Philadelphia, Pennsylvania. Time: 9:30 a.m.–3 p.m.(Hearing) Time: 4 p.m.–6 p.m. (Meeting)
November 6, 1991, 1991—Public Hearing, St. Thomas. Time: 6 p.m.–9 p.m.
November 7, 1991—Public Hearing, St. John. Time: 6 p.m.–9 p.m.
November 8, 1991—Public Hearing, St. Croix. Time: 6 p.m.–9 p.m.
November 13, 1991—Public Hearing, Puerto Rico. Time: 9:30 a.m.–3 p.m.
November 20, 1991—Public Hearings, Washington, DC. Time: 1 p.m.–4 p.m.
November 21, 1991—Public Hearings, Washington, DC. Time: 9:30 a.m.–4 p.m.
November 22, 1991—Full Commission Meeting, Washington, DC. Time: 10 a.m.–2 p.m.
December 9, 1991—Public Hearing, Tampa, Florida. Time: 9:30 a.m.–3 p.m.
December 11, 1991—Public Hearing, Miami, Florida. Time: 9:30 a.m.–3 p.m.
December 18, 1991—Public Hearing, Dallas, Texas. Time: 9:30 a.m.–3 p.m.
December 20, 1991—Public Hearing, Houston, Texas. Time: 9:30 a.m.–3 p.m.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, NW., room 7121, Washington, DC 20005.

TYPE OF MEETING: Open.

Due to scheduling difficulties, this notice could not be published 15 days prior to the first meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 91-23176 Filed 9-25-91; 8:45 am]

BILLING CODE 6820-07-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Advisory Council on Arts Education; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Advisory Council on Arts Education will be held on October 8, 1991, from 1:30 p.m.–4:45 p.m. and October 9 from 9: a.m.–3:30 p.m. at the Kennedy Center for the Performing Arts, Washington, DC 20566

This meeting will be open to the public on a space available basis. The topics will be introductions and overview; purpose and organization of the Advisory Council; review of the National Endowment for the Arts; reauthorizing legislation and existing education programs; Chairman's vision and objectives for the Advisory Council including The Summit '92 Conference/ National Action Agenda, America 2000, improving partnerships and collaborations, and effective use of research; group discussion and consideration of future actions, summary.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms Yvonne M. Sabine, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: September 20, 1991.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–23115 Filed 9–25–91; 8:45 am]

BILLING CODE 7537–01–M

Humanities Panel; Meeting

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786–0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated January 15, 1978, I have determined that these meetings will be close to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. *Date:* October 10–11, 1991.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of Public Programs, for projects beginning after April 1, 1992.
2. *Date:* October 17–18, 1991.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of Public Programs, for projects beginning after April 1, 1992.
3. *Date:* October 24–25, 1991.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of Public Programs, for projects beginning after April 1, 1992.
4. *Date:* October 30, 1991.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 430.
   Program: This meeting will review Study Grants for College and University Teachers applications in Communication, Rhetoric and Film, submitted to the Division of Fellowships and Seminars, for projects beginning after May 1, 1992.
5. *Date:* October 31, 1991.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 315.
   Program: This meeting will review Study Grants for College and University Teachers applications in Comparative Literature and Romance Languages, submitted to the Division of Fellowships and Seminars, for projects beginning after May, 1992.
6. *Date:* October 31–November 1, 1991.
   Time: 8:30 a.m. to 5:30 p.m.
   Room: 415.
   Program: This meeting will review applications submitted for Humanities Projects in Media, submitted to the Division of Public Programs, for projects beginning after April 1, 1992.

David Fisher,

Advisory Committee Management Officer.

[FR Doc. 91–23223 Filed 9–25–91; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Developmental Biology; Meeting

Name: Advisory Panel for Developmental Biology.

Date & Time: October 14th-16th, 1991 8:30 a.m. to 5 p.m.

Place: Ramada Hotel, 404 N. Freeway, Tucson, AZ 85745, Telephone: 602/624–8341.

Type of Meeting: Closed.

Contact Person: Dr. Thomas Brady, Program Director, Developmental Biology, room 321, National Science Foundation, Washington, DC 20550.

Minutes: May be obtained from Contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research in Developmental Biology.

Agenda: Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data; such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

Dated: September 23, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–23210 Filed 9–25–91; 8:45 am]

BILLING CODE 7555–01–M

Division of Behavioral and Neural Sciences; Fall 1991 Panel Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide advice and recommendations to the National Science Foundation concerning the support of research, in the Behavioral and Neural Sciences Division. The agenda is to review and evaluate proposals as part of the selection process of awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), the Government in the Sunshine Act.

Dated: September 23, 1991.

M. Rebecca Winkler,

Committee Management Officer.

Anthropology

Archaeology, November 4–5, 1991, room 540B, Dr. John Yellen/(202) 357–7804.

Cultural Anthropology, November 12–13, 1991, room 1242, Dr. Stuart Plattner/(202) 357–7804.

Physical Anthropology, November 4–5, 1991, room 523, Dr. Mark Weiss/(202) 357–7804.

Language, Cognition and Social Behavior

Linguistics, November 6–8, 1991, Georgetown Harbor Mews, Dr. Paul Chapin/(202) 357–7696.

Human Cognition and Perception, October 21–23, 1991, room 523, Dr. Joseph Young/(202) 357–9898.

Social Psychology, November 7–8, 1991, room 1242, Dr. Jean Intermaggio/(202) 357–9485.

Biological Basis of Behavior

Animal Learning and Behavior, October 24–25, 1991, room 523, 8:30 a.m. – 5 p.m., Dr. Fred Stollnitz/(202) 357–7949.

Neural Mechanisms of Behavior, October 18–19, 1991, Holiday Inn at Fisherman's Wharf, San Francisco, CA, Dr. Kathie Olsen/(202) 357–7040.

Neuroscience

Sensory Systems, November 4–6, 1991, room 1242, Dr. Katherine Fite/(202) 357–7428.

Cellular Neuroscience, November 6–8, 1991, room 1243, Dr. Edward Lieberman/(202) 357–7471.

Developmental Neuroscience, November 20–22, 1991, The River Inn, Dr. Martha Bohn/(202) 357–7042.

All sessions will be closed and will be held from 9 a.m. to 5 p.m. unless otherwise indicated.

[FR Doc. 91–23209 Filed 9–25–91; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Research Career Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel In Research Career Development.

Dates: October 16–18, 1991.

Times: October 16–6 p.m. to 9 p.m.—Panel Chairs.

Meeting: October 17–8 a.m. to 5:30 p.m.—Panel Meeting. October 18–8 a.m. to 3:30 p.m.—Panel Meeting.

Place: Washington Sheraton Hotel, 2660 Woodley Rd. at Conn. Ave. NW., Washington, DC 20008.

Type of Meeting: Closed.

Purpose: To review and evaluate proposals as part of the selection process for awards. Because the proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals, the meetings are closed to the public. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Agenda: Review and evaluate Young Scholars Proposals.

Contact: Dr. Virginia Eaton, Young Scholars Program, Division of Research Career Development, Directorate for Education and Human Resources, National Science Foundation, room 630, Washington, DC 20550, (202) 357–7538.

Dated: September 23, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–23208 Filed 9–25–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Full Board Meeting

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of Public Law 100–203, the Nuclear Waste Policy Amendments Act (NWPAA) of 1987, the Board's Panel on Structural Geology & Geoengineering will hold a day-and-a-half meeting in Seattle, Washington, on the repository sealing program. The meeting will be followed by a half-day tour of The Robbins Company, the world's largest manufacturer of tunnel-boring machines. The day-and-half meeting will be held at the Wyndham Garden Hotel, 18118 Pacific Highway South, Seattle, Washington 98188; (206) 244–6666, and will run from 8:30 a.m.–5:30 p.m. on November 12 and from 8:30 a.m.–11:30 p.m. on November 13. Both the meeting and tour are open to the public.

On Tuesday, November 12, panel members will hear presentations from representatives of the Department of Energy (DOE) and Sandia National Laboratories (SNL), who will review the status of the proposed repository sealing program. Members will hear presentations on the program's history, regulatory requirements, design philosophy, sealing concepts, and the rationale for these concepts. Following discussions will focus on the technical requirements of sealing and the development of a numerical model of the permeability of the zone surrounding the openings of the proposed repository. The model's purpose is to demonstrate sealing performance in response to the effects of water flow to the repository and gaseous flow out of the repository or around sealed and backfilled boreholes, shafts, ramps, and underground openings. The latter part of the day will be devoted to a discussion of plans for future studies. The morning of November 13 will be a continuation of this discussion. Presentations will conclude with a discussion of the materials selection process, seal degradation, and proposed field test efforts.

On the afternoon of November 13, Board members and interested meeting participants will have the opportunity to tour The Robbins Company, which is located at 2244 76th Avenue South, Kent, Washington 98031 (approximately 15 minutes from the hotel). Transportation will depart at 12:30 p.m.

Transcripts of the meeting will be available on a library-loan basis from Victoria Reich, Board librarian, beginning January 3, 1992. For more information, contact Paula N. Alford, Director, External Affairs, Nuclear Waste Technical Review Board, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473.

Dated: September 23, 1991.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 91–23175 Filed 9–25–91; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF PERSONNEL MANAGEMENT

Request for Clearance of Form SF 2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for clearance of an information collection. Form SF 2809, Health Benefits Registration Form, is the instrument by which eligible individuals may enroll or change their enrollment status under the Federal Employees Health Benefits (FEHB) Program.

Approximately 9,000 SF 2809 forms will be completed per year. The form requires 30 minutes to fill out. The annual burden is 4500 hours.

For copies of this proposal, contact C. Ronald Trueworthy, on (703) 908–8550.

DATES: Comments on this proposal should be received by October 28, 1991.

ADDRESSES: Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E. Street, NW, CHP 500, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–0623.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

[FR Doc. 91–23198 Filed 9–25–91; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 91-9-41, Docket 47514]

Application of F.S. Air Service, Inc., For Certification Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding F.S. Air Service, Inc., fit and award it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to file objections should do so no later than October 4, 1991.

ADDRESSES: Objections and answers to objections should be filed in Docket 47514 and addressed to the Documentary Service Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2337.

Dated: September 19, 1991.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-23212 Filed 9-25-91; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43232]

Security of Aircraft and Safety of Passengers Transiting Lebanon

A number of foreign air carriers have recently begun or announced plans to begin service to Beirut, Lebanon. This has brought a number of inquiries to the department pertaining to the status of the aviation-related restrictions put in place by the Department with regard to Lebanon in 1985.

By this Notice, we are reaffirming the restrictions that were put in place by Order 85-7-45 and which were clarified by Order 91-3-16. Specifically, it is a condition in all certificates held by U.S. air carriers, all permits held by foreign air carriers and all exemptions from sections 401 and 402 of the Act, including those authorizing air freight forwarder activities, that the holder and its agents shall not sell in the United States any transportation by air which includes any type of stop in Lebanon.

This Notice shall be printed in the **Federal Register.**

Dated: September 17, 1991.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 91-23146 Filed 9-25-91; 8:45 am]

BILLING CODE 49910-62-M

Federal Aviation Administration

[Summary Notice No. PE-91-34]

Petition for Exemption

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

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 the specified requirements of the Federal Aviation Regulations (14 CFR chapter I). 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 October 7, 1991.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

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 (FOB10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, 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 September 20, 1991.

Denise Donohue Hall,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 26627.

Petitioner: Air Transport Association of America.

Regulations Affected: 14 CFR 121.343 (c), (e), and (f).

Description of Relief Sought: Petitioner seeks to extend the compliance date for members of the Air Transport Association of America to install in their airplanes approved flight recorders that utilize a digital method of recording, storing and retrieving data.

[FR Doc. 91-23190 Filed 9-25-91; 8:45 am]

BILLING CODE 4916-13-M

National Highway Traffic Safety Administration

[Docket No. 91-15; Notice 2]

Determination that Nonconforming 1988 Mercedes-Benz 230E Passenger Cars are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by the Administrator, NHTSA, that nonconforming 1988 Mercedes-Benz 230E passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by the Administrator, NHTSA, that 1988 Mercedes-Benz 230E passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation and sale in the United States and certified by its manufacturer as complying with the safety standards, and are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of the date of its publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) (the

Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined:

"(I) that the motor vehicle * * * is substantially similar to a motor vehicle originally manufactured for importation and sale into the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *."

Petitions for eligibility determinations may be submitted by manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. After receipt of a petition, NHTSA publishes notice of its receipt in the **Federal Register**, and affords interested persons an opportunity to comment. Following close of the comment period, NHTSA reviews the petition and comments, and publishes its determination in the **Federal Register.**

G&K Automotive Conversion, Inc. of Anaheim, California (Registered Importer No. R–90–007) petitioned for a determination regarding the eligibility for admission into the United States of 1988 Mercedes-Benz 230E, Model ID 124.023 passenger cars. Notice of the petition was published on May 2, 1991, and an opportunity afforded for comment (56 FR 20255).

G&K argued that the 1988 Mercedes-Benz 230E is substantially similar to the 1988 Mercedes-Benz 260E, Model ID 124.026, and it submitted information indicating that Mercedes-Benz of North America offered the 1988 Mercedes-Benz 260E for sale in the United States. This model was manufactured by Daimler-Benz A.G. and was certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner noted that the agency, on its own initiative, had already made a determination of substantial similarity covering the 1988 Model 260E that Daimler-Benz A.G. did not certify and offer for sale in the United States (55 FR 47418). It alleged that the 230E and non-conforming 260E cars differ "mainly in engine size and minor options which go with it."

G&K submitted information with its petition intended to demonstrate that the vehicle was originally manufactured to conform to many Federal motor vehicle safety standards in the same manner as its companion U.S. model, or was capable of being readily modified to conform to them.

Specifically, it averred that the noncertified 230E was identical to the certified 260E with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluids*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also argued that the vehicle was capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Install U.S.-model headlamp assemblies and front sidemarkers; (b) install U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) install a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Install a tire information placard.

Standard No. 111 *Rearview Mirrors:* The passenger's outside rearview mirror is convex and must be replaced with a convex mirror permanently marked "Objects in mirror are closer than they appear", or with a flat mirror.

Standard No. 114 *Theft Protection:* The vehicle's key-locking system lacks a warning buzzer, and it is necessary to install a buzzer microswitch in the steering lock assembly, and the buzzer itself.

Standard No. 115 *Vehicle Identification Number:* Install a VIN label.

Standard No. 118 *Power Window Systems:* Rewire so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* Replace rear door locks and locking buttons with U.S. parts.

Standard No. 208 *Occupant Crash Protection:* (a) Install a U.S. model seat belt in the driver's position, or install a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) install an ignition switch-actuated seat belt warning lamp and buzzer.

Standard No. 214 *Side Door Strength:* Insall reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Install a rollover valve in the fuel tank vent line between the fuel and the evaporation emissions collection cannister.

One comment (and an amendment) was received in response to the notice of receipt of the petition, from Mercedes-Benz of North America, Inc. ("MBNA"), the U.S. subsidiary of the original manufacturer, which "strongly urges the agency to deny the petition." MBNA admitted that in some instances the 230E can be "easily modified" to conform to Federal standards, but asserted that other modifications will require substantial changes to the vehicle's structural components. It presented arguments with respect to many of the Federal standards. NHTSA invited the petitioner to comment on these arguments. The discussion below presents MBNA's opinions, and G&K's responses:

Standard No. 101: MBNA comments that petitioner has omitted mention of the required horn identification symbol. The 230E's horn pad has never been manufactured with the horn symbol, and its addition would be necessary.

G&K responded that a horn pad need not be manufactured with the symbol; the symbol can be easily added.

Standard No. 103: Contrary to petitioner's assertion that the windshield defogging and defrosting systems are identical in the 230E and 260E, the 230E is available in three different versions. Only the automatic climate control system placed in U.S. market cars is certified to meet the standard. MBNA asserts that the system can be readily modified to be substantially similar only after the system in the vehicle is replaced with an automatic climate control.

G&K avers that its model is equipped with the automatic climate control system to which MBNA refers.

Standard No. 105: The model 230E does not have the required brake warning indicator lamp check function, requiring modification of the wiring and control circuits.

G&K comments that the indicator lamp circuit is easily modified at low cost to check the lamp function by turning the key to the on position before activating the ignition.

Standard No. 106: Replacement hoses that comply with the standard are not available from MBNA for the 230E as a spare part because of the differences between that car and the U.S. 260E. Thus, the vehicle is not substantially similar, and because of the absence of replacement parts cannot be readily modified.

G&K has examined a 230E vehicle in its shop and finds that it is equipped with brake hoses, front and rear, which bear the symbol "DOT", indicating compliance with Standard No. 106, as well as the SAE marking "SAE J1401".

Standard No. 108: The wiring harness of the 230E does not have the capability to illuminate the side marker lamps. Major changes in the vehicle's wiring will be necessary for compliance.

G&K states that the conversion can be accomplished in 7 minutes. It involves only the repositioning of contacts in the quick-connect headlamp assembly pigtail socket and inclusion in it of the sidemarker wiring which comes with the U.S. model headlamp/sidemarker assembly.

MBNA further argued that the headlamp aiming adjustment mechanism located inside the 230E's passenger compartment is not permitted by Standard No. 108.

G&K replies that the U.S. model headlamp assembly does not have an aiming adjustment mechanism, and, thus, the control that exists for this function on European models, is rendered inoperable and useless when the U.S. model headlamp assembly is installed.

Standard No. 109: The requirements of part 574 Tire Identification and Record Keeping are not fulfilled.

G&K replies that there is no requirement in Standard No. 109 for this function.

Standard No. 208: The U.S. certified model 260E that petitioner claims is substantially similar to the 230E is designed to meet the standard only through the use of a supplemental restraint system that includes a driver side air bag and knee bolster. Petitioner seeks to import a car with no demonstrated ability to meet the passive restraint requirements. This potential modification is so significant that it disqualifies the 230E from importation as it cannot be deemed to be substantially similar to the 260E.

G&K replies that it does not need to retrofit its vehicles with airbags.

Standard No. 209: MBNA stated that some of the seat belt assemblies on the 230E may not have been tested for compliance with Standard No. 209, and therefore may not have the required labeling.

G&K states that it will install seat belts that conform with Standard No. 209.

Standard No. 210: The non U.S. model 230E has a different seat location to anchorage relationship than the U.S. model 260E. Determination of this relationship requires "H" point measurements and detail drawings which are not available outside of Germany. Thus the 230E cannot be readily modified to meet this standard.

G&K replies that MBNA's arguments are too general for comment, and that the company failed even to cite part numbers to substantiate its claim that non U.S. versions fail to comply. It is prepared to obtain the "secret" measurements to refute this claim.

Standard No. 302: The 230E is equipped with upholstery which MBNA has not tested for compliance with the standard. The German DIN standard is not identical to the U.S. standard because it does not specify a maximum burn rate. Thus the upholstery has not been tested for conformance with the maximum burn rate. The interior materials in the 230E, therefore, are neither substantially the same or readily modifiable.

G&K states that it constantly monitors interior materials for flammability in cars that it modifies and, when compliance appears questionable, it treats the material with a fire retardant. However, its burn tests of fabrics in vehicles manufactured by Daimler-Benz. A.G. has never shown any need for additional treatment of interior materials, and it assumes that the company, as a matter of policy, equips all its vehicles with fabrics that comply with Standard No. 302.

In reviewing MBNA's comments, NHTSA does not consider that the petitioner's original omission to cover several aspects of compliance is fatal to its argument. NHTSA regards the addition of symbols, warning light indicators, and side marker lamps to be relatively simple in nature, as they have been performed on thousands of nonconforming vehicles imported over the years. Thus, the 230E is readily capable of being conformed to meet Standards 101, 105, and 108.

With respect to Standards Nos. 103, 209 restraints, 210, and 302, MBNA makes the argument that the 230E is different from the 260E, and has not been tested or certified to U.S. requirements. G&K has addressed the comments with respect to each of these standards. The arguments of MBNA fall short of a convincing statement that the 230E, in fact, does not comply, and, if this is the case, that the noncompliant state is not readily capable of being transformed into a compliant one. Agency experience with a wide variety of Mercedes-Benz models indicates that the requirements of these standards can be easily met by most vehicle modifiers, either by providing proof that the components or assemblies in question are identical to, or provide the performance of, those found in complying vehicles, or by modifying those items to meet these requirements.

As for Standard No. 106, MBNA avers that complying replacement brake hose are not available for the 230E, and because of this the vehicle is not substantially similar and cannot be readily modified. G&K's inspection of the vehicle indicates that the vehicle is already equipped with brake hoses that bear the DOT symbol. Therefore, the question of its modificability does not arise. It is irrelevant to the Administrator's determination whether replacement brake hoses are available through authorized Mercedes-Benz spare parts departments.

MBNA's views with respect to Standard No. 109 are that the requirements of part 574 are not met. This argument is irrelevant; as G&K notes, it ignores the fact that Standard No. 109 imposes no recordkeeping requirement on the petitioner.

MBNA reserves its principal objection to the petitioner's arguments with respect to Standard No. 208. It argues that the petitioner must certify compliance to the automatic restraint requirements of the standard, and that this potential modification is so significant that it disqualifies the vehicle from importation. MBNA bases its argument on the premise that the petitioner is required to conform a substantially similar vehicle to the standards in a manner identical to the vehicle being compared. NHTSA disagrees with this approach. All that the petitioner is required to do is to bring the 230E into compliance with Standard No. 208 as it was in effect when the vehicle was manufactured. Thus, it is legally acceptable for petitioner to argue that the 230E is readily capable of conformance to the non-automatic restraint specifications of Standard No. 208. NHTSA notes, however, that its views pertain to the individual 230E as the subject of a petition, and that were the registered importer to be the importer of record for quantities of 1988 230Es, a percentage of them would have to be equipped with

automatic restraints in accordance with Standard No. 208 as it was in effect at the time the vehicles were manufactured.

In addition to the arguments with respect to the specific standards, MBNA presented two general views that NHTSA deems worthy of addressing. The first of these is the remark that modifications would be required affecting structural changes "that if done to a U.S. certified vehicle would require recertification under NHTSA regulations governing vehicle alterers." MBNA appears to equate this with a lack of capability of ready modification. Second, it states that because the 230E is manufactured for many markets other than the U.S. "it is impossible for NHTSA to make an engineering determination that the vehicle is substantially similar without knowing for what country it was produced", and accordingly, any positive finding "must be limited to the country where the original vehicle analyzed by NHTSA was purchased."

As noted in its analyses of MBNA's arguments with respect to specific standards, NHTSA has found some of the comments speculative, and others unpersuasive. Further, it does not agree with either of MBNA's general arguments. Recertification of a vehicle is required by an alterer whose activities go beyond "the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies or minor finishing operations such as painting * * *." There is nothing in the legislative history of the 1988 Amendments that equates capability of ready conversion with readily attachable components. For example, given the complexity of contemporary headlighting and aiming systems, it is debatable whether such are "readily attachable components", yet NHTSA views conversion of a vehicle from one headlighting system to another as one which is readily capable of conformance. Finally, MBNA overlooks the requirement that registered importers must certify to the Administrator that the vehicles they process have been brought into compliance with the standards.

Nor does NHTSA believe that it is "impossible" to make engineering determinations without knowing for what country a vehicle was produced. It believes that all models within a line are substantially similar in structural design regarding integrity of the body, chassis, and seating. It further finds petitioner's arguments persuasive that the 1988 230E is capable of being readily converted, within the meaning of the statute, to conform to all applicable Federal motor vehicle safety standards.

MBNA also argued, with respect to part 541—Theft Prevention Standard, that Model W124 is classified by NHTSA as a "high theft line", and that the registered importer must therefore inscribe the VIN on 14 vehicle parts of every 230E imported. This remark is inaccurate because the W124 has not been *per se* classified as a high theft line. Models within that line such as the 260E do bear this classification, but no designation has been made of the 230E. To the extent that MBNA seeks to include the 230E under the W124 umbrella, it would appear to admit that the 230E has the same body and chassis, or is otherwise similar in design within the meaning of "line" as that term is defined in part 541. Compliance with part 541 is irrelevant to vehicle eligibility determinations. Part 541 is outside the requirements of the Federal Motor Vehicle Safety Standards and the National Traffic and Motor Vehicle Safety Act, and the capability of compliance with its requirements has no legal bearing on a determination of whether the 230E is capable of ready conversion to safety standards.

Importation Code Number for Eligible Vehicles

The importer of a vehicle admissible under any final determination must indicate on the Form HS–7 accompanying entry the appropriate "VSA#" indicating that the vehicle is eligible for entry. VSA #66 is the number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1988 Mercedes-Benz 230E is substantially similar to a 1988 Mercedes-Benz 260E originally manufactured for importation into and sale in the United States, certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(iii); 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on September 17, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–23214 Filed 9–25–91; 8:45 am]

BILLING CODE 4910–59–M

Urban Mass Transportation Administration

Environmental Impact Statement on the Extension of Transit Service From East St. Louis, Illinois, to Scott Air Force Base in St. Clair County, Illinois

AGENCY: Urban Mass Transportation Administration, Illinois Department of Transportation, and the East-West Gateway Coordinating Council.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Urban Mass Transportation Administration (UMTA), the Illinois Department of Transportation (IDOT), and the East-West Gateway Coordinating Council (EWGCC) give notice that they intend to prepare an Environmental Impact Statement (EIS), in accordance with the National Environmental Policy Act (NEPA), on the proposed extension of light rail transit service from East St. Louis, Illinois, to the vicinity of Scott Air Force Base, Illinois. The local joint lead agencies will ensure that the EIS also satisfies the requirements of the Illinois Environmental Protection Agency (IEPA). In addition to the light rail extension, the EIS will evaluate no-action, transportation system management (TSM), and busway alternatives and any other alternatives identified through the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state, and local agencies, and through a public meeting.

DATES: Written comments on the scope of alternatives and impacts to be considered should be sent to the East-West Gateway Coordinating Council by Wednesday, October 30, 1991. The public scoping meeting will be held on Wednesday, October 16, 1991 at 7 p.m. in the St. Clair County Board Meeting Room.

ADDRESSES: Written comments on project scope should be sent to Martin Altman, Director, Transportation Planning, East-West Gateway Coordinating Council, 911 Washington Avenue, St. Louis, Missouri 63101. The scoping meeting will be held at St. Clair County Board Meeting Room B–564, St. Clair County Building, 10 Public Square, Belleville, Illinois 62220.

FOR FURTHER INFORMATION CONTACT: Joan Roeseler, Deputy Director of Planning Assistance, Office of Planning Assistance, UMTA Region VII, 6301 Rickhill Rd., suite 303, Kansas City, Missouri 64131–1178. Phone (816) 926–5053.

SUPPLEMENTARY INFORMATION:

Scoping

UMTA and the EWGCC invite interested individuals, organizations, and federal, state, and local agencies to participate in defining the alternatives to be evaluated in the EIS and in identifying any significant social, economic, or environmental issues related to the alternatives. A scoping report describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule is being mailed to affected federal, state, and local agencies and to interested parties on record. Others may request the scoping report by contacting Martin Altman at the address above or by calling him at (314) 421–4220. Scoping comments may be made verbally at the public scoping meeting or in writing. See the **DATES** and **ADDRESSES** section above for locations and times. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives that are less costly or less environmentally damaging while achieving similar transit objectives. Scoping is not the time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the Draft EIS has been completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact Martin Altman as previously described.

Description of the Study Area and Project Need

The study area is an area within St. Clair County approximately 20 miles long from downtown East St. Louis to Scott Air Force Base and is generally bounded by Interstate 64 on the north and the Norfolk and Southern Railway extended through Alorton, Centreville, and Belleville, Illinois on the south. The EWGCC and other agencies are presently building Metro Link, a light rail transit line from downtown East St. Louis to Lambert Airport in St. Louis. The proposed St. Clair County extension of Metro Link is intended to improve transit accessibility between downtown St. Louis and the growing and developed areas in St. Clair County, including Scott Air Force Base and a potential new commercial airport. The project should also improve transit accessibility between the study area and the western sections of the St. Louis area, including a major medical center, shopping areas and Lambert Airport. The project may assist in alleviating regional air quality problems by providing an alternative to the automobile for many trips.

Alternatives

The alternatives proposed for evaluation include no-action, which involves no change to transportation services or facilities in the corridor beyond already committed projects, and a TSM alternative, which consists of low to medium cost improvements to the facilities and operations of the Bi-State Development Agency and St. Clair County Transit, in addition to the currently planned transit improvements in the study area. The light rail alternative includes three possible alignments: One along I–64, another along the CSX Railway right-of-way, and the third along the Norfolk and Southern Railway. Each would begin in downtown East St. Louis and extend to the vicinity of Scott Air Force Base. In addition, a busway alternative, i.e., a reserved or separate roadway exclusively for improved bus service, or for buses, van-pools and car-pools, will be considered for the same general alignments as described for the light rail alternatives.

Probable Effects

UMTA and EWGCC plan to evaluate in the EIS all significant social, economic, and environmental impacts of the alternatives. Among the primary issues are the expected increase in transit ridership, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project, the financial impacts on the funding agencies, and support for development in the study area. Environmental and social impacts proposed for analysis include land-use and neighborhood impacts, traffic and parking impacts near stations, visual impacts, impacts on cultural resources, and noise and vibration impacts. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and geologic forms also will be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be explored.

UMTA Procedures

In accordance with the Urban Mass Transportation Act and UMTA policy, the Draft EIS will be prepared in conjunction with an Alternatives Analysis and the Final EIS in conjunction with Preliminary Engineering. After its publication, the Draft EIS will be available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS and the comments received, EWGCC will select a locally preferred alternative and seek approval from UMTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on: September 23, 1991.

Lee Waddleton,

Midwestern Area Director.

[FR Doc. 91–23213 Filed 9–25–91; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 18, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0013
Form Number: IRS Form 56
Type of Review: Extension
Title: Notice Concerning Fiduciary Relationship
Description: Form 56 is used to inform IRS that a person is acting for another person in a fiduciary capacity so that IRS may mail tax notices to the fiduciary concerning the person for whom he/she is acting. The data is used to ensure that the fiduciary relationship is established or terminated and to mail or discontinue mailing designated tax notices to the fiduciary.
Respondents: Individuals or households, Businesses or other for-profit, and Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 25,000
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—8 minutes
Learning about the law or the from—32 minutes
Preparing the form—46 minutes
Copying, assembling, and sending the

form to IRS—15 minutes
Estimated Total Reporting/ Recordkeeping Burden: 292,800 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 91–23158 Filed 9–25–91; 8:45 am]

BILLING CODE 4830–1–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 20, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: New
Form Number: None
Type of Review: New collection
Title: Card Survey on Global Trade Talk Magazines
Description: This information collection is a survey of readers of the Global Trade Talk for their opinions on ways to improve the publication or topics they would like to see covered.
Respondents: Businesses or other for-profit, Federal agencies or employees, Small businesses or organizations
Estimated Number of Responses: 200
Estimated Burden Hours Per Response: 15 minutes
Frequency of Response: Annually
Estimated Total Reporting Burden: 50 hours
Clearance Officer: Ralph Meyer, (202) 566–4019, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–23199 Filed 9–25–91; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

Date: September 18, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3190 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–
Form Number: None
Type of Review New
Title: Coordinated Examination Program Examination Post Closing Survey
Description: Information gathering for program evaluation and operation. The data collected will be used to evaluate the level of satisfaction of the largest corporate taxpayers examined by the IRS Examination Function, to identify possible areas of program improvement, and thereby, improve the quality and effectiveness of the Coordinated Examination Program.
Respondents: Businesses or other for-profit
Estimated Number of Respondents/ Recordkeepers: 300
Estimated Burden Hours Per Respondent/Recordkeeping: 1 hour and 30 minutes
Frequency of Response: One time at conclusion of taxpayer examination
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 91–23159 Filed 9–25–91; 8:45 am]

BILLING CODE 4830–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 187
Thursday, September 26, 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 ELECTION COMMISSION

DATE AND TIME: Tuesday, October 1, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor)

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 3, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor)

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Final Audit Report—Bush-Quayle '88 and George Bush for President, Inc./ Compliance Committee
Advisory Opinion 1991–22: Mr. Douglas A. Kelley on behalf of Senator David Durenberger, Representative Jim Ramstad, Representative Vin Weber, and others.
Proposed Revisions to Bank Loan Regulations (continued from meeting of August 29, 1991)
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 376–3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91–23402 Filed 9–24–91; 2:43 pm]

BILLING CODE 9-24-91

POSTAL RATE COMMISSION

TIME AND DATE: 10:00 a.m., September 26 and September 27, 1991.

PLACE: Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Issues in Docket No. R90–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, N.W., Washington, D.C. 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 91–23327 Filed 9–24–91; 10:42 am]

BILLING CODE 7710–FW–M

Corrections

Federal Register
Vol. 56, No. 187
Thursday, September 26, 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 ENERGY

Federal Energy Regulatory Commission

[Docket No. TM91-1-31-001]

Arkla Energy Resources, A Division of Arkla, Inc.; Corrections to Tariff Filing

Correction

In notice document 91-14899 appearing on page 28754 in the issue of Monday, June 24, 1991, in the third column, in the file line at the end of the document, "FR Doc. 91-14889" should read "FR Doc. 91-14899".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Change of Name and Removal From Roster of Approved Trustees

Correction

In notice document 91-15207 appearing on page 29305 in the issue of Wednesday, June 26, 1991, in the third column, in the file line at the end of the document, "FR Doc. 91-15202" should read "FR Doc. 91-15207".

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 171, and 172

[T.D. 91-71]

RIN 1515-AA91

Delegation of Authority To Decide Penalties and Liquidated Damages Cases

Correction

In rule document 91-19609 beginning on page 40776 in the issue of Friday, August 16, 1991, make the following corrections:

§ 10.39 [Corrected]

1. On page 40779, in the second column, in amendment 2., in the first line "word" was misspelled.

§ 171.21 [Corrected]

2. On the same page, in the third column, in § 171.21, in the second line"finds" should read "fines".

§ 171.33 [Corrected]

3. On page 40780, in the first column, in § 171.33(b)(1), in the ninth line, "directory" should read "director".

4. On the same page, in the same column, in the 14th line, "In the district believes" should read "If the district director believes".

5. On the same page, in the same column, in § 171.33(d), in the heading, in the first line "*Appeals of*" should read "*Appeals to*".

PART 172 [CORRECTED]

6. On the same page, in the same column, in the authority citation for part 172, "1634" should read "1624".

§ 172.22 [Corrected]

7. On the same page, in the same column, in § 172.22(e), in the heading, in the second line "in--bond" should read "in-bond".

8. On the same page, in the same column, in § 172.22(e), in the 11th line "delegation" should read "delegations".

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federal register

Thursday
September 26, 1991

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Part 431, et al.

Medicare and Medicaid; Requirements for Long Term Care Facilities and Nurse Aide Training and Competency Evaluation Programs; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 442, 447, 483, 488, 489 and 498

[BPD-396-F]

RIN 0938-AD 12

Medicare and Medicaid; Requirements for Long Term Care Facilities

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

ACTION: Final rule.

SUMMARY: These final regulations revise and consolidate the requirements that facilities furnishing long term care are required to meet to participate in either or both the Medicare and Medicaid programs. They revise our February 2, 1989 (54 FR 5316) final regulations to reflect our response to comments submitted by the public and to conform them to statutory provisions that were not in effect when we issued the prior rule, and to include various minor and technical changes in the requirements made by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508).

EFFECTIVE DATES: These regulations are effective April 1, 1992. We would note, however, that these regulations reflect a number of provisions that are currently in effect as a result of their publication in a final rule on February 2, 1989 (54 FR 5316) and also provisions that were enacted in OBRA '90 and made effective by Congress as if they were enacted in the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203). State agencies have until 90 days after receipt of a revised State Plan preprint to submit their plan amendments and required attachments. We will not hold a State to be out of compliance with the requirements of these final regulations if it submits the necessary plan materials by that date.

FOR FURTHER INFORMATION CONTACT: Bill Ullman (301) 966-5667.

SUPPLEMENTARY INFORMATION:

I. Background

Prior Rulemaking Activity

On February 2, 1989, we published in the **Federal Register** (54 FR 5316) final regulations that specified new and revised requirements that long term care facilities (skilled nursing facilities (SNFs) under Medicare, and SNFs, intermediate care facilities (ICFs), and, effective October 1, 1990, nursing facilities under Medicaid) must meet in order to receive Federal funds for the care of residents who are Medicare beneficiaries or Medicaid recipients. We invited comments on the regulations if submitted by May 3, 1989.

Many of the requirements in the February 2 regulations implemented provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100-203). An effective date of August 1, 1989 was specified for the regulations except for provisions that relied on a later statutory effective date. (Some OBRA '87 requirements have effective dates of January 1, 1990, April 1, 1990, and October 1, 1990.) However, we later determined that the August 1, 1989 effective date did not give States and others adequate implementation time, and on July 14, 1989 we delayed the August 1, 1989 effective date to January 1, 1990 (54 FR 29717).

On December 19, 1989, the Omnibus Budget Reconciliation Act of 1989 (OBRA '89, Pub. L. 101-239) was enacted. Section 6901(a) of OBRA '89 changes the January 1, 1990 effective date of the nursing home regulations to October 1, 1990. As a result, on December 29, 1989 we published in the **Federal Register** (54 FR 53611) a final rule to revise the effective date of our February 2, 1989 regulations to October 1, 1990.

On November 5, 1990, the Omnibus Budget Reconciliation Act of 1990 (OBRA '90, Pub. L. 101-508) became law. Sections 4008(h) (for the Medicare program) and 4801 (for the Medicaid program) contained technical amendments to the nursing home reform provisions contained in the previously cited statutes. Section 4207(k) of the same act gave the Secretary authority to issue regulations "on an interim or other basis" to implement the provisions of the relevant title. Conference Committee Report language for both Medicare and Medicaid provisions indicated the conferees view that the amendments made by OBRA '90 were "minor and technical changes to the nursing home reform statute as originally enacted in 1987. The managers are aware that the Secretary will soon issue regulations implementing portions of the original law. The managers do not intend that the amendments below result in any further delay in forthcoming regulations." (H12661, Congressional Record, October 26, 1990.) As a result, we have incorporated the OBRA '90 changes into this final regulation. In the interests of issuing this final regulation as quickly as possible, we have inserted the OBRA '90 changes in the regulations text and discussed them in the preamble at places where comments and responses for the amended provisions appear.

Effect of Proposed Rule

The February 2, 1989 revision of the nursing home regulations was the most extensive set of Federal regulatory changes in this area of the health care industry in 15 years. We revised the requirements that long term care facilities must meet in order to receive Federal funds for the care of residents who are Medicare beneficiaries or Medicaid recipients. We issued the regulations following a notice of proposed rulemaking (NPRM) (52 FR 38582, October 16, 1987) to refocus the requirements for participation in both programs to actual facility performance in meeting residents' needs in a safe and healthful environment. The previous set of requirements had focused on the capacity of the facility to provide appropriate care. In addition, we needed to simplify Federal enforcement procedures by using a single set of requirements that apply to all activities common to SNFs, ICFs, and NFs.

As discussed in the preamble to the proposed rule (52 FR 38582), our NPRM reflected the recommendations of the Institute of Medicine (IoM). OBRA '87 was written with both the recommendations of the IoM and our NPRM as a model. OBRA '87 departs from previous Congressional practice by specifying many details which prior law leaves to the authority of the Secretary. It also contains entirely new requirements which are also specified in detail.

In drafting the final regulation, we attempted to adapt the language used in OBRA '87 in all cases in which we believed that the requirements in question are supportable under the statute as it existed prior to inclusion of OBRA '87 requirements and reasonably flow from proposals published in the October 16, 1987 NPRM. We did this because we had comments on the NPRM that have recommended this course of action. Consequently, in the February 2, 1989 rule, we included many of the provisions of our NPRM (revised as appropriate) and, when possible, the new requirements contained in OBRA '87 that are effective October 1, 1990. Provisions that were not specifically addressed by elements of OBRA '87 but which met requirements of the Administrative Procedure Act that would permit issuance of a final rule, were made effective on October 1, 1990. It was our intention that the final regulations reflect, to the extent possible, the comments on the NPRM

and the requirements of titles XVIII and XIX of the Act as modified by OBRA '87.

As a result of comments and the legislative changes, we incorporated the following major OBRA '87 requirements:

- Assuring residents' privacy rights with regard to accommodations, medical treatment, personal care, visits, written and telephone communications, and meetings with resident and family groups;
- Maintaining confidentiality of personal and clinical records;
- Guaranteeing facility access and visitation rights;
- Issuing a notice of rights at the time of admission;
- Implementing admissions policy requirements;
- Assuring proper use of physical and chemical restraints;
- Protecting resident funds being managed by a facility;
- Ensuring transfer and discharge rights and issuing notices required of a facility;
- Providing twenty-four hour licensed nursing services, and services of a registered nurse at least 8 consecutive hours a day, 7 days a week, subject to waivers;
- Furnishing comprehensive assessments and being subject to civil money penalties for falsification of an assessment;
- Requiring minimum training of nurse aides, competency evaluation programs, and regular in-service education;
- Prohibiting admission to SNFs and NFs of individuals with mental illness and mental retardation, except when they need SNF and NF services and have been prescreened by a State authority of mental illness or retardation;
- Providing or obtaining routine and emergency dental services;
- Employing a full time social worker if a facility has more than 120 beds; and
- Meeting disclosure of ownership requirements.

Due to the extensive revisions from our NPRM, we invited public comments and offered to undertake revisions if warranted.

Content of February 2, 1989 Rule

Inasmuch as the February 2, 1989 rule totally restructured the regulations with respect to long term care facility requirements, no brief summary of its content could adequately present technical material exhaustively presented in previous documents. Readers with interest in specific background information on items included in this rule should refer to the preambles of the NPRM (52 FR 38582) or final rule (54 FR 5316).

It is important to note that the February 2, 1989 long term care requirements significantly departed from the format traditionally used, thus creating an effect in enforcement activities that measure adherence to the requirements. The condition of participation (COP) format traditionally used by Medicare and Medicaid consisted of condition and standard level statements. It was based on the principle that each condition level statement would be a statutory requirement while standard level requirements were reflective of regulatory standards. In determining compliance with our requirements, a State survey agency could find a facility with deficiencies at the standard level and making efforts to correct them acceptable to continue to participate in the Medicare program. The State agency would, however, recommend a facility be subject to termination if it failed to meet a condition level (i.e., statutory) requirement. Regardless of the significance of the requirement, that is, whether the requirement was a COP or a standard within a condition, the facility was responsible for fully complying with all requirements.

Notwithstanding this long standing agency policy, we believe that, to the extent that Federal requirements were set forth in what appeared to be a qualitative hierarchy, there was some misunderstanding that violations of the "lesser" requirements would not be subject to Federal enforcement.

Additionally, the OBRA '87 requirements have recast substantive requirements so as not to use the traditional "conditions" and "standards" terminology.

Accordingly, in the final rule published February 2, 1989 we retained the organization of the various proposed requirements, and designated them as Level A and Level B requirements.

It was never intended that the Level A and Level B designations imply a hierarchy of importance. In the final rule we included a preamble statement at 54 FR 5318 indicating that the Level A and Level B "designations are intended to communicate that all the nursing facility requirements are binding and are not part of a qualitative hierarchy." Moreover, sections 1819(h) and 1919(h) of the Act as amended by OBRA '87 make all nursing facility requirements binding. Thus a facility must be in compliance with all the requirements of sections 1819(b) through (d) and 1919(b) through (d) in order to participate in the Medicare and Medicaid programs.

Every requirement in these regulations must be enforced and penalties must be assessed in accordance with regulations issued pursuant to sections 1819(h) and 1919(h) of the Social Security Act (the Act).

II. Overview of Final Rule, Comments and Responses and Summary of Changes

We received more than 800 comments in response to the February 2, 1989 final rule with a comment period. Comments were submitted from various associations and organizations representing nursing homes, and the various medical and other professional employees that make up long term care facility staff also submitted comments. Individual States and major third party payers also submitted comments. In that the majority of comments and issues dealt with the content of new part 483, Requirements for Long Term Care Facilities, we deal with these items first. Commenters also expressed views on part 442, Standards for Payment for Skilled Nursing and Intermediate Care Facility Services and part 447, Payment for Services. Below, we summarize briefly the provisions of the rule generating the comments, indicate individual comments and responses, and summarize changes to our rules.

Comments on Part 483, Requirements for Long Term Care Facilities

Comment: A number of commenters, especially those dealing with resident activities and social services, objected to the Level A and Level B designations used in the organization of these requirements. Their principal objection centered around a belief that Level B requirements were less important than Level A requirements.

Response: In order to prevent any further confusion over this issue, we have decided to delete from part 483 all references to Level A and Level B requirements.

The deletion of Level A and Level B designation has led to one complication, however. The OBRA '87 enforcement regulation was not issued in final form on October 1, 1990, and 42 CFR parts 442, 488 and 489 (the current enforcement rules) were amended to refer to Level A and Level B requirements. (The current enforcement system refers to Level A and Level B requirements and adverse actions are taken as a result of noncompliance with Level A requirements.) It is therefore necessary from an administrative standpoint to continue to use the Level A and Level B designations for all surveys until a few enforcement system

and accompanying forms and procedures are in place. This policy is reflected by the reference to Level A and Level B in parts 442, 488, 489, and 498. These references to Level A and Level B will be removed in the OBRA '87 enforcement rule. Accordingly, the following listing of requirements designated as Level A or Level B, as published in the February 2, 1989 **Federal Register**, is repeated here for informational purposes.

Section	Level A requirement	Level B requirement
483.10	Resident rights	(a) Exercise of rights.
		(b) Notice of rights and services.
		(c) Protection of resident funds.
		(d) Free choice.
		(e) Privacy and confidentiality.
		(f) Grievances.
		(g) Examination of survey results.
		(h) Work.
		(i) Mail.
		(j) Access to facility.
		(k) Access and visitation rights.
		(l) Telephone.
		(m) Personal property.
		(n) Married couples.
		(o) Self administration of drugs.
483.12	Admission, transfer and discharge.	(a) Transfer and Discharge.
		(b) Notice of bed-hold policy and readmission.
		(c) Equal access to quality care.
		(d) Admissions policy.
		(e) Resident care policies.
483.13	Resident behavior and facility practices.	(a) Restraints.
		(b) Abuse.
		(c) Staff treatment of residents.
483.15	Quality of life	(a) Dignity.
		(b) Self-determination and participation.
		(c) Participation in resident and family groups.
		(d) Participation in other activities.
		(e) Accommodation of needs.
		(f) Activities.
		(g) Social Services.
		(h) Environment.
483.20	Resident assessment.	(a) Admission orders.
		(b) Comprehensive assessments.
		(c) Accuracy of assessments.
		(d) Comprehensive care plans.
		(e) Discharge summary.
		(f) Preadmission screening for mentally ill individuals and individuals with mental retardation.
483.25	Quality of care.....	(a) Activities of daily living.
		(b) Vision and hearing.
		(c) Pressure sores.
		(d) Urinary incontinence.
		(e) Range of motion.
		(f) Psychosocial functioning.
		(g) Naso-gastric tubes.
		(h) Accidents.
		(i) Nutrition.
		(j) Hydration.
		(k) Special needs.
		(l) Drug therapy.
		(m) Medication errors.
483.28	Nursing services--skilled nursing facilities.	(a) Director of nursing services.
		(b) Charge nurse.
		(c) Twenty-four hour nursing service.
483.29	Nursing services--intermediate care facilities.	
483.30	Nursing services.....	(a) Sufficient staff.
		(b) Registered nurse.
		(c) Nursing facilities: Waiver of requirement to provide licensed nurses on a 24-hour basis.
		(d) SNFs: Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week.
483.35	Dietary services.....	(a) Staffing.
		(b) Sufficient staff.
		(c) Menus and nutritional adequacy.
		(d) Food.
		(e) Therapeutic diets.
		(f) Frequency of meals.
		(g) Assistive devices.
		(h) Sanitary conditions.
483.40	Physician services....	(a) Physician supervision.
		(b) Physician visits.
		(c) Frequency of physician visits.
		(d) Availability of physicians for emergency care.
		(e) Physician delegation of tasks.
483.45	Specialized rehabilitative services.	(a) Provision of services.
		(b) Qualifications.
483.55	Dental services.....	(a) Advisory dentist.
		(b) Outside services.
		(c) Skilled nursing facilities.
		(d) Nursing facilities.
483.60	Pharmacy services..	(a) Methods and procedures.
		(b) Procedures.
		(c) Pharmaceutical services committee.
		(d) Service consultation.
		(e) Drug regimen review.
		(f) Labeling of drugs and biologicals.
		(g) Storage of drugs and biologicals.
483.65	Infection control	(a) Infection control programs.
		(b) Preventing spread of infection.
		(c) Linens.
483.70	Physical environment.	(a) Life safety from fire.
		(b) Emergency power.
		(c) Space and equipment.
		(d) Resident rooms.
		(e) Toilet facilities.
		(f) Resident call system.
		(g) Dining and resident activities.
		(h) Other environmental conditions.
483.75	Administration.....	(a) Licensure.
		(b) Compliance with Federal, State and local laws.
		(c) Compliance with Federal, State and local laws and professional standards, effective October 1, 1990.
		(d) Relationship to other HHS regulations.
		(e) Governing body.
		(f) Institutional plan and budget.
		(g) Required training of nurse aides.
		(h) Proficiency of nurse aides.
		(i) Staff qualificatio
		(j) Use of outside resources.
		(k) Medical director.
		(l) Laboratory services.
		(m) Radiology and other diagnostic services.
		(n) Clinical records.
		(o) Disaster and emergency preparedness.

Section	Level A requirement	Level B requirement
		(p) Transfer agreement. (q) Utilization review. (r) Quality assessment and assurance. (s) Disclosure of ownership. (t) Independent medical evaluation and audit.

Section 483.05 Definitions

Summary of Provisions

Section 483.05 specifies the definition of "facility" for purposes of subpart B.

Comments and Responses

There were no public comments on § 483.05. Nonetheless, we are making a clarification to the definition of "facility". We believe that the change in the definition is necessary because of the misunderstanding that gave rise to the statutory requirement relating to intrafacility transfers in sections 4008(h)(2)(G) and 4801(e)(8) of OBRA '90. The statutory authority under which a "distinct part" is considered to be a SNF or NF is the language in sections 1819 and 1919 of the Act, at the beginning. However, the term facility is often used to denote not just a participating entity but also a larger institution of which the participating entity is a part.

Summary of Change to § 483.05

We have added a sentence to the definition of "facility to clarify the fact that, for purposes of Medicare and Medicaid eligibility, coverage, and certification, and payment. this term refers to the entity that participates in the program, whether or not the participating entity is comprised of the entire institution or a distinct part of the institution.

Section 483.10 Resident Rights

Summary of Provisions

Section 483.10 specifies that the resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. Section 483.10 also specifies that the facility must assert, protect, and facilitate the exercise of these rights. Under present rules, resident rights are categorized as an individual provision within a condition.

Section 483.10(a) specifies that (1) The resident has the right to exercise his or her right as a resident of the facility, and as a citizen or resident of the United States, including the right to file complaints; (2) the resident has the right to be free of coercion or reprisal from the facility in exercising his or her rights; and (3) an individual appointed under State law may exercise a resident's rights when a resident has been adjudicated to be incompetent.

Section 483.10(b) requires that the facility must inform the resident of his or her rights and all rules governing resident conduct and responsibilities during the stay in the facility. The notice must include the State's notice of rights and obligations of residents of nursing facilities (and spouses of such residents) under the Medicaid program. States are required to develop this notice by section 1919(e)(6) of the Act. Section 4801(e)(10) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90, Pub. L. 101–508) requires that these statements be included in the facility's notice to the resident and so we have included that requirement here.

Section 483.10(c) specifies that a resident is not required to deposit personal funds with the facility, and the resident may designate another party to manage his or her finances.

Section 483.10(d) specifies that a resident has the right to choose an attending physician, be informed in advance of care and treatment, and to participate in development of his or her plan of care.

Section 483.10(e) provides that a resident has the right to refuse the release of personal and clinical records to any individual outside of the facility, except when required to release to another health care institution by law, or third party payment contract.

Section 483.10(f) specifies that a resident has a right to treatment or care, and the right to prompt efforts by the facility to resolve a grievance.

Section 483.10(g) provides that a resident has the right to examine the results of the most recent survey of the facility conducted by Federal and State surveyors.

Section 483.10(h) specifies the work requirement and the resident's right to perform services for the facility when the need or desire for work is documented in the plan of care.

Section 483.10(i) specifies that a resident has the right to privacy in written communication including the right to send and receive unopened mail promptly.

Section 483.10(j), Level B requirement: Access to the facility, was only effective only until October 1, 1990. Therefore we propose to eliminate it. All subsequent paragraphs are redesignated.

Section 483.10(k) (redesignated to § 483.10(j)) specifies that a resident has a right to receive immediate family members or other relatives at any hour, and other visitors at a reasonable hour by arrangement with the facility.

Section 483.10(l) (redesignated to § 483.10(k) in this final rule) provides that a resident has the right to be provided use of a telephone.

Section 483.10(m) (redesignated to § 483.10(l) in this final rule) specifies that a resident has the right to retain and use personal possessions, unless to do so would infringe upon rights or health and safety of other residents.

Section 483.10(n) (redesignated to § 483.10(m) in this final rule) specifies that a resident has the right to share a room in a facility with a spouse when both spouses consent to the arrangement.

Section 483.10(o) (redesignated to § 483.10(n) in this final rule) provides that an individual may self-administer drugs only if the interdisciplinary team determines that it is safe.

Section 483.10(o) specifies the resident's right to refuse transfer from a room on one distinct part of a facility to a room in another distinct part of the facility for purposes of obtaining Medicare of Medicaid eligibility or without medical justification (to create vacancies for purposes of admitting other individuals who may be eligible for these programs to distinct parts to which payments may be made).

Comments and Responses

Comment: A number of commenters representing mental health interests requested that we add to the opening statement for resident rights that each resident has the right to treatment for the mental and physical conditions identified in his or her comprehensive plan of care.

Response: We do not believe the recommended changes would have the intended result. Instead, we believe that the appropriate means to assure that residents with mental or other illnesses receive the treatment they need is through enforcement of the requirements relating to properly assessing care given and comparing the provision of services actually furnished to those required to meet the resident's identified needs. We address several mental health treatment issues in additional responses. (See §§ 483.20(b)(2)(iii) and (vii); 483.20(f); 483.25(f); and 483.45(a)).

Comment: The regulations addressing resident incompetence and devolution of rights elicited over twenty responses;

commenters overwhelmingly opposed the proposed wording of § 483.10(a)(3). Almost all commenters asked that the rule address non-adjudicated determinations of incompetency as well as adjudicated cases because they asserted that residents often are not adjudicated incompetent but are too confused or ill to exercise their rights effectively without the assistance of others. Because the OBRA '87 provision concerning competency fails to address non-adjudicated situations, we did not include a provision in the February 2, 1989 final rule specifically addressing these cases. Commenters charged that this omission has the effect of requiring adjudication before anyone else can exercise a resident's rights. Also, they claimed that this omission either conflicts with State laws or excludes from consideration a variety of State-authorized means of handling resident incapabilities through non-judicial designation of legal surrogates, such as durable powers of attorney, living wills, or natural death laws. By ruling out these advance directives, we would effectively restrict a resident's right to self-determination.

Response: In order to avoid such ambiguity, we accept commenters' recommendations that we include a statement dealing with non-adjudicated cases of incompetence. Because of the variance in State laws concerning the issue of exercise of resident rights, we are deferring entirely to State law in these cases as we have already done with adjudicated cases. We are adding a provision at § 483.10(a)(4) which recognizes State mechanisms to designate legal surrogates through non-judicial means. To the extent that State-designated mechanisms for either adjudicated or non-adjudicated residents rely on a physician's determination of incapacity or incompetence, we bow to the State's authority to regulate in what has traditionally been a State matter.

Comment: Thirteen commenters responded to the preamble discussion on informing the resident of rights and responsibilities of the meaning of "in the language that he or she understands", which was contained in regulations at § 483.10(b)(1). The requirement is that facilities must notify residents of their rights. Several commenters objected to the many forms in which we suggested the notice of rights should be given (e.g., use of written foreign language translations and interpreters for non-English speaking residents and large print or sign language interpretation for those with visual or hearing impairment). Some suggested that we clarify in the interpretative guidelines that using family members or other appropriate third party representatives to provide translations for the resident would be sufficient. Other commenters praised this clarification and requested that it be included in the regulations text.

Response: We are retaining the regulation as it was presented in the February 2, 1989 final rule. We believe the approach we recommended in the preamble to that rule was sufficiently flexible not to place an undue burden upon facilities. That is, for foreign languages commonly encountered in the facility's locale, the facility should have written translations of its statement of rights and responsibilities and should make the services of an interpreter available. In the case of uncommon foreign languages, however, a representative of the resident may sign that he has interpreted the statement of rights to the resident prior to the resident's acknowledgment of receipt. For hearing impaired residents who communicate by signing, the facility would similarly be expected to provide an interpreter. Large print texts of the facility's statement of resident rights and responsibilities should also be available for the many residents who need them. We do not believe a facility should avoid its responsibility to see that the resident knows what his or her rights are and what is expected of him or her.

Comment: Fifteen commenters asked for clarification of either "during a resident's stay" or "all rules and regulations" in the regulation at § 483.10(b)(1).

Response: We believe that "during a resident's stay" means that any time State or Federal laws relating to resident rights or facility rules changes, residents must promptly be apprised of these changes. "All rules and regulations" relates to facility policies governing resident conduct. A facility cannot reasonably expect a resident to abide by rules about which he or she has never been told. Whatever rules the facility has formalized and by which it expects residents to abide should be included in the statement of rights and responsibilities.

Comment: We received over 60 comments on § 483.10(b)(2), which deals with the resident's right to inspect and purchase photocopies of his or her records. A sizable number of resident advocates asked for the right to inspect records immediately upon request. They were willing, however, to wait 48 hours to obtain photocopies. This group of commenters pointed out that current records are available immediately to staff, consultants, and Federal and State inspectors. They believe that residents should also have immediate access. Several commenters also believed that requiring a written request disadvantaged some residents with disabilities and that an oral request should be sufficient.

An equally sizable group of provider-based commenters claimed that 48 hours was not long enough to produce records. They pointed out that in the case of some long term residents, medical records can be extremely voluminous. Current records are periodically thinned. Older records may be warehoused away from the unit or even the facility, and several days might be required for retrieval. Facility-based commenters asked for from 2 to 7 working days to fulfill a request to see records.

Response: In keeping with the Institute of Medicine (IoM) recommendation that residents should be as informed and in control of their care as possible, we concur with the view of resident advocates that a resident should have the same right of access to his or her current records that staff, consultants or inspectors have and that an oral request should suffice. We also recognize the validity of the facilities' position concerning older records. We are therefore amending § 483.10(b)(2) to grant residents access within 24 hours to records which would include clinical records as specified in OBRA '90 and according to commenters request. We are not allowing immediate access to current records so as not to go beyond the OBRA '90 provisions which allow 24 hours for facilities to obtain clinical records. Upon provision of the records, new or old, a facility would be allowed two working days in which to provide photocopies at the resident's expense.

Comment: Several commenters responded to the statement in § 483.10(b)(2) that a resident should have access to "all records pertaining to the resident." Some asked that we limit records to medical records while others applauded the inclusiveness of this statement. Two commenters asked that facility incident reports not be considered a part of resident records.

Response: We are leaving the term "all records" as stated in the February 2 rule because we agree with those commenters that believe that a resident should have access to all records pertaining to him or her such as trust fund ledgers, contracts with the facility, and facility incident reports which involve him or her. This also includes clinical records as specified by the

provisions of OBRA '90 and, for consistency, we are allowing facilities 24 hours to grant access to all listed records.

Comment: As was the case with comments on the October 16, 1987 proposed rule, a handful of commenters again asked that we qualify the right to inspect records with the statement "unless medically contraindicated."

Response: As we explained in the preamble to the February 2, 1989 rule, we have eliminated this qualifier from all rights. This decision was based on the overwhelming response of commenters to the October 16, 1987 proposed rule who favored deletion of such phrases and upon our belief that each resident should have as much control as possible over his or her care. Other provisions relating to the exercise of resident rights should assure that incompetent residents do not have inappropriate access to records relating, for example, to their treatment.

Comment: Thirteen commenters, mostly representing facilities, expressed the belief that the role of informing the resident of both his or her medical condition and health status clearly belongs to the physician, not the facility. Some commenters believed the facility should only be responsible for responding to a resident's questions concerning what he or she had been told by the physician, but another group of commenters believed that, even in responding to questions, the facility could be placed in jeopardy for miscommunicating medical information that requires a physician's professional opinion. In such cases, they stated it would be improper for facility staff to answer specific questions.

Response: We note that proposed regulations at § 483.10(b)(3) would have qualified the right to be fully informed with "by a physician." We did not place this qualifier in the final rule because we did not wish to absolve the facility of all responsibility for communicating with the resident concerning his or her health status. We do not feel the change is appropriate now. This provision is consistent with § 483.10 (d)(2) and (d)(3), which require that the resident be informed of changes in his or her care or treatment and, unless a State authorized surrogate decision maker is involved, be allowed to participate in the planning of his or her care. While professional ethics would dictate that discussion of some matters requires a physician, the in-house interdisciplinary care-planning process should be discussed with the resident. The facility has always been in the position of contacting the physician when only a physician's judgment will suffice. In sensitive areas of discussion with the resident, the facility staff would not act in violation of this requirement should they refer the resident's questions to the attending physician or a facility physician. However, we expect facility staff, especially medical social workers, to routinely communicate in layman's terms information about health status to the resident.

Comment: Nine commenters responded to the requirement at § 483.10(b)(4) that residents have the right to refuse treatment and participation in experimental research. Several of them were concerned that the statement does not deal with incompetent, yet non-adjudicated residents incapable of making informed decisions. They believed that to allow such individuals to refuse food and water when not in mental control is irresponsible. Some of these commenters questioned our solution, in non-adjudicated cases, that if the refusal of all treatment is persistent and consistent, the facility may have grounds for discharge of the resident. One commenter suggested that we consider adding to the regulation our interpretation that a petition for a court-appointed guardian be considered in such cases. Another suggested that the regulations should emphasize the facility's obligation to offer the least restrictive treatment modality to patients in need of some form of treatment and should require the facility to offer rehabilitative alternatives in the face of persistent refusal.

Response: We are clarifying in a new § 483.10(a)(4) that we defer to whatever legal processes a State has adopted for dealing with incompetence or incapacity on the part of a resident. Some of these legal processes may involve the use of the courts to adjudge an individual incompetent and appoint a guardian or conservator. Other State designated instruments, such as a durable power of attorney, are non-adjudicative because they do not involve the use of the courts to permit another person to act on behalf of the resident. Some State processes discriminate between areas where a resident is competent and areas where a surrogate is empowered to make divisions. We recognize any legal surrogate designated in accordance with State law, whether appointed by adjudicative or non-adjudicative means and to any extent designated.

We believe that, whether or not a resident is incompetent, consistent refusal of treatment over time must be honored, but in compliance with State law and case law. The resident has the right to refuse treatment. This refusal and the facility's response to it must be consistently documented before a facility can legitimately consider discharge as an option. A pattern of failure to document the resident's refusal of treatment and the facility's efforts to employ alternate modalities of treatment before resorting to discharge as the ultimate solution could lead to a deficiency for discharging without adequate grounds and/or for a failure to provide an adequate quality of care.

Comment: Fourteen commenters responded to § 483.10(b)(5) and (b)(6), which concern notification of residents about Medicare and Medicaid and about services offered by the facility but not covered by Medicare and Medicaid. The largest number of commenters requested clarification of "periodically" in § 483.10(b)(6). Two commenters termed these requirements onerous because the number of items in the State plan or offered by facilities are numerous and change often. They believed a list of what the Medicaid-eligible resident is responsible for or a notice of changes in the cost of services used by a private pay resident should be sufficient. Another commenter urged us to publish a list of items and services that are included in nursing facility services and for which the resident may not be charged. Still other commenters asked for 30 days written notice of any changes in the list of services covered by the State plan and charges for uncovered services.

Response: These two requirements (§ 483.10(b)(5) and (b)(6)) are taken directly from section 1919(c)(1)(B)(iii and iv) of the Act as amended by OBRA '87. When the two provisions—one relating to Medicaid recipients and the other relating to non-Medicaid recipients—are considered together, the thrust of these provisions becomes clear: Residents should be told in advance when changes will occur in their bills. Therefore, we interpret "periodically" to mean whenever changes are being introduced that will affect the resident's liability. The items and services which may be charged to a resident's personal funds are being clarified as part of a separate regulation published as a notice of proposed rulemaking on March 20, 1990 at 55 FR 10258.

Comment: Three commenters asked that § 483.10(b)(7)(ii), which requires a facility to notify residents of their right to file complaints in certain instances, be expanded to include notice of the resident's right to complain to the State licensure office, the ombudsman program, the protection and advocacy network, the adult protective services, and the Medicaid fraud control unit. They asked that the names, addresses, and phone numbers of each of these

advocacy groups be included in the notice of rights as well as be required to be posted so that this information is easily accessible to residents and visitors.

Response: We agree with these commenters that the notice of rights is an appropriate place to present information about the various State agencies acting as client advocates. Section 483.10(f)(1) assures that residents have the right to voice grievances, and § 483.10(g)(2) requires that residents receive information about such organizations and be afforded the opportunity to contact these agencies. However, nowhere do we currently require that detailed information about how to contact these agencies (i.e. name, mailing address and telephone number) be placed in every resident's hands at the time of admission. We are therefore amending § 483.10(b)(7) to include a requirement that the statement of rights contain the name, mailing address and telephone number of relevant advocacy agencies. By relevant advocacy agencies we mean, the State survey and certification agency, the State licensure office (usually synonymous with the survey and certification agency), the ombudsman program established by the State under the Older Americans Act of 1965; the protection and advocacy system for developmentally disabled individuals established under the Developmental Disabilities Assistance and Bill of Rights Act; the protection and advocacy system established under the Protection and Advocacy for Mentally Ill Individuals Act; and the Medicaid fraud control unit established under section 1903(q) of the Act, as amended by the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977.

Our rationale for imposing this requirement is that we believe it does a resident or his or her representative little good to tell him or her that he or she can complain without supplying specific information concerning relevant advocacy agencies. The written statement of rights given at the time of admission is likely to be retained by the resident or representative and is, therefore, an appropriate place to list these client advocacy agencies. Section 1919(c)(1)(x) gives the Secretary the authority to establish other rights. We believe this requirement is an extension of the rights specified in section 1919(c).

We do not believe this requirement is overly burdensome since most of this information should be readily available to the facility. For instance, in order to transfer or discharge a resident, OBRA '87 amended section 1919(c)(2)(B)(iii) of the Act to require that the NF include in the transfer or discharge notice identical information about the State ombudsman and, as appropriate, the protection and advocacy systems for individuals with mental retardation/developmental disabilities and mental illness.

Comment: Two commenters responded that § 483.10(b)(8), which requires facilities to tell residents how to contact their physicians, as presented in the February 2 rule, implies that the facility chooses the physician responsible for the resident's care. They asserted that in fact, the reverse is usually the case. The resident or responsible party chooses the physician and should inform the facility as to whom the treating physician is and when a change occurs. They stated that only in rare instances should the facility have to secure a physician without prior consultation with the resident or responsible party.

Response: This provision was added to the list of resident rights because commenters on the proposed rule alleged that many residents have no knowledge who is their attending physician or how to contact him or her. While the resident has the right to choose a physician, and most residents may do so, the resident may not have exercised this right and may not know whom to contact. When a resident has selected an attending physician, it is appropriate for the NF to confirm that choice when complying with this requirement. When a resident has no attending physician, it is appropriate for the NF to obtain one and inform the resident.

Comment: Several commenters asked that we specify "primary" or "attending" physician in § 483.10(b)(8) because some residents have several different physicians. Other commenters noted that facilities often use clinics and that the name, address, and telephone number of the clinic should be sufficient.

Response: We believe "the physician responsible for his or her care" means the attending or primary physician or clinic, whichever is responsible for managing the resident's plan of care and excludes other physicians whom the resident may see from time to time.

Comment: Ten commenters responded to the requirement at § 483.10(b)(9) based on OBRA '87 that facilities provide information about Medicare and Medicaid. Several commenters objected to having to provide oral information to potential residents. They asked that this requirement be limited to referring individuals to the appropriate agency for explanation if the individual could not read or understand the written material presented. Another commenter asked us to define the parameters of a "potential" resident. Other commenters believed that the State or Federal government should prepare the written materials on how to apply for Medicaid and Medicare.

Response: Since OBRA '87 requires that the facility provide residents or individuals applying to reside in the facility with oral and written information, we cannot alter this requirement. Written materials issued by the State Medicaid agency and the Federal government relating to these benefits may be used. Also, we believe that facilities may fulfill their obligation to inform orally residents or applicants for admission about how to apply for Medicaid or Medicare by assisting them in contacting the local Social Security Office or the local unit of the State Medicaid agency. Nursing facilities cannot be expected to know and are not responsible for orally providing detailed information on the often complex Medicare or Medicaid eligibility rules. In accordance with the OBRA '87 provision, we have substituted the term "applicants for admission" for the less precise "potential residents."

Comment: Two commenters requested that the notice given under § 483.10(b)(9) should include information about how to appeal if Medicaid or Medicare benefits are denied.

Response: Since other rules specify that all denial notices contain information about appeal rights, we believe that requiring an NF to discuss how to file an appeal on a resident right is unnecessary. Furthermore, the OBRA '87 provision upon which this requirement is based does not include notice of appeal procedures.

Comment: One commenter asked if the phrase "how to receive refunds for previous payments covered by such benefits" in § 483.10(b)(9) is a reference to refunds which might be due based on publication of the list of items and services furnished by a nursing facility which are not chargeable to the personal funds of a resident.

Response: We expect to publish in a forthcoming proposed rule the list of items and services which cannot be charged to a resident's personal funds. We do not anticipate that these requirements, even when published as a final rule, would be applied retroactively. Rather, the reference relates to refunds due as a result of Medicaid payments when eligibility has been determined retroactively.

Comment: Over 50 commenters responded to the requirement concerning notification of changes in the

resident's health condition. Several commenters suggested this requirement be rewritten. As it is currently worded, they pointed out, it means that in a medical emergency or in the case of a competent individual the facility does not have to tell the resident what is happening to him or her. Nor, in these two situations, does the facility have to contact the resident's physician and the legal representative or family to notify them of the changes.

Response: The interpretation of the commenters is not what we intended. We are clarifying the wording of this provision to indicate that in all cases, whether or not there is a medical emergency, the facility must notify the resident; his or her physician; and any legally-appointed representative or an interested family member, if known. In the case of an incompetent individual, the legal representative would make any decisions that might have to be made, but we believe the resident should still be told what is happening to him or her even though he or she is not capable of fully understanding. In the case of a competent individual, the facility must still contact the resident's physician and notify an interested family member, if known.

Comment: A number of commenters raised questions about who must be notified. Some felt that we should not use the term "interested family member" because it has no legal status, because some families are very large and many members may be "interested", and because a competent resident should either be expected to notify the family himself or be afforded the choice of whether he or she wants to approve or deny notification of the family. Other commenters pointed out that the definition of a "legal representative" varies from State to State or even within a State, depending upon the instrument used. Another commenter asked why the facility should "consult" with the resident and only "notify" the physician, rather than the other way around.

Response: We agree that the facility should inform the resident of the changes that have occurred but consult with the physician about actions that are needed. As we indicated in § 483.10 (a)(3) and (a)(4) we defer entirely to any State requirements relating to designation of legal surrogates that may be in effect. By using the term "interested family member" we expect that a family that wishes to be informed would designate one member to receive calls. Even when a resident is mentally competent, we believe such a designated family member should be notified of significant changes in the resident's health status because the resident may not be able to notify them personally, especially in the case of sudden illness or accident.

Comment: Twelve commenters objected to granting the facility up to 24 hours in which to notify the resident's physician and the legal representative or family. As some noted, a resident could be dead or beyond recovery in that time and the family would be denied the opportunity of being with their loved one during the time of crisis.

Response: We agree and have amended the regulation to require that the physician and legal representative or family be notified immediately.

Comment: Fifteen commenters requested that we qualify "injury" to include only those which are "substantial" or "require physician intervention." Commenters also asked us to define a "significant" change in health status or treatment.

Response: We recognize that judgment must be used in determining whether a change in the resident's condition is significant enough to warrant notification, and accept the comment that only those injuries which have the potential for needing physician intervention must be reported to the physician. We have defined "significant change" to mean deterioration in health, mental, or psychosocial status in either life-threatening conditions (for example, heart attack, stroke) or clinical complications (for example, development of a stage II pressure sore, onset or recurrent periods of delirium). A need to alter treatment "significantly" means a need to stop a form of treatment because of adverse consequences (for example, an adverse drug reaction) or commence a new form of treatment to deal with a problem (for example, the use of any type of restraint, medical procedure, or therapy which has not been used on that patient before).

Comment: Seventeen commenters responded to the requirement concerning change in room or roommate assignment at § 483.10(b)(10)(ii)(A). Several asked what the purpose of notification of roommate change is. Some consumer advocates stated that the notice is meaningless if the resident does not have the right to request, approve, or refuse a change in room or roommate. One such commenter proposed that the residents subject to involuntary intra-facility transfer should have the same rights available to them under the transfer and discharge provisions in § 483.12. On the other hand, facility representatives indicated that they must have the right to make practical and reasonable roommate changes since they are ultimately held accountable for the welfare of all the facility's residents. Emergency room changes may need to be made to isolate a resident, or a change in pay status may require movement to a different bed. While they could understand the importance of notifying the family of a room change, some facility commenters felt that it was not practical to notify families when a roommate is changed. Some facility-based commenters also questioned why they should have to notify both the resident and a legal representative. A number of commenters also asked us to define "promptly."

Response: This requirement is based on sections 1819(c)(1)(v)(II) and 1919(c)(1)(v)(II) of the Act, which requires that the resident be given prior notification of both room and roommate changes. The statute does not give the resident more than the right to be informed that the change will take place. Therefore, we did not expand upon this right to accord residents veto powers over facility decisions. Changes in room or roommates is not subject to the same rights as inter-facility transfers or discharges. Far from being meaningless, the right to notification of room or roommate changes should reduce stress for residents. For example, a commenter on the proposed rule noted that too often a resident will come back from lunch to find that his or her room or roommate has been changed. Anyone would find such a discovery unsettling. Even many incompetent residents can be presumed to benefit from being informed in advance of the changes. We have therefore specified in the regulation that both the resident and the resident's representative or family be informed. The interpretive guidelines explain that "promptly" generally means the resident should be informed as soon as the facility determines that a change in room or roommate is to be made.

With respect to the issue of inter-facility but intra-physical plant transfers (**Note**: For a more detailed discussion of intra and inter-facility transfer, see discussion for the second response to comment under section 483.12 Admission, Transfer, and Discharge rights, Comments and Responses.) relating to payment status, we would note that such transfers are inappropriate in the context of the Medicaid program. When a resident occupies a bed in a distinct part of a NF which participates in Medicaid and not in Medicare, he or she may not be moved by the facility (or be required to be moved by the State) solely for the purpose of assuring Medicare eligibility for payment. Such inter-facility but

intra-physical plant movements are only appropriate when they take place at the request of the resident as might occur, for example, when a privately paying Medicare beneficiary believes that admission to a bed in a Medicare participating distinct part of the facility may result in Medicare payment. This point was made explicitly in sections 4008(h)(2)(G) and 4801(e)(8) of OBRA '90, which prohibit intra-facility transfers for purposes of qualifying patients for Medicare payment. A discussion of these two sections occurs later, where new § 483.10(o) is described and explained.

Comment: Two commenters believe nursing facilities should receive reimbursement for having to provide the banking services required at § 483.10(c)(2) or be allowed to charge residents for the services.

Response: Section 1902(a)(13)(A) of the Act provides for title XIX payment for meeting the requirements of section 1919(b) (other than paragraph (3)(F) thereof), (c), and (d). The provision requiring an accounting of resident funds is found at section 1919(c)(6). Therefore, the expense of providing these services should be included in the State's Medicaid payment rates which must be calculated pursuant to 42 CFR part 447.

Comment: Twenty-four commenters responded to the deposit of funds requirement in § 483.10(c)(3), which was taken directly from OBRA '87. Many of the commenters objected to the burden of having to keep full, complete, and separate accountings for 2 accounts (interest-bearing and non-interest-bearing) for each resident entrusting his or her funds to the facility. They claimed that facilities will be moving funds back and forth between the two accounts with no real gain for the resident. Many commenters also complained that the threshold of $50 is too low. They pointed out that banks are increasingly unwilling to offer interest-bearing accounts on such small sums or levy service charges that exceed the interest. Other commenters recommended as a solution to this problem that the facility be allowed to have one pooled trust account for all residents having a balance of $50 or more.

Response: This requirement is based on sections 1819(c)(6) and 1919(c)(6) of the Act. After further examination of the statute, we have determined that it does not prohibit placement of resident funds less than $50 in interest-bearing accounts. Instead, it gives facilities flexibility in managing resident funds less than $50. Thus, while a facility must place resident funds greater than $50 in an interest-bearing account, it may opt to place funds less than $50 in an interest-bearing, a non-interest-bearing account, or a petty cash fund. We have made this change in the regulations.

Also, the February 2 final rule contained a typographical error which led to some misunderstanding on the part of commenters. The preamble also erroneously stated that the facility must keep the "resident's" (as opposed to "residents' ") funds in separate accounts. We are modifying § 483.10(c)(3) to reflect the statutory language which permits both petty cash and the interest-bearing funds to be pooled, so long as residents' funds are not commingled with any of the facility's operating accounts and separate accounting is made of each resident's share of the assets and earnings (in the case of interest-bearing accounts). We understand that computer programs for performing these functions are available to NFs. If a pooled account is used, each resident must be individually identified and the interest prorated on a basis of actual earnings or end-of-quarter balance.

Comment: Eight commenters responded to the accounting and records requirement in § 483.10(c)(4). Six of them asked for quarterly statements rather than reporting upon request.

Response: Because the majority of commenters who addressed this requirement in both the proposed rule and final rule with comment overwhelmingly requested quarterly statements, we have amended § 483.10(c)(4) to require them.

Comment: Nine commenters, all representing facilities, asked that we limit the requirement to notify residents when the amount of money in their accounts reaches certain balances to funds for which the facility has responsibility.

Response: We agree that a facility would have no way of knowing what other resources an individual might have other than those deposited with the facility. The interpretive guidelines clarify that a facility is not responsible for knowing about assets not on deposit with the facility.

Comment: Seven commenters responded to § 483.10(c)(6), which requires a facility to convey promptly a resident's funds to his or her estate administrator upon death. Some asked us to define "promptly". Others asked that we establish a procedure for cases in which there is no individual available to administer the estate.

Response: We consider within 30 days to be generally acceptable as a definition for "promptly" and have made this substitution. We also have clarified that the final accounting must be conveyed to the "individual or probate jurisdiction" administering the estate in response to commenter's concerns.

Comment: Four commenters noted that the limitations on personal funds addressed in § 483.10(c)(8) are already illegal and that HCFA should issue regulations defining what services are covered by Medicaid and what services cannot be charged to a resident's personal funds.

Response: The statutory provisions in sections 1819(f)(7) and 1919(f)(7) relating to the requirement for regulations defining the items and services that may be charged to resident funds and the items and services included in nursing facility payments is being implemented in another rule. In the interim, States are required to assure that residents are not charged for routine personal hygiene items and services. Section 483.10(b)(7) currently contains the requirements relating to a facility's responsibility for informing the resident about the facility's charging practices.

Comment: Twenty-two commenters responded to the requirement of free choice of an attending physician. The vast majority of commenters argued in favor of having this resident right balanced by a facility right to grant or withdraw staff privileges to physicians. These commenters argued that the facility is required to ensure good care and must be able to deny privileges to physicians who do not deliver the level of care that meets the level of physician services required of the facility or who do not follow facility policies.

Response: We believe the right of the resident to choose a physician is not absolute. In the interpretative guidelines we explain that if a physician of the resident's choosing fails to fulfill a given Medicaid or Medicare requirement, the facility has the right, after informing the resident, to seek alternate physician participation to assure the provision of appropriate and adequate care and treatment.

Comment: One commenter pointed out that continuing care retirement centers (CCRCs) generally have a panel of physicians under contract and structure the medical and financial program around the physician panel.

Response: In the case of CCRCs, a resident has already exercised a certain degree of choice in selecting this type of living arrangement. If the resident is allowed to choose his or her physician from among panel members, the requirements for free choice is being met.

Comment: Two commenters asked that we expand the right to choose an attending physician to include the right

to choose other providers such as pharmacists.

Response: We have not amended the regulation to include a right of a resident to select other providers because we believe that the resident has already exercised freedom of choice in selecting the facility. The facility has the responsibility of maintaining appropriate methods of dispensing and administering drugs in the facility. With that responsibility goes the right to define certain methods and procedures with which the pharmacist must comply. These methods and procedures are essential to assuring that the patient is protected from medication errors. Therefore, the facility has the right to restrict the variety of drug labeling and packaging practices that can result from using multiple pharmacies in an effort to reduce or eliminate medication errors.

Comment: Two commenters expressed the opinion that the responsibility of informing the resident about care and treatment should belong to the physician, not the facility. One of these asked who has to bear ultimate responsibility when there is a disagreement among the resident, the physician, and the facility staff over implementation of the plan of care.

Response: As we indicated in the response to comments submitted on § 483.10(b)(3), we believe the facility shares with the physician responsibility for communicating with the resident about care and treatment. We have explained in the interpretive guidelines that the facility is expected to discuss options and alternatives with the resident or his or her legal representative; the resident selects and approves the specific plan of care before it is instituted. This requirement does not apply to application of emergency procedures in life-threatening situations unless advance directives are in effect. If the resident objects to any proposed changes in the plan of care, the facility should allow the resident to discuss his or her objections with the physician and note the final decision in the medical record.

Comment: Two commenters asked us to clarify who may participate in care planning on behalf of incapacitated residents or expressed the concern that the use of the phrase "adjudicated incompetent" was too strong and that the requirement should allow for the use of less restrictive mechanisms.

Response: The rest of the phrase in question reads ". . . or otherwise found to be incapacitated under the laws of the State . . ." We note that under § 483.10(a)(3) and (a)(4) we have deferred to State law in the matter of acceptable legal surrogates for both adjudicated and non-adjudicated incompetent persons, and believe that position is appropriate here also.

Comment: Two commenters asked that we clarify the regulation which states that the facility is not required to provide a private room in relationship to the resident's right to have privacy in accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. The commenters believed that the qualifier only applied to resident accommodations and did not apply to rooms for meetings of residents and family groups, visits, written and telephone communications, personal care, and medical treatment.

Response: Sections 1819(c)(1)(A)(iii) and 1919(c)(1)(A)(iii) require privacy in accommodations, medical treatment, and meetings of family and resident groups. The provision at the end of sections 1819(c)(1)(A)(x) and 1919(c)(1)(A)(x) state that "clause (iii) shall not be construed as requiring the provisions of a private room" and we have so clarified the regulation. We believe this statement applies to accommodations and all the activities listed under sections 1819(c)(1)(A)(iii) and 1919(c)(1)(A)(iii). Thus, the ultimate rule the facility must follow is the practice of assuring an individual's privacy rights. How they accomplish that privacy is not mandated by the statute or these regulations. With the exception of the explicit requirement for privacy curtains in all initially certified facilities (see § 483.70(d)(1)(v)) the facility is free to innovate in order to provide privacy for its residents. This may but need not be through the provision of a private room.

Comment: One respondent asked that we eliminate the provision in § 483.10(e)(3) that restricts the rights of patients to refuse release of personal and clinical information to third party payors because persons in the community have the right to refuse to release records to such payors.

Response: We concur and have deleted this reference. A third-party payment insurance contract may be contingent upon the resident's consent to release information but the rules should not permit a facility to release the information without the resident's consent.

Comment: Five commenters responded to the grievance requirements in § 483.10(f). One believed that the right to voice grievances should not be restricted to those pertaining to treatment or care. The right to file any grievances (for example, those concerning mismanagement of finances or violation of rights) should also be protected.

Response: We agree and have amended the text of the regulations to avoid making the list we present exclusive so that the resident has the right to voice any grievances, including those about treatment and care.

Comment: Two other commenters asked that we substitute "address" for "resolve" on the grounds that the facility cannot guarantee that all grievances will be resolved to the resident's complete satisfaction since the facility is also responsible to other residents and must uphold their rights as well. A third commenter, however, supported the statement in § 483.10(f)(2) as worded.

Response: The regulation reguires the facility to assure the resident the right to "prompt efforts" to resolve grievances. This is OBRA '87 language at sections 1819(c)(1)(A)(vi) and 1919(c)(1)(A)(vi) of the Act and in no way requires the facility to resolve all grievances, cnly to make prompt effort to do so.

Comment: Eighteen commenters responded to the requirement that residents have the right to examine survey results and that facilities must post these results. The majority did not object to having the survey results accessible in their entirety, but they felt that "posting" these results, which are lengthy and cumbersome, would not contribute to ease in reading or a homelike atmosphere. They proposed, instead, that the facility be allowed to post a notice on a wall or bulletin board that the results are available for inspection and that the survey results be readily available (perhaps organized in a binder] at the same location as the notice. Under this arrangement, a resident or visitor would not have to ask to see the results. A minority of commenters believed, however, that the results of a survey could be misinterpreted. They wanted to have the results available "upon request."

Response: While the wording of this requirement in OBRA '87 would allow for examination of survey results "upon reasonable request," we retained the "posted" language, used in the proposed rule and in the February 2 final rule because of the favorable response of commenters. The majority of commenters on both the proposed rule and the February 2 final rule supported our view that individuals wishing to examine the results should not have to ask to see them. We accept their suggestion that the results be made available in a more readable form such as a binder and have revised the wording of § 483.10(g)(1) to state that the results must be "made available for

examination" in the facility in a place readily accessible to residents.

Comment: A few commenters requested that more information than the results of the most recent annual survey and any plan of correction in effect be made available. For example, they asked that past surveys, citations produced as a result of State complaint investigations, and notices of any adverse actions imposed by the survey agency also be required to be made available. They also asked that the separate statement of deficiencies be posted as well as the survey report form. One commenter believed that rather than posting the complete survey report form, a facility should be required to post only the statement of deficiencies if one exists.

Response: Sections 1819(c)(1)(A)(ix) and 1919(c)(1)(A)(ix) give the resident the right to examine the results of the most recent survey of the facility. We are interpreting the "results" of the most recent survey to include both the survey report form and any statement of deficiencies, however these deficiencies were generated (whether by a standard or extended survey or as a result of a complaint investigation). Since OBRA '87 addresses only the "most recent survey," we did not require facilities to make available surveys previous to the most recent survey.

Comment: The three commenters who responded to the requirement that residents be permitted to contact and receive information from a client advocate asked that we require posting of a complete list of the names of all available regulatory enforcement and client advocacy agencies and their addresses and telephone numbers. Many of these organizations have 800 numbers.

Response: We note that commenters on the October 16, 1987 proposed rule objected to posting this list because it detracts from a homelike atmosphere, However, we were persuaded by the recent commenters who argued that on balance the benefits of having this information readily available (posted) would be greater since timid or frightened residents may be reluctant to request it from facility staff. Thus, we have included a provision for posting the names, addresses, and telephone numbers of regulatory and advocacy agencies.

Comment: Nine commenters responded to the work requirement in § 483.10(h). Three of them supported making all work arrangements, whether paid or voluntary, reviewable in the plan of care. Some commenters, however, objected to any references to work for pay. Others expressed fears that facilities would be required to offer work for pay to any resident who wanted it or that all voluntary work performed by residents would cease due to the inability of facilities to pay a "prevailing wage." Another commenter asked what a "prevailing wage" means (whether prevailing in the facility or in the community) and whether a facility would have to pay taxes for FICA or workman's compensation if it offered work for pay. This commenter also suggested that if a community prevailing rate is required, the work performed should be of a quantity and quality comparable to that performed in the community before similar pay would have to be offered.

Response: We do not believe the work requirement as presented in the February 2 rule requires a facility to offer paid work. By making all work reviewable under the plan of care, we believe we have created a bargaining table at which the voluntary or paid nature of therapeutic work can be discussed and terms can be negotiated if pay is to be offered.

Comment: Nineteen commenters responded to the mail requirement. Nearly all of them either supported or objected to the February 2 preamble discussion which clarified that the requirement for the sending or receiving of mail "promptly" means that delivery to the resident of incoming mail must be within 24 hours of arrival within the facility and delivery of outgoing mail to the post office must be within 24 hours. The majority wanted some allowance made for weekends and holidays.

Response: The interpretive guidelines specify that we continue to support the concept of delivery to the resident within 24 hours of delivery by the post office, but we will relax the 24 hour guideline for outgoing mail on weekends and holidays when there is no regularly scheduled postal delivery and pick-up service.

Comment: Several commenters asked that we define "at any reasonable hour," "reasonable access," and "reasonable restrictions" as used in § 483.10(k) redesignated in these rules as § 483.10(j), Access and visitation rights. (Section 483.10(j), which deals with access to facilities and visitations rights contains provisions that expire October 1, 1990, hence it is deleted and § 438.10(k) through (o) are redesignated as § 483.10(j) through (n), respectively.

Response: In the interpretive guidelines we indicate that "at any reasonable hour," means that the facility must allow access to the resident at least 8 hours per day, arranged in such a way that daytime, evening, and weekend visitation times are available to meet the schedules of most potential visitors who are subject to visiting hours. The only individuals who are not subject to visiting hour limitations are State and Federal Health and Human Services (HHS) representatives and representatives of the State ombudsman system and the protection and advocacy agencies for mentally ill and mentally retarded individuals.

The law delineates somewhat differing access rights for 3 groups. First, immediate family or other relatives will no longer be subject to visiting hour limitations or other restrictions. Second, non-family visitors must also be granted immediate access to the resident; however, the facility may place "reasonable restrictions" upon this right. "Immediate access subject to reasonable restrictions" means that the facility may not limit the timing of the visit by a non-relative but may establish other reasonable limitations to facilitate care giving for the resident or to protect the privacy of other residents. For example, the facility may require that non-family visits not take place in a resident's room if a roommate is asleep or receiving care. Third, the facility must provide "reasonable access" to any resident by any entity or individual that provides health, social, legal, or other services to the resident. "Reasonable access" by service providers means that the facility may establish rules that establish permissible times and circumstances of the visit such as location or duration of the visit.

Comment: Four commenters requested that we amend the requirement at redesignated § 483.10(j) to allow residents the right to grant or deny access by State or Federal surveyors on the grounds that a resident should have the right to deny access to anyone of his or her choosing.

Response: The statutory language of sections 1819(c)(3)(A) and 1919(c)(3)(A) does not allow residents the right to deny access by State or Federal HHS representatives, by representatives of the State ombudsman and protection and advocacy systems for the mentally ill or mentally retarded, or by the resident's individual physician. All other parts of sections 1819(c)(3) and 1919(c)(3), which grant access to variou other categories of visitors (that is subparagraphs B through E), contain clauses such as "subject to the resident's right to deny or withdraw consent at any time" or "with the permission of the resident". Subparagraph A contains no such qualifier. Because of the presence of such limitations in all other subparagraphs, we cannot interpret the

absence of such a qualifier in subparagraph A as a mere omission. We therefore hold that a resident cannot refuse to see these specified government officials or his or her own physician.

Comment: Seventeen facility representatives objected to granting immediate access to the immediate family and other relatives on the ground that 24-hour-a-day open access conflicts with the facility's caregiving responsibilities. It could interfere with meals, sleep, or treatment. It could pose security risks during the late evening or night. Moreover, it could deprive roommates of privacy.

Response: The statute provides no basis for adding "reasonable restrictions" to this right to access by family and relatives. Sections 1819(c)(3)(B) and 1919(c)(3)(B), (§ 483.10(j)(1)(vii) of the regulation), which grant immediate access to immediate family and other relatives contain no such qualifier. By contrast, the next subparagraph C (§ 483.10(j)(1)(viii) of the regulation) which grants access to others visiting the resident contain the clause "subject to reasonable restrictions."

Comment: Three commenters objected to the limitations placed on the examination of residents' clinical records by representatives of the State ombudsman. One ombudsman commenter objected to having to obtain a resident's permission. Another wanted all the resident's records, not just clinical ones, open for examination by ombudsmen with the permission of the resident. The third commenter thought that written consent of the resident or his or her representative should be required.

Response: The statute at sections 1819(c)(3)(E) and 1919(c)(3)(E) clearly requires permission of the resident and restricts access to the resident's records to clinical records. Therefore, we have not expanded upon this requirement.

Comment: Thirteen commenters responded to the requirement on telephones. Several commenters asked that the text of the regulation specifically require wheelchair accessibility and availability of adaptive equipment. One commenter suggested that we change "regular" to "reasonable" access to the private use of a telephone on the grounds that regular could mean once a week. Another commenter applauded the requirement, stressing the importance of telephone calls when family members live at considerable distance: Frequent calls are the next best thing to visits. A number of commenters also questioned the degree of privacy that must be accorded. Some pointed out that pay phones and even private phones in shared rooms are not totally private. Others felt that the facility should not be required to provide a specific phone for patient access or that we should specify that the use of a phone is a resident expense.

Response: We do not believe that the regulation needs to be expanded to address the comments relating to telephones. The right to privacy is a resident right clearly spelled out in § 483.10(e)(1). Section 504 of the Rehabilitation Act of 1973 assures that handicapped persons also have this right. We have, however, clarified the language in section 483.10(k) to make it clear the resident must have reasonable access to a telephone where calls can be made without being overheard. We have made no further changes in the rule.

Comment: Five commenters responded to the personal property requirement of redesignated § 483.10(1). One requested that facilities be required to replace lost prosthetic items such as glasses and hearing aids that are essential to independent functioning. Another commenter urged that we require facilities to keep an inventory of a resident's possessions and to institute search and investigation procedures. The remaining commenters asked that either the facility administrator or the resident have more control over what furnishings were acceptable.

Response: We believe the OBRA '87 requirement at sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act concerning reporting of misappropriation of property should help to deal with cases of theft or loss of property. While we do not have the authority to require facilities to maintain inventories of all resident possessions, we recommend such a practice. In response to those commenters who believe either the facility administration or the resident ought to have more power to decide what furnishings are acceptable, we believe that the wording presented in the February 2 rule strikes a workable balance between resident and facility rights. On grounds of space and health or safety concerns, the facility may legitimately deny a request. On the other hand, residents are entitled to have some familiar possessions and furnishings to make their rooms homelike.

Comment: We received ten comments on the requirement that married couples in the same facility be allowed to share a room. Five of them urged that we reinstate an "unless medically contraindicated" provision to deal with spousal abuse while another supported our deletion of such a limitation.

Response: As we explained in the preamble to the February 2 rule, the overwhelming response to the proposed rule favored the deletion of medical contraindications to all rights. We continue to believe that our response to this issue is appropriate. In the February 2 rule we added the qualifier that both spouses must consent to the room sharing and that, in verifiable cases of spousal abuse, facilities should use their social work staff to resolve difficulties or encourage the abused spouse to withdraw consent.

Comment: The few remaining commenters opposed this requirement on the ground that it places a burden on case mix reimbursement systems. One commenter proposed that reimbursement be made at the higher rate.

Response: As we stated in the preamble to the February 2 rule, we believe that the incidence of cases in which both spouses are in the same facility at very different levels of care is low enough that facilities will not incur inordinate financial losses.

Comment: States, facilities and consumer advocates have also asked how we view the priority of rights in situations where a resident's spouse wants to share a room in the facility, but the resident's current roommate does not want to be relocated to accommodate the admission of the spouse.

Response: The regulations at redesignated § 483.10(n), effective October 1, 1990, state that the resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement. We do not believe that this provision gives a resident the right to compel another resident to relocate to accommodate a spouse. It means that when a room is available for a couple to share, the facility must permit them to share it if they choose. However, it does not compel a facility to relocate anyone to accommodate the wishes of the married couple.

Comment: Approximately 30 commenters complained about the provision at redesignated § 483.10(n) of the final rule which gives residents the right to self-administer drugs unless an interdisciplinary team has decided that this practice is unsafe.

The commenters maintain that about 95 percent of the residents are not physically, mentally, or visually capable of this task, and if the interdisciplinary team has to document why 95 percent of the residents cannot self-administer drugs, a very large paperwork burden

will exist. Furthermore, commenters pointed out that those residents who are capable of self-administration of drugs represent a potential danger to other residents if they do not maintain proper security of their drugs. Wandering residents are highly likely to find these supplies and help themselves.

Response: The right to self-administer drugs was promoted as a way to help residents maintain as much self-control and self-determination as possible. This is particularly important for residents on a discharge plan who are preparing to become independent in their homes again. As commenters have pointed out, however, this right does not weigh favorably against the potential hazard it may cause to other residents and the paperwork burden it can create for facilities. Thus, we have changed the requirement so that a resident has the right to self-administer a drug only if the interdisciplinary team determines that it is safe.

Summary of Changes to § 483.10

In response to comments, in addition to minor technical or editorial changes, we are making the following changes:

- We are revising all the sub-headings of the regulations to simply state the subject matters that follows. For example, §§ 483.10(f) and 483.10(j), formerly designated as Level B requirements, will now read "Grievances" and "Access and visitation rights", respectively. Similarly, those 2 sub-headings are grouped under the heading "Resident Rights", formerly designated as a Level A requirement. Headings will be italicized. The use of italics is intended only to aid identification of categories or groupings of rights, not to indicate a hierarchy of importance.
- In § 483.10(a)(4) we are clarifying that we defer to the State in dealing with individuals determined incapacitated or incompetent through either adjudicative or non-adjudicative means.
- In § 483.10(a)(4) we are adding a provision which recognizes State mechanisms to designate legal surrogates through non-judicial means.
- In § 483.10(b)(2) we are granting residents access to records within 24 hours including clinical records. Facilities are allowed two working days to provide photocopies at the resident's expense.
- In § 483.10(b)(7) we include a requirement that the statement of rights contain detailed information about how to contact relevant advocacy agencies.
- In § 483.10(b)(9) we clarified that the requirement applies to applicants for admission to a facility.
- In § 483.10(b)(10) we clarified the requirement concerning notification of changes in the resident's health condition.
- In § 483.10(c)(4) we now provide that residents be informed of the status of any funds held in account quarterly.
- In § 483.10(c)(6) we require a facility to convey a resident's funds to the estate administrator within 30 days after the resident's death.
- In § 483.10(c)(7) we are revising this provision to reflect the exact wording of sections 1819(c)(6)(C) and 1919(c)(6)(C) of the Act, thus eliminating "or provide self-insurance." We are replacing that language with "provide assurance satisfactory to the Secretary." Under most circumstances we expect NFs will obtain a surety bond since these bonds are inexpensive and readily available and the total amount they will need to cover is relatively small. In the interpretive guidelines we will spell out circumstances under which we would accept self-insurance but the facility would have to meet strict criteria for fiscal solvency.
- In § 483.10(e)(3) we remove the restriction on residents to deny access of third party payors to personal and clinical information.
- Section 483.10(j), Level B requirement: Access to facility, is effective only until October 1, 1990. We would eliminate this paragraph and redesignate all subsequent paragraphs.
- In § 483.10(n) (redesignated from § 483.10(o)) we have changed the requirement so that a resident has the right to self-administer a drug only if the interdisciplinary team determines that it is safe.
- In § 483.10(o), Refusal of certain transfers, we are adding a new residents' right provision to reflect changes made by sections 4008(h)(2)(G) and 4081(e)(8) of OBRA '90. Specifically these provisions allow a resident to refuse transfer from a room in one distinct part of a facility to a room in another distinct part of the facility for purposes of obtaining Medicare eligibility or without medical justification.

We are also amending § 483.10(b)(7) to reflect a change made by section 303(a)(2) of the Medicare Catastrophic Coverage Act (MCCA) of 1988 which was overlooked in the February 2 rule. Section 303(a) of MCCA is generally referred to as the spousal impoverishment provision. The statute applies to institutionalized persons who have spouses living in the community. The provisions establish new income and resource eligibility methods and provide for more generous deductions from income of institutionalized spouses to meet the need of their community spouses and other family members when calculating how much institutionalized spouses contribute to the cost of their care.

Section 303(a) of MCCA, amended section 1919(c)(1)(B)(i) by adding an additional requirement that nursing facilities inform, orally and in writing, each resident at the time of admission of the requirements and procedures for establishing Medicaid eligibility, including the right (in the case of married couples where only one spouse is institutionalized) to request and have the appropriate agency within the State assess couples' resources. Resource assessments requested under this provision are assessments described in section 1924(c)(1)(B) of the Act and may be requested by either member of a couple or a representative acting on behalf of either spouse. Such assessments are evaluations of resources held by couples as of the beginning of continuous periods of institutionalization to determine the type and value of resources which would be used to determine Medicaid eligibility if the institutionalized member of a couple applied for Medicaid. Countable resources held by couples as of the beginning of the most recent period of institutionalization are used in part of the Medicaid eligibility determination process, regardless of when a Medicaid application is filed.

Thus, such arrangements will be useful to couples in financial planning and should produce a more accurate accounting of each spouse's resources should a Medicaid application be filed some time in the future. States are permitted to charge reasonable fees for assessments requested by couples who have not applied for Medicaid. No charge is permitted when a computation of a couple's resources is made in conjunction with a Medicaid application. Therefore, residents must be made aware of any fees associated with such assessments. At the completion of an assessment, each spouse will be provided a copy of the assessment and the documentation used to make it. Such persons are also provided notices advising couples that they do not have the right to appeal the assessment findings at the time the assessments are made but have the opportunity to appeal findings if and when the institutionalized spouse applies for Medicaid.

Section 483.12 Admission, Transfer, and Discharge Rights

Summary of Provisions

In the final rule we created a new requirement called Admission, transfer and discharge rights, § 483.12, based on wording from OBRA '87 provisions.

Paragraph (a), Transfer and discharge, defines transfer and discharge of a resident. The paragraph also specifies the requirements and documentation needed for transfer or discharge of a resident and specifies that a facility must notify the resident and a family member or legal representative of a transfer or discharge.

New paragraph (b), Notice of bed-hold policy and readmission, largely incorporates OBRA '87 provisions in new section 1919(c)(2)(D) of the Act. This paragraph requires that facilities provide written information to the resident and a family member or legal representative that specifies the duration of the bed-hold policy, if any, under the State plan, and the facility's policies on bed hold periods before a resident is transferred to a hospital or for therapeutic leave, and at the time of transfer.

Paragraph (c), Equal access to quality care, implements the OBRA '87 provision in new section 1919(c)(4) of the Act, which provides that a facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all individuals regardless of source of payment.

Paragraph (d), Admissions policy, incorporates OBRA '87 provisions in section 1919(c)(5) of the Act, which prohibit facilities from—

- Requiring a third party guarantee of payment as a condition of admission, expedited admission, or continued stay in the facility; and
- Charging, soliciting, accepting or receiving, in addition to any amount required to be paid under the State plan, any gift, money, donation or other consideration as a condition of admission, expedited admission or continued stay in the facility.

A facility must not—

- Require residents or potential residents to waive their rights to Medicare or Medicaid, and
- Require oral or written assurance that residents or potential residents are not eligible, or will not apply for, Medicare or Medicaid benefits. These provisions are intended to prevent discrimination against individuals entitled to Medicare or Medicaid benefits.

Comment and Responses

Comment: A commenter wanted to know what would prevent facilities from "dumping" residents whom they viewed as undesirable and requested the regulation assure that facilities do not justify this type of transfer or discharge by not providing a service normally covered by the statutory definitions of nursing facility or skilled nursing facility services. Another commenter specifically addressed the situation of residents with dementia, who may be viewed as a threat to the safety of other residents, and opposed their discharge where the facility fails to provide appropriate care.

Response: The facility must not transfer or discharge a resident unless it is necessary for the resident's welfare and the resident's needs cannot be met in the facility (§ 483.12(a)(1)(i)); the transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility (§ 483.12(a)(1)(ii)); the safety or health of individuals in the facility is endangered (§ 483.12(a)(1) (iii) and (iv)); or the resident has failed, after reasonable notice, to pay his/her bill (§ 483.12(a)(1)(v)).

The facility must provide services according to the provisions of sections 1819(b)(4)(A) (i) through (vi) and 1919(b)(4)(A) (i) through (vi) of the Act to the extent needed to fulfill all plans of care; nursing and related services and specialized rehabilitative services to allow or maintain the highest practicable physical, mental, and psychosocial well-being of each resident; pharmaceutical services; dietary services; an ongoing program of activities; and routine dental services. Thus, a facility would be out of compliance if it refused to provide a statutorily defined service in order to eliminate certain residents under one of the transfer reasons stated above.

Comment: Several commenters urged that the applicability of the OBRA '87 transfer and discharge provisions be clearly explained. They specifically wanted to clarify that these provisions apply to inter not intra facility transfer and discharge.

Response: OBRA '87 clearly intends that the transfer and discharge provisions apply to residents who are transferred or discharged "from the facility". There are two statutory references that support this contention. One is at section 1919(c)(2)(A) of the Act which states that "A nursing facility must permit each resident to remain in the facility and must not transfer and discharge the resident *from the facility* (emphasis added) unless * * *." There is an identical Medicare provision at section 1819(c)(2)(A) of the Act. Similar language at sections 1819(c)(2)(C) and 1919(c)(2)(C) makes reference to transfer *from the facility*. Thus, the transfer and discharge provisions must refer to movement of the resident from one facility to another facility and not within a facility.

Another provision of OBRA '87 supports this view in another way. Sections 1819(c)(1)(A)(v)(II) and 1919(c)(1)(A)(v)(II) of the Act give the resident the right "to receive notice before room or roommate of the resident in the facility is changed." If the law had intended for the transfer and discharge provisions to apply to intra facility transfer, there would have been no reason for this provision. Further, sections 1819(a) and 1919(a) define a participating facility in terms of being * * * "an institution (or a distinct part of an institution)." Thus, if a resident is transferred from a nursing facility unit (i.e., distinct part) to a skilled unit (i.e., distinct part) of the same physical plant, they are being transferred outside of one facility (in this case, the intermediate care unit) and into another, and the transfer and discharge provisions of OBRA '87 would apply.

We have clarified this issue by adding a definition of transfer and discharge to § 483.12(a) at paragraph (1). This definition states that "transfer and discharge" includes the movement of a resident to a bed outside of the certified facility whether that bed is within the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility. As a result of this addition, all subsequent paragraphs are redesignated.

We have also added a new residents' right at § 483.10(o) to reflect the provisions of sections 4008(h)(2)(G) and 4801(e)(8) of OBRA '90. These two sections of the law made explicit an existing right of patients to avoid transfers from "distinct part" SNFs to "distinct part" NFs or vice versa for purpose of manipulating payments under Medicare or Medicaid.

Briefly, both Medicare and Medicaid permit a SNF or NF to be a "distinct part" of an institution, and institutions often choose to designate one distinct part for Medicare, or a distinct part for Medicaid, or both. Since Medicare payment can only be made when the beneficiary is in a SNF (or distinct part of an institution that is participating as a SNF) and Medicaid payment can only be made to a NF (or a distinct part of an

institution that is participating as a NF) States and institution operators often have the incentive to relocate residents from one distinct part to another, for example:

- A facility with a small Medicare distinct part may wish to move residents whose Medicare coverage is exhausted to distinct part that does not participate in Medicare so that a new Medicare patient can be placed in the vacated bed; or
- A State may wish a dually entitled beneficiary (i.e , a beneficiary who is eligible for both Medicare and Medicaid payments) to be transferred to a distinct part of a facility that participates in the Medicare program so that payment would not be made under the State's Medicaid program. (This program occurred frequently before the repeal of MCCA '88, when there was no Medicare requirement for a 3 day hospital stay for SNF entitlement and the benefit was calculated on an annual basis. It was alleged that residents were transferred from one distinct part (Medicaid) to another (Medicare) to shift liability from one program to another.)

Both types of transfers were inappropriate under existing rules; however, there were reports of inappropriate transfers which led to the inclusion of this explicit right in OBRA '90.

The language in the new right includes a statement that a refusal to consent to a transfer does not affect Medicaid eligibility or entitlement. This language means only that a State may not refuse to make Medicaid payment because a resident declines to be admitted to a distinct part in which the Medicare program could make payment. It does not create new Medicaid entitlement or expand entitlement to individuals who are in facilities (or distinct parts of facilities) that do not participate in the Medicaid program as NFs.

Comment: Seven commenters objected to the provision at § 483.12(a)(2)(v), which prohibits facilities from transferring or discharging a resident for 30 days in cases where the resident has not paid his or her bill or has not had his or her bill paid by Medicare or Medicaid. They wanted to add a provision that would allow them to transfer or discharge a resident without 30 days notice when Medicare, Medicaid, or other third party payor abruptly terminated payment for the resident. Without this provision, they claim they would have to provide up to 30 days of free care when payment is denied without notice by Medicare, Medicaid, or third party payor.

Response: The provision at § 483.12(a)(5) requiring a 30 day notice before transferring or discharging a resident because of nonpayment of services is a statutory requirement found at sections 1819(c)(2)(A)(v) and 1919(c)(2)(A)(v) of the Act. Congress specifically intended a 30 day notice because at sections 1819(c)(2)(B)(ii) and 1919(c)(2)(B)(ii) it exempted a 30 day notice for a number of reasons (e.g., the transfer or discharge is necessary for the health, safety, or welfare of the resident or the resident has not lived in the facility for 30 days) but not for nonpayment of services. We interpret this exemption as leaving the Department without discretion to consider the commenter's suggestion.

Comment: Two commenters addressed the requirement at § 483.12(a)(3)(i) (redesignated to § 483.12(a)(4)(i)) which provides that the facility notify the resident and, if known, a family member or legal representative of the transfer or discharge and the reasons for the move. One suggested that we include the word "written" to conform to the requirement in § 483.12(a)(5) (written notice). The other commenter suggested that we also modify this provision by adding to the end of the statement "in a language and manner that the resident understands."

Response: We agree, for clarification purposes, to modify this provision to include the suggested revisions to read as follows: "Notify the resident, and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand."

Comment: A commenter asked whether a facility must provide notice of transfer or discharge to residents who have resided less than 30 days in the facility, and another noted that this seems to be a discriminatory practice against new residents. The provisions of redesignated § 483.12(a)(2) (i) through (vi) describe the circumstances in which a resident may be given 30 days notice. These dates do not apply when the resident has lived in the facility less than 30 days (§ 483.12(a)(4)(ii)(E) redesignated as § 483.12(a)(5)(ii)(E)).

Response: The facility has no obligation to notify residents who have lived in the facility less than 30 days. The regulation at redesignated § 483.12(a)(5)(ii)(E) implements the statutory provision at sections 1819(c)(2)(B)(ii)(IV) and 1919(c)(2)(B)(ii)(IV) of the Act, which excludes residents with less than 30 days residency from the requirement of providing advance transfer or discharge notice.

Comment: A commenter noted that the transfer and discharge requirements are overly cumbersome, particularly because facilities are already overburdened with paperwork.

Response: We are not able to eliminate or make major modifications to these requirements since they are specifically required by OBRA '87 provisions. However, we welcome any suggestions for ways that the law could be amended to make these requirements less cumbersome.

Comment: A commenter recommended inclusion of a requirement that any determination of need to transfer, except in an emergency, should be made in consultation with a multidisciplinary assessment and care planning team.

Response: We require at § 483.12(a)(2)(i) (redesignated from § 483.12(a)(1)(i)) that when a facility transfers or discharges a resident under any circumstances as described under § 438.12(a)(2) (i) through (v), documentation must be made by the resident's attending physician (§ 483.12(a)(3)(i)) or, as required at § 483.12(a)(3)(ii), a physician. This does not prevent an interdisciplinary team from making a recommendation for discharge or transfer but makes the physician the final arbiter of the appropriateness of the decision.

Comment: A commenter expressed the belief that a resident should be allowed to return to the facility under bed-hold provisions in cases where an acute episode of mental illness (MI) occurs.

Response: The requirement at § 483.12(b)(3) already provides that the facility must establish and follow a written policy under which a resident whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan is admitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident requires the services provided by the facility and is eligible for Medicaid. If this situation follows an acute episode of MI, then the bed-hold provisions apply. Thus, we see no need for additional regulations.

Comment: One commenter suggested that a resident's notice of transfer or discharge as required under redesignated § 483.12 (a)(3) should be given immediately in those circumstances where the 30-day notice is not possible. It was also recommended that upon a resident's successful appeal after transfer, a resident should be returned immediately to the facility or, in those cases where the appeal is made before transfer, any action should be stayed pending determination of the appeal.

Response: We have outlined those circumstances under which a 30-day notice would not have to be given for a transfer or discharge under redesignated § 483.12 (a)(5)(ii) (A) through (E). The notice may be made as soon as practicable before transfer or discharge when the safety of the individuals in the facility is endangered, the resident's health improves to allow for an immediate discharge, or the resident has not resided in the facility for 30 days.

With regard to a resident's appeal rights for transfers and discharge, we are currently establishing in a separate regulation requirements the States must meet to provide a fair mechanism for hearing appeals on transfer or discharges from skilled nursing facilities. Comments about these appeals that we received in connection with this regulation have been considered in the process of drafting the NPRM on appeals which will also be subject to public comment when it is published.

Comment: Ten commenters responded to the notice of bed-hold requirements in § 483.12(b). Most commenters questioned how or why a facility could, or should have to, give notice both before and at the time of transfer. Particularly in the case of an emergency transfer, many commenters believed the second notice was inappropriate. They asked us to clarify in the interpretive guidelines that the first notice could be provided well in advance of any transfer (e.g., at the time of admission) and that the second notice could be given after an emergency transfer in order not to delay the transfer. Another commenter could see no reason for notifying both the resident and the legal representative or family member if the resident is competent.

Response: This requirement is taken directly from OBRA '87, which requires that two notices be issued, both before and at the time of transfer. The statute also requires that the written notice be given to both the resident and the family or legal representative. We believe the first notice could be given well in advance of any transfer. However, reissuance of the first notice would be required if the bed-hold policy under the State plan or the facility's policy were to change. We intend to explain in the interpretive guidelines that, in cases of emergency transfer, notice "at the time of transfer" means that the family or legal representative could be provided with the written notification within 24 hours of the transfer. We accept the requirement is met if the resident's copy of the notice is sent with other papers accompanying the resident to the hospital.

Comment: Five commenters responded to the readmission requirement in paragraph (b)(3) with a variety of comments. One commenter pointed out that a transfer to a hospital or therapeutic leave frequently indicates a significant change in the resident's health status. Readmission to the facility must be contingent upon the facility's continued ability to provide appropriate care. Another commenter objected to having to readmit a resident who has an outstanding balance for Medicaid cost-sharing when he or she goes out on bed-hold. This commenter felt that forced readmission constituted a major infringement on the facility's property rights. Another facility-based commenter asked what the facility should do if the next available bed in a semiprivate room is in a room already occupied by a person of the opposite sex. Still another commenter believed that this provision, which applies only to Medicaid recipients, discriminates against private pay residents.

Response: This requirement is contained in section 1919(c)(2)(D)(iii) of the Act. If, after a stay in a hospital, a resident requires nursing facility services, the facility must readmit the resident. The law makes no reference to or exception for unsatisfied balances. Therefore, the facility must readmit such an individual. We believe the "next available bed in a semiprivate room" can be construed to mean a bed in a room shared by another resident of the same sex. In response to the final objection that this provision is discriminatory, we note that the statute requires that the notice of bed-hold and readmission policies must be given to all residents who transfer or go out on therapeutic leave. The statute requires readmission only of Medicaid recipients after the bed-hold period expires.

Comment: A few commenters asked whether the prohibition against third party guarantees in § 483.12(d)(2) applies to private pay admissions as well as to Medicare beneficiaries and Medicaid recipients.

Response: We note that the statute makes a distinction when referring to specific individuals or residents (e.g., section 1919(c)(5)(A)(iii), "in the case of an *individual* who is entitled to medical assistance for nursing facility services * * *", and section 1919(b)(1)(A), "A nursing facility must care for its *residents* in such a manner * * *"). Thus, in this instance, since no similar distinction is made, the prohibition against third party guarantees applies to all residents and prospective residents regardless of the payment source in both Medicaid NFs and Medicare SNFs.

Comment: Several commenters asked that we clarify that the prohibition against third party guarantees does not include gathering information about eligibility for payment by Medicare, Medicaid, or private insurance. If the facility cannot assure that once admitted the resident will indeed pay his or her bills at least through insurance, the facility is put at risk to recover payment for services rendered, particularly if the resident becomes incompetent. These commenters believed that unless facilities are allowed to establish information about third party payment sources, they will be reluctant to accept individuals who are not Medicaid eligible unless they have sufficient assets to guarantee payment for a long stay.

Response: The wording of this provision is taken directly from OBRA '87. We agree that the term "third party guarantee" needs definition. The legislative history reveals that Congress was concerned with prohibiting SNFs and NFs from requiring a person, such as a relative, to accept responsibility for the charges incurred by a resident, unless that person is authorized by law to disburse the income or assets of the resident. In such allowable cases, the person providing the guarantee assumes no personal liability. He or she only promises to make payment out of the resident's financial holdings. We do not believe that Congress intended to limit in any other way the facility's right to obtain information necessary for collecting payment from third party payors (not guarantors). Therefore, we will explain in the interpretive guidelines that a "third party guarantee" is not the same thing as a "third party payor" and that this provision does not preclude the facility from obtaining information about Medicare or Medicaid eligibility or the availability of private insurance. The provision does, however, prohibit the facility from requiring a person other than the resident to assume personal responsibility for any cost of the resident's care. We would also note that the prohibition against requiring a third party guarantee of payment would not prohibit a third party voluntarily from making payment on behalf of a resident.

Comment: Several other commenters were concerned that this provision would prevent continuing care retirement communities (CCRCs) from requiring members to take out long term care insurance to cover costs of nursing facility care they might need. These commenters pointed out that CCRCs

offer life care services, ranging from independent living accommodations to NF care. Residents sign contracts for this extensive package of housing and health care services and pay an entrance fee and monthly fees. In return, the community assumes the financial risk of providing some or all of the services the resident needs for the rest of his or her life. At a minimum, the contract guarantees access to NF services. At a maximum, it covers the full cost of NF services. These commenters believed that this requirement, as written, would prohibit CCRCs from including participation in a group long-term care insurance program for those who can afford to do so, as a contract provision. They therefore urged that the facility and community be considered separately.

Response: As we established above, insurance is a third party payor, not a third party guarantor. In addition, the CCRC member usually makes this commitment by his or herself, rather than having someone else make it for him or her.

Comment: Seven commenters objected to § 483.12(d)(3) which regulates nursing facility solicitation and acceptance of gifts, because they believed that the requirement severely restricts fund raising for nonprofit facilities. They also pointed out that residents sometimes donate large items such as organs or pianos to be used by the residents during their stays and left to the facility after death or discharge. They believe this requirement would prohibit a facility from accepting any unconditional gift from a resident or potential resident. Also, these commenters pointed out that in soliciting funds, non-profit facilities appeal to their entire religious or community organization. They should not be expected to purge their mailing lists of any relatives of current residents or any potential residents. In a broad sense, nearly everyone in their organizations is a "potential" resident.

Response: This requirement is derived almost verbatim from section 1919(c)(5)(A)(iii) and (8)(iv) of the Act, which apply this prohibition only to Medicaid eligible recipients in nursing facilities certified under Medicaid. Section 1819(c)(5)(A) contains no comparable requirement for skilled nursing facilities under Medicare. Therefore, we have revised the text of the regulation to reflect this limitation. We have also restructured this section to make the intent of the OBRA admissions provisions more readily understandable.

In clarifying that revised § 483.12(d)(3) applies only to Medicaid recipients in Medicaid NFs, we note that, by contrast, the proceeding two requirements in sections 1819(c)(5)(A) and 1919(c)(5)(A) which prohibit facilities from requiring individuals to waive their rights to Medicare or Medicaid benefits (revised § 483.12(d)(1)) or from requiring a third party guarantee of payment (revised § 483.12(d)(2)) apply to all residents, not just Medicaid recipients, in both Medicare SNFs and Medicaid NFs.

We believe that revised § 483.12(d)(3) only prohibits the nursing facility from charging/soliciting or accepting/receiving gifts from or on behalf of a Medicaid recipient when these gifts are intended to purchase preferential treatment for a Medicaid recipient, presumably over other Medicaid recipients. Gifts given by or on behalf of Medicaid recipients for purposes other than to gain admission, expedited admission or continued stay are not prohibited. Nor are any donations from or on behalf of non-Medicaid eligible individuals, given for whatever reason, prohibited.

Thus, non-profit nursing facilities may continue to appeal to their traditional sources of support with few limitations (i.e., only with respect to Medicaid-eligible residents or potential residents and only with respect to donations given to gain for the Medicaid recipient preferential treatment with respect to admission, expedited admission or continued stay).

We note that, while section 1819(c)(5)(A) of the Act contains no corresponding statement on gifts or donations to Medicare skilled nursing facilities, other parts of the statute and regulations are relevant. Under section 1866(a) of the Act, a participating Medicare provider must agree not to charge a Medicare beneficiary (or other person on his or her behalf) for services covered by Medicare, except for any deductible and coinsurance amounts that may be applicable. This provision operates to preclude acceptance by a Medicare SNF of donations from or on behalf of Medicare beneficiaries in return for preferential treatment with respect to admission or continued care. The implications of the section 1866 agreement are spelled out, in part, in regulations at 42 CFR 489.22. In addition, regulations at 42 CFR 489.53(a)(2) prohibit any participating Medicare provider that accepts both Medicare and Medicaid patients from imposing restrictions on the acceptance of Medicare patients for treatment which are more severe than those it imposes on all other persons seeking care. Because section 1866(a) is already implemented elsewhere in the regulations, as indicated, we are not repeating these requirements here.

Comment: Five commenters asked why the requirement at § 483.12(e) which requires the facility to have resident care policies will be removed after October 1, 1990.

Response: This requirement is based on section 1861(j)(2) of the Act, which was repealed by OBRA '87, effective October 1, 1990.

Summary of Changes to § 483.12

In response to comments, we have made the following changes:

- In § 483.12(a) we have added at paragraph (1) a definition of transfer and discharge to clarify that the determinant is whether a resident is moved to another certified facility, whether or not the bed is in the same physical plant. This results in redesignating all following paragraphs and correcting appropriate cross references.
- In § 483.12(a)(4) (redesignated from (a)(3)) we clarify that notification for a move must be in writing and in a language and manner that the resident understands.
- In § 483.12(b), since this section applies only to Medicaid as specified in section 1919(c)(2)(D) of the Act, it is necessary to specify *nursing facility* as opposed to *facility*.
- In section 483.12(d) we clarify the admission policy for a facility to conform the regulation more closely to the statute.

We also made minor editorial or technical changes to conform the regulation more closely to the statute. In a few instances we removed obsoleted material, i.e., not in effect after September 30, 1990. We also deleted the reference to the "State agency designated by the State for such appeals" at § 483.12(a)(6)(iv) since we are designating the use of the Medicaid fair hearing system at § 483.200ff in another regulation.

Section 483.13 Resident Behavior and Facility Practices

Summary of Provisions

Section 483.13(a) specifies that a resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience.

Section 483.10 (b) and (c) provide that a resident has the right to be free from abuse, corporal punishment and involuntary seclusion and that a facility must develop and implement written policies and procedures that prohibit mistreatment, neglect and abuse of a resident, and misappropriation of resident property.

Comments and Responses

Comment: A large group of commenters raised issues on the physical and chemical restraint requirement at § 483.13(a).

Response: As we pointed out in the preamble (54 FR 5323) to the final regulation, we plan to publish a separate regulation detailing specific requirements on physical and chemical restraints in emergency and non-emergency situations. While we are using the comments received on this regulation to assist in preparing this proposed rule, we will accept and review further comments when it is published in the Federal Register.

Comment: Five commenters objected to the location of the restraint requirement. They felt that it would be better located under § 483.10, Resident rights. This would ensure that the right to be free from restraints would be among those rights of which residents are informed pursuant to § 483.10(b).

Response: The organizational location of this requirement in no way frees the facility from notifying a resident of all his or her rights as established by these regulations. The rights of residents are established in three sections, § 483.10 Resident Rights, § 483.12 Admission, Transfer and Discharge Rights, and § 483.13 Resident Behavior and Facility Practices.

Comment: Several commenters felt that the references to a right to be free from involuntary seclusion in § 483.13(b) and (c) should be removed. They pointed out that involuntary seclusion can be a form of treatment to minimize the use of physical restraints by removing a resident from a source of agitation.

Response: We agree with the commenters that involuntary seclusion can be used in some circumstances. We are, however, unable to remove the prohibition against its use from the regulations because it is statutorily required by sections 1819 and 1919(c)(1)(A)(ii) of the Act as amended by OBRA '87.

Comment: Several commenters pointed out that in revising § 483.13(c), which requires the facility to take several steps to protect residents from mistreatment, neglect, and abuse of residents by staff, we did not take into account all of the relevant OBRA '87 provisions. Sections 1819 and 1919(g)(1)(C) of the Act require the State, through its survey and certification agency, to have a process for receipt, timely review, and investigation of all allegations of resident abuse or neglect or misappropriation of resident property by a nurse aide or other individual used by the facility. The State survey and certification agency must also enter all adverse findings into the nurse aide registry or notify the appropriate licensure authority in the case of other staff (non-nurse aides). Sections 1819 and 1919(e)(2)(B) require the nurse aide registry to include specific documented findings by the State survey and certification agency concerning resident neglect, abuse, or misappropriation of resident property by an individual listed in the registry. Also, sections 1819 and 1919(b)(5)(C) require a nursing facility to inquire of the registry as to information concerning an individual before allowing him or her to serve as an aide. Commenters noted that § 483.13(c):

- Contains no mention of misappropriation of resident property;
- Omits explicit reference to the State survey and certification agency's role in investigating all alleged violations;
- Leaves the reporting of alleged violations to "other officials in accordance with State law" optional (by using "or" instead of "and" in § 483.13(c)(2) and (c)(4)), thus rendering the operation of the registry ineffective; and
- Uses a different standard than proposed in OBRA (i.e., § 483.13(c) limits the prohibition against hiring to individuals who have been "convicted," presumably by a court of law, rather than to those who are "found" by the survey and certification agency to have neglected or abused a resident or misappropriated resident property).

Response: In addition to this regulation, the nurse aide registry and enforcement provisions of OBRA '87 are the subject of other proposed rules which are under development. In those rules, we will explain more fully how these staff treatment requirements relate to the workings of the nurse aide registry and the survey and certification process. See for example, 55 FR 10938 in the March 23, 1990 issue of the Federal Register for our proposed rule on nurse aide registry requirements. (See § 483.75(g) for other nurse aide training and competency requirements.)

Also as a result of these comments we have reevaluated the wording of § 483.13(c) which was first proposed in the October 16, 1987 proposed rule at § 483.25(n) as a close parallel to § 483.420(d) in the regulations for intermediate care facilities for the mentally retarded (ICFs/MR). Section 483.420(d) requires that the ICF/MR not employ any individual who has been "convicted" of abuse, neglect, or mistreatment of a resident. We have been advised that "found guilty by a court of law" is a more inclusive term and should be used. This term includes situations in which the accused pleads guilty, or is found guilty while having pleaded innocent, or pleads *nolo contendere.*

While the survey and certification agency is charged under OBRA '87 with investigating and producing findings on all allegations of resident abuse, neglect and misappropriation of resident property by staff, we continue to believe that the facility has an important responsibility for identifying and investigating all incidents of suspected resident abuse, neglect, or mistreatment or misappropriation of property, whether by staff or others. Often the source of the offense will be initially unknown. Other residents or visitors, rather than staff, could be involved. Once the facility's preliminary investigation implicates staff, the facility is responsible for notifying the State survey and certification agency. If an incident appears to involve a criminal act, the facility is also responsible for notifying the appropriate law enforcement agencies.

Comment: A number of commenters responded to the requirement at § 483.13(c)(1)(ii) which prohibits the facility from employing individuals who have been convicted of abusing, neglecting, or mistreating individuals. Most of the commenters were concerned that this information is not and will not always be available to the facility. These commenters pointed out that even though States are required to maintain nurse aide registries, not all staff will be included in the registry. Also, access to police records is often limited and may not be available at all from sources outside the State. These commenters requested that the regulation be changed to read that the facility must not knowingly employ individuals who have been convicted of abusing, neglecting, or mistreating residents.

Response: The intent of the regulation is to prevent the abuse of residents by staff who have a history of abuse. To add the word "knowingly" would dilute the intention of the regulation and give facilities an opening not to be thorough in their investigations of the past histories of individuals they are considering hiring. In addition to inquiring of the State nurse aide registry or other licensing authorities, the facility should check all references and make reasonable efforts to uncover information about any past criminal prosecutions. If the nursing facility should learn of a history of criminal acts by an employee (past, present, or prospective), we are requiring that it

report such knowledge to the State registry or other licensing authority.

Comment: Another group of commenters suggested that the regulation could result in many employees unfairly losing their jobs. They stated that the regulation does not describe what protection must be afforded employees who are accused of neglect or mistreatment, nor does it inform facilities of the investigation and due process procedures with which all parties must comply.

Response: The regulation prohibits the facility from hiring individuals who have been found guilty of abusing, neglecting or mistreating residents or misappropriating resident property either by a court of law or by the State survey and certification agency. Court actions would provide safeguards to protect the innocent. Furthermore, OBRA '87 requires that the investigatory role of the survey and certification agency is to include opportunities for a fair hearing and for the individual to rebut adverse information contained in the registry. Therefore, we believe due process rights are protected and ample safeguards are in place to protect the innocent whether in a court of law or before a survey and certification agency.

Comment: Several commenters suggested that the requirement at § 483.13(c)(4) which states that the results of all investigations must be reported to the administrator or his or her designated representative within 5 working days of the incident did not allow the facility enough time for investigation in cases where an allegation is not made until several days after the incident. They suggest that the requirement be changed to read within 5 working days of knowledge of the incident.

Response: We have not accepted these comments. We think that 5 days is a reasonable time in view of the fact that a resident may be in jeopardy of repeated abuse in the meantime. To make the change requested would weaken the intent of the regulation, which is to protect patients from abuse.

Summary of Changes

In order to make the staff treatment provisions of this rule consistent with these other OBRA '87 provisions, as a result of these comments we are:

- Adding "misappropriation of property" to the list of violations in § 483.13(c)(1) against which the facility must protect the resident.
- Changing "convicted" in § 483.13(c)(1)(ii) to read "found guilty by a court of law" and must not employ individuals for whom findings indicate a past history of abuse, neglect, or mistreatment of residents or misappropriation of resident property.
- Changing the "or" to an "and" in § 483.13(c)(2) and (c)(4) to make reporting of allegations and findings of the facility's own investigation to the State survey and certification agency and any other officials, as required by State law, obligatory.
- Requiring the facility to report to the State nurse aide registry and other licensing authority any knowledge it has of criminal actions taken against a past, present, or prospective employee which might indicate unfitness for service as a nurse aide or other staff.

Section 483.15 Quality of life

Summary of Provisions

Section 483.15 Quality of Life, specifies that the facility must ensure that residents receive care in a manner and in an environment that maintains or enhances their quality of life without abridging the safety and rights of others by (a) treating each resident with dignity and respect and (b) maintaining each resident's privacy.

Section 483.15(c) specifies that residents have a right to choose activities, schedules and health care, consistent with their interests, assessments and plans of care, and also to interact with members of the community both inside and outside the facility.

Section 483.15(f) provides that the facility must provide for an ongoing program of activities appropriate to residents' needs and interests designed to promote opportunities for engaging in normal pursuits, including religious activities of their choice.

Section 483.15(g) specifies that a facility must provide medically related social services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

Section 483.13(h) requires that the facility provide a clean, comfortable, and homelike environment for the resident.

Comments and Responses

Comment: Section 483.15(c)(6) requires that, "when a resident or family group exists, the facility must listen to the views and act upon grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility." A commenter noted that "listening to and acting upon" is too vague and suggested requiring written responses from the administration about grievances or recommendations and forwarding unresolved grievances to the licensing bureau.

Response: We do not believe it is necessary to regulate the means by which the facility should respond to grievances by requiring a written response. Our regulations allow facility flexibility and we do not wish to impose any additional burden upon the facility.

Comment: Section 483.15(f)(2) requires the activities program to be, "directed by a qualified professional who is a qualified therapeutic recreation specialist who is licensed or registered if applicable, by the State in which practicing; and eligible for certification as a therapeutic recreation specialist by a recognized accrediting body on October 1, 1990." Several commenters recommended that the National Association of Activity Professionals (NAAP) be included in the qualifications for the person who directs the activity program because they believe their certification criteria are appropriately based on the educational and experiential background needed for a person to be able to provide a quality activity program to an elderly population. It also emphasizes the importance of providing a variety of activity programs, not a specific type of program, such as music, art recreation, etc.

Response: We chose not to specify particular accrediting associations or organizations but rather leave it to the majority membership of the particular discipline to determine which association or organization they recognize.

Comment: Section 483.15(f)(2)(B)(iv) requires that an activities program must be directed by a qualified professional who "has completed a training course approved by the State." Approximately 80 commenters addressed this section. Some commenters supported this requirement; others suggested that the State-approved course be used in conjunction with other qualifications (i.e., degree and appropriate certification as an art, dance, music, or recreation therapist). Several commenters opposed this requirement for a number of reasons:

- State approved programs do not include components necessary to implement a successful therapeutic activity program.
- State programs differ in length, content, and qualifications, thus there are not national uniform standards.
- Regulations do not provide any evaluation method for these programs. Many State training courses provide 30 to 50 contact hours of training. Given multiple responsibilities of the activity

professional, the limited training provides a bare minimum even in the best of circumstances.

• When State-approved certification programs are in place, they may not include consultation by an occupational or recreational therapist to ensure that high standard programs are in place.

• State approved programs provide too much flexibility for the States or for facilities.

• State approved programs should be required for all activity assistants or activity aides.

Response: Based upon the provisions of OBRA '87, we are requiring an ongoing program of activities directed by a qualified professional designed to meet the interests and the physical, mental, and psychological well-being of each resident. We do not believe it is necessary to eliminate the option of State approved programs as we are continuing to focus on outcome measures rather than the method by which these objectives are accomplished. We have no evidence that the residents participating in activities programs directed by individuals who have completed State approved programs are less likely to achieve the desired objective than when the program is directed by other individuals.

Comment: Many of the commenters wanted to retain the requirements at 42 CFR 405.1131(a) which state that a member of the facility's staff is designated as responsible for the patient activities program.

Response: Upon the effective date of the February 2, 1989 rule (October 1, 1990) 405.1131(a), which allows a member of the facilities staff to be responsible for the patient activities program, is eliminated. Similarly, we eliminate the requirement that if the staff member is not a qualified patient activities coordinator, he or she must function with frequent, regularly scheduled consultation from a person so qualified. We believe that effective October 1, 1990, the consultation requirement is unnecessary since we have stated that the activities must be directed by a qualified professional.

Comment: Several commenters addressed the qualifications section of this requirement and recommended that the activities program be directed by a qualified professional who is a qualified therapeutic recreation specialist who is licensed or registered if applicable, by the State in which practicing; and eligible for certification as a therapeutic recreation specialist by the National Council for Therapeutic Recreation Certification; or has two years experience in a social or recreational program within the last 5 years, one of which was full-time in a patient activities program in a health care setting; or is a qualified occupational therapist.

Response: As stated in the previous response, we are accepting the recommendations for the qualified professional who directs the activities programs as stated at § 483.15(f)(2). We chose not to include a specific certification body eligibility but are revising the language at § 483.15(f)(2)(i)(B) to state "eligible for certification as a therapeutic recreation specialist by a recognized accrediting body on October 1, 1990."

Comment: In the preamble to the February 2 rule, it was noted that the commenters had recommended adding another requirement to the activities section which would contain three types of therapeutic activities; supportive, maintenance, and empowerment. We had responded by noting we would present this material in the interpretive guidelines. Many commenters opposed presenting this in the interpretive guidelines as they stated these terms are used only by a small percentage of activities professionals and not at all by therapeutic recreation specialists. They felt incorporation of these classifications into the survey or regulatory system could jeopardize many activities programs that base their programs upon the individual needs of residents.

Response: We believe that the source of the controversy surrounding this material is the disagreement among various activities professionals over the appropriateness of this terminology. Rather than attempting to mediate this dispute, we will delete this terminology from the interpretive guidelines and leave this aspect of the activities requirement to the surveyor's discretion.

Comment: There were approximately 80 comments addressing the social services requirements. Over one half of the total comments addressed the new requirements pertaining to the qualifications of the social worker. Many of these believed that the social worker qualification standard at § 483.15(g)(4)(ii) (i.e., two years of social work supervised experience in a health care setting working directly with individuals) is a less stringent standard and is a lower standard than that of OBRA '87. The OBRA '87 states a social worker must have at least a bachelor's degree in social work or similar qualifications. Other comments addressing the qualifications requirements were:

• Social services should be provided by individuals with a master's degree in social work.

• Maintain current requirements for social workers. as listed at 42 CFR 405.1130(b) (a member of the facility designated as responsible for services. If the designated person is not a qualified social worker, the facility has a written agreement with a qualified social worker or recognized social agency for consultation and assistance).

• Require a nonsocial worker providing social services who is not a graduate or licensed social worker to receive at least 200 hours per year of consultation from a licensed social worker or a social worker with a degree from an accredited school of social work and at least one year of health care experience.

• Do not require a social worker consultant to be a graduate of a particular discipline since social worker consultants come from all disciplines (i.e., psychology, sociology, and mental health education).

• Require social workers to have a bachelor's degree in gerontology with substantial course work in social work.

• Clarify "similar professional qualifications" as stated at § 483.15(g)(4)(iii).

• Define "similar professional qualifications" as a bachelor's degree in a related field such as human services field (i.e., applied sociology, with at least 1 year of previous supervised experience in meeting psychosocial needs).

• Recommend as social worker qualifications either a bachelor's degree from an accredited school of social work, or a bachelor's degree in a related human services field plus 1 year of previously supervised experience in a health care setting, or two years of supervised experience providing social services in a nursing facility prior to October 1, 1990.

• Clarify whether the bachelor's degree requirement is met only by a bachelor's degree in social work from a program accredited by the National Association of Social Workers or by a social work major from any program.

• Delete § 483.15(g)(4)(ii) "2 years of social work supervised experience in a health care setting working directly with individuals."

Response: Regarding comments recommending that we require a master's degree social worker to provide social services, the provisions of OBRA '87 require that in the case of a skilled nursing facility with more than 120 beds the facility must have at least one social worker (with at least a bachelor's degree in social work or similar professional qualifications) employed full-time to provide or assure the

provision of social services in sections 1819(b)(7) and 1919(b)(7). Thus, requiring individuals with master's degrees would go beyond the statute. This does not preclude facilities from employing social workers with master's degrees.

With regard to commenters who wanted to maintain the current requirements for social workers as listed at 42 CFR 405.1130(b), we may not retain these requirements as they do not reflect the statutory requirement of "at least a bachelor's degree".

We do not believe that commenter requests for requiring non social workers providing social services to receive at least 200 hours per year of consultation from a licensed social worker would benefit resident rights. Under our regulations, facilities with 120 beds or more must have a qualified social worker. Facilities with less than 120 beds must assure that the facility provides medically related social services to attain or maintain the highest practicable physical, mental, or psychosocial well-being of each resident.

We agree to define the statutory requirements found at sections 1819(b)(7) and 1919(b)(7) of the Act, "similar professional qualifications" as a bachelor's degree in a human services field (including but not limited to sociology, special education, rehabilitation, counseling, and psychology).

We agree to delete the requirement at § 483.15(g)(4)(ii) describing a social worker as someone with a bachelor's degree or 2 years of social work supervised experience in a health care setting. Instead, we will require a bachelor's degree and 1 year experience of supervised social work as commenters requested.

Comment: Several commenters suggested that the social worker should be identified as part of the interdisciplinary team as described in § 483.20(d)(2)(ii). A comprehensive care plan must be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs and with the participation of the resident, the resident's family, or legal representative to the extent practicable.

Response: We do not agree to specify the social worker as part of the interdisciplinary team but rather leave it to the discretion of the interdisciplinary team to decide when social work involvement in care planning is needed by a resident.

Comment: A number of commenters noted that Congress in the Medicare Catastrophic Coverage Act of 1988 (MCCA) required that the standards for social service workers be "at least as stringent" as those in effect prior to the enactment of OBRA. They argue that because the previous regulation contained provisions which are not included in the final rule, the standards for social workers in this final rule are therefore contrary to the statute.

Response: We disagree. First, we recognize that the "at least as stringent" language, which did not appear in the MCCA, does appear in OBRA '90. It is our opinion, however, that the standards for social workers in the final rule are in full accordance with the statute. In fact, the United States District Court for the District of Columbia specifically concluded that the standards appearing in the final rule are at least as stringent as those in existence prior to the enactment of OBRA '87. See *Gray Panthers Advocacy Committee, et al.* v. *Sullivan,* Civil Action No. 89 0605–NHJ (D.D.C. Sept. 17, 1990). Simply because the final rule does not include every word of the regulations in effect prior to the enactment of OBRA '87, does not mean that the final rule could not be as stringent as the old regulations. Congress specifically did not require that the final rule contain the identical language as in the previous regulations. In fact, we believe that the final rule is more stringent than the previous regulation. The final rule by focusing on quality of care, rather than the mere capacity to provide such care, emphasizes outcome. With the previous regulations, it was possible that while the facility might have been in technical compliance, the care received was not adequate or appropriate. Specifically, the fact that an individual may have satisfied the credential requirements of the regulations provided no assurances that the care actually rendered was of high quality. Under these rules, however, since high quality services are the standard, this weakness in the old rule has been removed. Consequently, the objective of the final rule is to look at the quality of care actually received by each resident, and thus to prevent any undue reliance on staff qualifications that may have existed in the previous rule.

Comment: Several commenters opposed the setting of temperature ranges of 71–81° F on initially certified facilities:

- One commenter noted that the temperature range is contrary to HCFA comments in the preamble in the February 2 rule pertaining to food temperature where we refused to define a temperature range because we thought it was a subject for interpretive guidelines, not regulations.
- Commenters suggested that we revise § 483.15(h)(6), in part, to reference recommendations by the American Society of Heating, Refrigerating, and Air Conditioning Engineers. They believe that specifying temperature ranges does not take into account mechanical ability of various systems nor the resident's choice of temperature.
- Other commenters suggested requiring facilities to provide comfortable and safe humidity levels.

Response: The temperature ranges indicated in § 483.15(h)(6) are for facilities initially certified after October 1, 1990, the effective date of these regulations, not for existing facilities. Currently certified SNFs and ICFs that are initially certified under these requirements as NFs and SNFs after October 1, 1990 would not be required to modify their heating and cooling systems to maintain the specified temperature ranges. Even though we deferred from specifying temperature ranges in the "Quality of Life" requirement on food, we indicated that we intend to issue guidelines to ensure that the food is served at the proper temperature and under sanitary conditions. We decided in this instance to provide specific temperature ranges in response to many comments to the proposed rule that expressed concern for appropriate temperature ranges within nursing facilities and indicated how residents' comfort in this area affected quality of life. We derived our temperature ranges from standards recommended by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE standard, Thermal Environmental Conditions for Human Occupancy, ANSI/ASHRAE 55–1981) with a few degrees of variation in consideration of lower metabolism rate of the nursing facility population, who are mostly elderly and/or less active than individuals in other settings.

We do not believe alternative wording suggested would provide any clearer assistance or guidance to surveyors in identifying noncompliant facilities. We do, however, plan to specify within guidelines exceptional circumstances under which a facility may be briefly outside the specified ranges. Thus, we believe this would accommodate concerns about situations in which the temperature may deviate a degree or two in either direction.

We did not accept the suggestion to add "humidity levels" as we believe that referring to safe and comfortable

temperature levels would encompass too much or too little moisture in the air.

Summary of Changes to § 483.15

As a result of our evaluation of comments, we are making the following changes:

• In § 483.15(g) we established as an alternative qualification for a social worker, a bachelor's degree in a human services field including, but not limited to sociology, special education, rehabilitation counseling and psychology with one year of supervised social work experience in a health care setting working directly with individuals. We deleted as qualifications two years of supervised social work experience or similar professional qualifications.

Section 483.20 Resident Assessment

Summary of Provisions

Section 483.20 specifies that a facility must conduct initially and periodically thereafter a comprehensive assessment of each resident's medical, functional and psychosocial needs. OBRA '90 amends this section to specify that the assessment must be conducted not later than 14 days after admission rather than 4 days as previously required.

Section 483.20(d) requires that the comprehensive care plan be prepared by an interdisciplinary team which includes the resident, the resident's family or resident's legal representative, a physician, a registered nurse, and other staff in disciplines determined by the resident's needs.

Section 483.20(f) provides that on or after January 1, 1989, a facility must not admit an individual with mental illness or mental retardation unless the State mental health authority or the State mental retardation or developmental disability authority has determined that the individual requires this level of care furnished by the facility.

If the individual requires such level of services, the State mental health or mental retardation authority must also have determined whether the individual needs active treatment. In the case of individuals with mental illness, the State mental health authority's determinations must be based on an independent evaluation performed by a person or entity other than the State mental health authority. This requirement implements the statutory requirement of section 1919(b)(3)(F) of the Act. In § 483.20(f)(2) we define mental illness and mental retardation based on the statutory provisions of section 1919(e)(7)(G).

Comment and Responses

Comment: Several commenters suggested that the requirement for resident assessment should be expanded by adding the phrase "physical and mental" before the word functional status at § 483.20(b)(2)(iii) and by adding "mental and psychosocial" status at § 483.20(b)(2)(vii). The same commenters asked that we specify at § 483.20(c)(1)(ii) that qualified mental health professionals must participate in the performance of the mental status portions of the comprehensive assessment.

Response: We agree with commenters that the mental status of a resident is an important component of any assessment and we had intended this concept to be conveyed in the term "psychosocial" in the current § 483.20(b). Baseline data on the mental status of all residents must be available to enable facilities to determine which residents need mental health services, including mental health rehabilitative services (see § 483.45(a)) and to enable mental health professionals to develop appropriate plans of care. To clarify this issue we have revised § 483.20(b)(2)(iii) to state physical and mental functional status, § 483.20(b)(2)(vii) to state mental and psychosocial status, and § 483.20(d)(1) to state mental and psychosocial needs.

We believe that, as currently stated, the requirement at § 483.20(c)(1)(i) that each assessment must be conducted or coordinated with the appropriate participation of health professionals already requires involvement of qualified mental health professionals in the performance of mental status examinations to the extent that they are needed. (See also the preamble discussion of mental health needs in § 483.20(f)).

Comment: Approximately six commenters thought that the requirement at § 483.20(b)(4)(ii) that individuals admitted on or after October 1, 1990 should have a comprehensive assessment no later than 4 days after the date of admission should be changed to give the facility more time to meet this requirement. Suggestions for change ranged from 7 working days to 21 working days.

Response: OBRA '87 made a 4 day assessment statutory at sections 1819 and 1919(b)(3)(C)(i)(I) of the Act. However, OBRA '90 amends these sections and now requires comprehensive assessment not later than 14 days for individuals admitted on or after October 1, 1990.

Comment: Commenters asked for clarification as to whether or not the physician needed to participate in person in the preparation of the comprehensive care plan required by § 483.20(d)(2)(ii).

Response: It is not the intention, nor does the regulation specify, that physician involvement in the interdisciplinary team process must be personal presence at a team meeting. The physician can participate through other means, such as one to-one discussions. This will be further clarified in interpretive guidelines for the regulation.

Comment: Approximately 20 commenters responded to § 483.20(f)(1) which requires that, on or after January 1, 1989, a nursing facility must not admit any new resident with mental illness or mental retardation unless the State mental health or mental retardation authority (as appropriate) has determined prior to admission that, because of the individual's physical and mental condition, he or she requires the level of services provided by a nursing facility.

In general, commenters on this preadmission screening provision felt that the regulations failed to address a major aspect of OBRA '87 NF reform provisions: responsibility to the resident who needs these services in order to attain the highest level of mental and psychosocial well-being as required by sections 1919(b)(2) and 1919(b)(4)(A) (i), (ii) and (v) of the Act. Commenters proposed a number of measures for correcting this perceived failure.

More specifically related to this preadmission screening provision, many of the commenters believed it is essential that HCFA provide clear definitions for and a delineation between special services for mental illness and the normal level of ongoing treatment for mental health problems that a resident is entitled to receive under the general rubric of services aimed at attaining or maintaining the highest level of mental and psychosocial well-being. (Specialized services was formerly called active treatment prior to enactment of OBRA '90 which substituted terms). Commenters stressed that services mandated by these long term care facility requirements must not be regarded as specialized services for mental illness. Otherwise, they believed a contradiction would exist between the requirements for psychosocial assessment and maintenance of psychosocial function and the preadmission screening and annual resident review (PASARR) requirements of OBRA '87 (i.e., Proper attention to a resident's mental and psychosocial needs would inevitably put the resident

at risk of being discharged or would put the facility at risk of not being reimbursed by Medicaid since section 1919(e)(7)(G)(iii) of the Act excludes specialized services from nursing facility services).

Many of the commenters very strongly urged that we define specialized services as being limited to those services that are required by individuals experiencing an acute episode of severe mental illness and should clearly be limited to the delivery of intensive, specialized mental health services on a 24-hour a day basis by trained mental health personnel. These commenters also pointed out that while the types of services provided might be the same or similar in both cases, the intensity of the services in a program of specialized services is much greater than that provided as a part of a normal level of care.

Another group of commenters also urged that, in defining mental health services, we include services for all individuals who require them, whether or not they have a formal diagnosis of mental illness. These same commenters felt that if a nursing facility takes anyone with mental health needs, it must assure that those needs are met.

Response: We must begin this response by noting that OBRA '90 contained 3 provisions with direct relevance to the issues which gave rise to many of the comments.

- The term "mentally ill" was directly keyed to the listing of mental illness in DSM–III, a comprehensive compendium of mental illnesses.
- Section 4801(b)(7) of OBRA '90 changed this term to read—"serious mental illness (as defined by the Secretary in consultation with the National Institutes for Mental Health)."
- As a result of section 4801(b)(8), the term "active treatment" was replaced each place where it occurred with the term "specialized services," to avoid confusing the needed services with the mode of treatment.
- The law was clarified for both Medicare SNFs (section 4008(h)(2)(D)) and Medicaid NFs (section 4801(e)(4)) by adding to the list of services a facility must provide, "treatment and services required by mentally ill and mentally retarded residents not otherwise provided or arranged for (or required to be provided or arranged for) by the State."

Before OBRA '90 was enacted, we had responded to the comments by clarifying the final regulation to make it clear that mental health rehabilitation services are required and by reflecting provisions relating to such services in the regulations provisions relating to resident assessment and quality of care. Commenters should note, also, that we reflected our intent to clarify these issues in the preamble to our March 23, 1990 proposed regulation relating to the preadmission screening and annual resident review (PASARR) requirements.

The bulk of the requirements relating to these provisions are contained in the PASARR regulations which, as in the case of the NPRM, will be published as a separate rule. In the paragraphs below, however, we describe the changes we made in this final regulation as a result of the comments we received and as a result of the OBRA '90 requirements.

In response to the more general comment that we failed to deal adequately with the OBRA requirements concerning the responsibility of the NF to deliver mental health services to residents who need them in order to attain the highest level of mental and psychosocial well-being, we believed that the references to psychosocial services in the February 2 rule were sufficient. Nursing facilities and their predecessors, SNFs and ICFs, have always been required to meet the physical and mental needs of their residents. The types of comments we received have, however, persuaded us that the regulation text needs to contain more specific references to mental health in the assessment, quality of care, and specialized rehabilitation services sections so that the intent of the regulation, now explicitly confirmed in OBRA '90, is clear. In this final rule we have, therefore, made changes to the wording of the assessment requirements at § 483.20(b)(2) (iii) and (vii) and the quality of care requirement concerning psychosocial functioning at § 483.25(f).

We have changed the references in those sections from "psychosocial" to "mental and psychosocial" since it seems clear from the comments that each term has separate nuances, all of which we wish to capture. For instance, the concept of mental status appears to include the mental dysfunction present in a sad or anxious mood as well as overt disruptive behavioral manifestations such as wandering, verbal abuse, and physical abuse. The concept of psychosocial well-being appears to relate to how people feel about themselves and their lives. This includes involvement in life around them, having satisfactory relationships with others as well as self-respect and a sense of satisfaction with life.

In § 483.45(a) we have also added rehabilitative services for mental illness and mental retardation, to the specialized rehabilitative services for which the nursing facility is responsible and which are covered NF services under Medicaid.

Since other nursing facility services such as nursing, dental, or medical-related social services are not defined in detail in these regulations, we are not defining mental health services in the regulation text. However, because there may be some ambiguity over terms such as "services for mental illness and mental retardation," we wish to clarify in this preamble what types of activities we believe are commonly understood to be included among mental health services:

- Crisis intervention services;
- Individual, group, and family psychotherapy;
- Drug therapy and monitoring of drug therapy;
- Training in drug therapy management; and
- Other rehabilitative services such as—

—Structured socialization activities to diminish tendencies toward isolation and withdrawal;
—Development and maintenance of necessary daily living skills including grooming, personal hygiene, nutrition, health and mental health education, money management, and maintenance of the living environment; and
—Development of appropriate personal support networks.

Some of these services may be delivered by nurses and social workers or through the activities program or pharmacy services while others may require the expertise of individuals with specialized training in psychology or psychiatry. In keeping with our focus on outcomes of care, we are not specifying who should perform the services. We do specify, however, in the quality of care requirement in § 483.25(f) that all NF residents who display mental or psychosocial adjustment difficulties must receive appropriate treatment and services to correct the assessed problem. This requirement also mandates that all residents who do not display psychosocial adjustment difficulties at the time of assessment do not develop these difficulties, unless their clinical condition demonstrates that such a pattern was unavoidable.

We also clarify that rehabilitative services for mental illness or mental retardation as required in § 483.45(a), are not synonymous with specialized services (previously called active treatment). We view these types of rehabilitative services as meeting the needs of individuals with mental illness or mental retardation whether or not

they are required to be subject to the PASARR process and whether or not they require additional services provided or arranged for by the State as specialized services. For example, individuals may need social services, activities, or medication to treat moderate depression. Sections 1819 and 1919(b)(4) of the Act as amended by OBRA '90, clearly indicate that mental health needs must be served by NFs, while section 1919(e)(7)(G)(iii) of the Act clearly indicates that certain specialized services are outside the scope of nursing facility mental health services. We believe that specialized services can only be ordinarily delivered in the NF setting with difficulty because the overall level of services in NFs is not as intense as needed to address these needs. If the State's PASARR program determines that an individual with mental retardation or mental illness may enter or continue to reside in the NF, even though he or she needs specialized services, and the individual does so, then the State must provide or arrange for the provision of additional services to raise the level of intensity of services to the level needed by the resident.

Readers should review the regulation expected to be published to make final provisions discussed in the March 23 proposed rule or the proposed PASARR requirements for a detailed discussion of these issues.

Comment: The remaining comments on the PASARR provision reflected a variety of objections, mainly to the statute itself, over which we have no discretion in implementation. Specifically, commenters objected to the application of PASARR requirements to private pay individuals, to the broad statutory definition of mental illness, to the lack of community alternatives which commenters feared would result in placement problems for individuals with mental illness who are not admitted to NFs, and to the lack of federal guidelines. A number of these commenters alluded to PASARR litigation which has ensued since enactment of the law.

Response: In the absence of language in the statute limiting the cope of PASARR, we have no alternative but to conclude that the statute requires that preadmission screening applies to "any new resident," regardless of the method of payment (see section 1819(b)(3)(F) and 1919(b)(3)(F)). Congress has twice considered an amendment exempting private pay individuals, in 1989 and 1990. In both years, this amendment was defeated. By contrast, OBRA '90 substituted a much narrow definition of mental illness, limited to serious mental illness as defined by the Secretary in consultation with NIMH.

With regard to fear that these requirements will result in placement problems, we note that Congress did allow States to submit alternative disposition plans (ADPs) through which States may gain extra time for creating community placements for current residents of skilled nursing facilities who must be relocated, but not for new applicants who are deflected from entering nursing facilities. For potential new residents, we recognize States will need to make other provisions for care for this population.

We note, in response to those who commented on the lack of Federal guidelines, that OBRA '87, as originally enacted, did not require issuance of final regulations, only criteria. This requirement was contained in section 1919(f)(8). By contrast, the preceding requirement at section 1919(f)(7) specifically instructs the Secretary to issue regulations on charges to residents' funds. In developing PASARR criteria, we consulted extensively and issued guidelines informally in September 1988. In May 1989, after further analysis and experience, we formally issued State Medicaid Manual part 4 Transmittal No. 42. We further note that the statute clearly required States to implement the preadmission screening requirements even in the absence of Federal criteria. This position was upheld in two Federal courts in May 1989. (See *Idaho Health Care Assoc., et al.* v. *Sullivan,* No. 88–1425 (D. Idaho May 11, 1989); (*Rayford, et al.* v. *Bowen,* No. 89–0418 (W.D. La. May 25, 1989). As a result of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89, Pub. L. 101–239), we are now required to publish these criteria as a proposed rule.

Summary of Changes to § 483.20

As a result of our evaluation of comments we have made several clarifying changes, as identified above.

We also are revising the wording of § 483.20(b)(1)(i) to reflect the provisions of sections 1819(e)(5)(B) and 1919(e)(5)(B) of the Act which require the State to specify an assessment instrument which is consistent with minimum data set and is approved by the Secretary. In the February 2, 1989 rule, we inadvertently omitted reference to the Secretary's approval.

We are also revising § 483.20(b)(4) (i) and (ii) so that it is consistent with sections 1819(b)(3)(C)(i)(I) and 1919(b)(3)(C)(i)(I) of the Act and OBRA '90 requirements relative to deadlines for assessing current residents of a facility as of October 1, 1990. Assessments must be conducted not later than 14 days after admission. Assessments of current SNF residents must be conducted between October 1, 1990 and January 1, 1991 (a three-month period). For residents, this period is one year (between October 1, 1990 and October 1, 1991).

Section 483.25 Quality of Care

Summary of Provisions

Section 483.25 specifies that each resident must receive the necessary nursing, medical and psychosocial services to attain and maintain the highest possible mental and physical functional status, as defined by the comprehensive assessment and plan of care.

Section 483.25(a) specifies that a resident's ability to ambulate, dress, eat, groom, bathe, toilet, transfer (i.e., from bed to chair) does not diminish unless reasonable justification is documented.

Section 483.25(b) provides that a facility must, if necessary, assist the resident in making appointments and arranging for transportation to and from a medical practitioner specializing in the treatment of vision and hearing impairments or vision or hearing assistive devices.

Section 483.25(c) specifies that a facility must ensure that a resident entering a facility without pressure sores does not develop them unless a physician certifies they were not reasonably avoidable, and a resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

Section 483.25(d) requires that a facility ensure that a resident who is incontinent of bladder receive the appropriate treatment and services to restore normal bladder functioning; a resident is not catheterized unless it is necessary; and a resident who uses a urinary catheter receives appropriate treatment to prevent infections.

Section 483.25(e) requires that a facility must ensure that a resident who enters a facility without contractures does not experience an unpredictable reduction in range of motion without justifiable cause, and a resident with contractures receives appropriate treatment to increase range of motion and prevent further decrease in range of motion.

Section 483.25(f) requires that a facility must ensure that a resident who displays mental and psychosocial adjustment difficulty receives appropriate treatment and services to achieve remotivation and reorientation,

and a resident whose assessment did not reveal a mental and psychosocial adjustment difficulty does not display a pattern of decreased social interaction or increased withdrawn, angry or depressive behavior without justifiable cause.

Section 483.25(g) requires that a facility must ensure that a resident who has been able to feed or partially feed himself or herself is not fed by naso-gastric tube unless reasonable justification is documented, and that the resident receives appropriate treatment and services to prevent complications and to restore normal feeding function.

Section 483.25(k) requires that a facility must ensure that residents receive proper treatment and care for the following special services (to the extent covered under the program): Injections; parenteral fluids, colostomy or ileostomy care; tracheostomy care; tracheal suctioning, foot care, and respiratory therapy.

Section 483.25(l) requires that the facility must ensure that each resident's drug regimen is free of unnecessary drugs, inadequate drug monitoring, unnecessary dose levels, undue adverse consequences (i.e., side effects), and significant medication errors or significant medication error rates.

Section 483.25(m) requires that facilities not have significant error rates and that residents be free of significant medication errors.

Comments and Responses

Comment: A number of commenters objected to the use of the word "ensure" to describe a facility's responsibility for certain outcomes in various provisions of this section and suggested substitute words such as "provide" or "enable." They argued that a facility cannot reasonably be expected to "ensure" that a desired outcome will occur, especially with respect to all of the factors that may affect frail, aged nursing home residents.

Response: As we noted in our discussion of this issue in the preamble to the February 2, 1989 final rule (see 54 FR 5332), resident care outcomes can sometimes be affected by factors other than the treatment and services furnished, such as the degree of a resident's cooperation (i.e., the right to refuse treatment) and disease processes. However, we do not believe it is unreasonable to make the facility responsible for ensuring that basic treatment and services are provided since this is the reason for the resident's stay in the facility, as well as for program payment. We believe that the current wording of this section acknowledges the limitations imposed by the resident's right to refuse treatment, as well as by recognized pathology and the normal aging process, by enabling the facility to demonstrate that based on available clinical evidence, a negative resident care outcome was unavoidable.

Comment: Various provisions of this section allow a facility to cite a resident's clinical condition in establishing that specific negative resident care outcomes (including the use of certain otherwise inappropriate medical interventions) were unavoidable. Two commenters expressed support for these provisions. Two others, however, felt that the wording of these provisions would have the effect of forcing a facility to withhold these types of medical interventions when they are appropriate if supporting documentation for the intervention is absent. One commenter suggested that the language be amended to specify that the clinical justification must be documented in the medical record by the R.N. and the physician.

Response: With regard to the specific medical interventions discussed in this section (urinary catheters, naso-gastric tubes, etc.), the intent of this language is simply to ensure that these interventions are used only when there is valid medical justification for doing so. Since medical factors supporting their use would always be present whenever these types of interventions are used appropriately, these provisions would not require a facility to withhold the intervention under such circumstances; rather, the facility would merely be expected to record the medical factors that should already be present. Therefore, we are not revising the language to specify the precise manner of documentation since we believe that this would be unnecessarily prescriptive. Further, we note that the issue of adequate documentation of the resident's clinical record is already dealt with in regulations at § 483.75(l)(1) and (l)(6).

Comment: Two commenters suggested the addition of a specific requirement dealing with daily oral hygiene.

Response: We believe that a separate requirement is not necessary since oral hygiene is already addressed in § 483.25(a)(3).

Comment: Some commenters recommended revising the language in several parts of the section which currently requires the facility to furnish various services to the resident, so that the facility would be required only to "offer" such services to the resident.

Response: We believe that such revisions are not necessary since the regulations already make clear that the resident has the right to refuse treatment (see § 483.10(b)(4)) and the discussion of that provision in the February 2 preamble to the final rule (see 54 FR 5321) makes this clear.

Comment: Two commenters expressed support for the section as a good example of an outcome-oriented process. Two others objected to the facility being held accountable for the actions of other professionals, such as physicians.

Response: This comment is responded to in our later discussion of physician services (§ 483.40) where we discuss the issue of accountability of physicians and other individual practitioners.

Comment: One commenter noted that the mere presence of dementia alone does not justify a decline in a resident's ability to perform activities of daily living (ADLs).

Response: We agree that the mere presence of a clinical diagnosis of dementia cannot, in itself, justify a decline in a resident's ability to perform ADLs; rather, it is necessary to look at the resident's actual functional status, as determined by the resident assessment (see § 483.20 (b)(1)(ii) and (b)(2)(iii)).

Comment: We received numerous comments requesting clarification of the facility's responsibility to pay for the items and services discussed in § 483.25(b), particularly with regard to Medicaid facilities and services that are not covered under a State's Medicaid program.

Response: In order to respond to this comment, we believe it is appropriate to clarify the intent of the introductory paragraph's requirement for a facility to "*provide the necessary care and services* to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care" (emphasis added.) The specific types of "care and services" that the facility is responsible for providing under this requirement are the ones listed in section 1819(b)(4)(A)(i) through (vii) of the Act (for Medicare SNFs) and in section 1919(b)(4)(A)(i) through (vii) of the Act (for Medicaid NFs.) If a service appears in the applicable portion of the Act the facility is obligated to provide it to all residents who need the service; the nonavailability of program funding for private pay residents, for example, does not relieve the facility of this obligation. The sole exception would be routine dental services in Medicaid NFs, which are required under section 1919(b)(4)(A)(vi) of the Act only to the extent that they are covered under the

State plan (section 1819(b)(4)(A) does not relieve Medicare SNFs of responsibility for their residents' dental services, but does allow them to impose an additional charge for these services).

For types of care and services (such as assistive devices for vision and hearing) that are not specified in the applicable portion of the Act, the facility's responsibility is simply to assist residents and their families in locating and utilizing any available resources (Medicare or Medicaid program payment, local health organizations offering items and services which are available free to the community, etc.) for the provision of the services that the resident needs. This would include assisting the resident with activities such as making appointments and arranging transportation necessary to obtain the needed services.

Comment: One commenter concurred with the requirement in § 483.25(c) which requires that a resident with pressure sores receive necessary treatment to promote healing and prevent infection or the development of new sores. Two others requested that § 483.25(c)(2) be revised, allowing a facility to be exempted from this requirement by claiming that a resident's clinical condition makes such treatment impossible.

Response: We are not making the requested revision because we believe that the facility should always furnish the necessary treatment and services to prevent the development of pressure sores or, at the least, to promote the healing of sores that have developed.

Comment: One commenter indicated that § 483.25 (d)(1) and (d)(3), which require an incontinent resident to receive appropriate care, are redundant.

Response: We agree with this comment, and are deleting § 483.25(d)(1).

Comment: One commenter argued that, in order to establish that no reduction in range of motion has occurred during a resident's stay, it would be necessary to conduct a baseline assessment for each resident upon admission, which might be burdensome for some facilities.

Response: We note that the regulations at § 483.20(b)(2) (iii) and (xi) already include functional status and rehabilitation potential as prescribed parts of the required resident assessment. This should provide an adequate baseline for determining whether a reduction in a resident's range of motion has occurred.

Comment: A number of commenters believed that we failed to address as quality of care issues a major aspect of OBRA '87 NF reform provisions: responsibility of the NF to deliver appropriate mental health services to the resident who needs these services in order to attain the highest level of mental and psychosocial well-being as required by sections 1919(b)(2), and 1919(b)(4)(A) (i), (ii) and (v) of the Act. They asked that we add explicit requirements for both mental health and psychosocial services.

Response: We agree and have changed the title to this requirement to "mental and psychosocial" functioning and have made other appropriate changes to encompass both mental health and psychosocial services. (See also the preamble discussion of mental health needs in § 483.20(f)).

Comment: A number of commenters questioned the use of the terms "remotivation" and "reorientaton" for a resident who displays psychosocial adjustment difficulty in § 483.20(f)(1). As an alternative, several suggested rewording the last portion of this section to require treatment and services "to correct the assessed problem."

Response: We accept this comment, and are revising this provision accordingly.

Comment: Several commenters suggested deleting the list of possible complications from § 483.25(g)(2).

Response: We are not accepting this comment. We believe that the specific language here is needed in the regulations themselves in order to give surveyors guidance in this area.

Comment: One commenter endorsed the recognition of podiatric care in § 483.25(k)(7), which deals with special needs, as a type of care that residents must receive when needed. Several others suggested that the reference to podiatric care should be changed to "foot care" since the use of the term "podiatric" implies that this care can be furnished only by a podiatrist.

Response: We accept the suggestion to revise this provision since it was not our intention to limit its applicability to care furnished by podiatrists. Foot care could, for example, be appropriately furnished by a Doctor of Medicine or a Doctor of Osteopathy as well as by a podiatrist.

Comment: Several commenters suggested that certain elements of § 483.25(k) be revised to clarify that the facility is required to ensure that residents receive services only to the extent that they are covered under the Medicaid State plan.

Response: We do not accept this comment. As noted in the discussion of vision and hearing services (see § 483.25(b)), and with the exception of dental services for residents of Medicaid NFs, the nonavailability of program funding does not relieve a facility of its obligation to ensure that its residents receive all needed services listed in section 1819(b)(4)(A) of the Act (for Medicare SNFs) and section 1919(b)(4)(A) of the Act (for Medicaid NFs). For those services that are not listed in the applicable section of the Act, a facility is only required to assist the resident in securing any available resources to obtain the needed services.

Comment: In the notice of proposed rulemaking published on October 16, 1987, we received twenty comments requesting that we define "unnecessary drug." We defined "unnecessary drug" in the preamble to the final rule with comment published February 2, 1989, (54 FR 5334) as follows:

> "Unnecessary drugs" are drugs that are given in excessive doses, for excessive periods of time, without adequate monitoring, or in the absence of a diagnosis or reason for the drug. An unnecessary drug is a drug for which monitoring data, or undue adverse consequences indicate that the drug should be reduced or discontinued entirely. An unnecessary drug is also one which is prescribed only in anticipation of an adverse consequence of another prescribed drug.

Commenters on the final rule objected to two of these definitions and argued that the rule interfered with the practice of medicine and that the Secretary lacked the statutory authority to promulgate such a rule (see the following comment and response for a discussion of these issues).

Response: Because we feel that it is important to establish a clear definition of unnecessary drug in order to deal with the problem of drug misuse in nursing homes, we have decided, as commenters requested in the NPRM of October 16, 1987, to define "unnecessary drug" in the regulation text rather than in the preamble to the February 2, 1989, final rule with comment. For categories of drugs commonly used in nursing homes, we will develop specific guidelines for further definition of excessive dose, excessive periods of time, without adequate monitoring, in the absence of a diagnosis, and when adverse consequences indicate the drug dose should be reduced or discontinued. Where surveyors detect potential violations of these guidelines, they will be instructed to review existing evidence that justifies the drug's use before making a decision about whether a violation of the unnecessary drug requirement exists. The term "unnecessary drug" will be reserved for drug therapy circumstances in which HCFA guidelines (to be based on medical and behavorial sciences

literature and expert opinion) have established that such circumstances are a potential threat to the resident's health and safety, and for which the facility is unable to justify why using a drug under such circumstances is in the best interest of the resident. In justifying drug use the facility can certainly rely on physician justification of the risk-benefit of the drug use, but the facility would not be allowed to justify the drug use on the basis of "the doctor ordered it." This justification would "render the regulation, and the statutory underpinnings for it, meaningless.

Comment: With respect to § 483.25(l)(1), which concerns drug therapy, one commenter objected to the definition of an unnecessary drug which is presented in the preamble to the February 2, 1989 final rule. The preamble, in part, said that an unnecessary drug is one that is prescribed in anticipation of a side effect caused by another drug. The commenter pointed out that there are many circumstances in which these are perfectly legitimate prescriptions. For example, prescribing an antacid with a drug which is known to cause acid secretion as a side effect is acceptable.

Response: We agree with the commenter, and we will not consider drugs prescribed for this reason to be unnecessary.

Comment: A number of commenters complained about the definition of unnecessary drugs because they did not believe that an inadequately monitored drug could be called an unnecessary drug. They argued that a drug may be necessary even if it is not adequately monitored. These commenters, however, conceded that without adequate monitoring, one could not determine if a drug had achieved desired results, and therefore could not determine if it was or was not a necessary drug. Commenters also conceded that, without adequate monitoring for potential adverse effects, the risk-benefit ratio of the drug might be so unfavorable that it could be considered an unnecessary drug.

Response: As mentioned previously, we have changed the regulations at § 483.25(l) to define unnecessary drug as it is defined in the preamble to the February 2, 1989 rule, and this includes a provision for adequate monitoring.

Comment: Nine commenters were concerned about the prohibition against unnecessary drugs (as defined in the preamble (54 FR 5335) to the February 2 final rule). They believed that the regulation inappropriately holds facilities responsible for controlling drug use when it is physicians who prescribe drugs and control their use. They argue that under State Law only the physician may prescribe and discontinue drugs, order laboratory monitoring tests for drug use, and generally arrange the drug therapy of the resident.

Response: Section 1919(c)(1)(A)(ii) of the Act establishes the right of a resident to be free from chemical restraints imposed for the purpose of discipline or convenience and not for treatment of medical symptoms. Moreover, a physician who attends residents in a long-term care facility is essentially an outside professional resource and the facility must assume responsibility for the quality of his or her services. This is required by sections 1819 and 1919(d)(4)(A) of the Act and these regulations at § 483.75(h)(2)(i) which require that a skilled nursing facility or nursing facility must obtain services that meet professional standards and principles that apply to professionals providing services in such a facility. These provisions clearly make the facility responsible for the quality of drug therapy provided in the facility. They do not require the facility to act in place of the physician, but they do, in accordance with the statute, hold the facility responsible for the health and safety of the resident.

Comment: A number of commenters believed that the prohibition against unnecessary drugs exceeds our statutory authority. They argued that because Congress has established very detailed requirements in the statute, HCFA is precluded from imposing additional requirements in the regulations.

Response: We disagree. First, there is no indication either in the statute or legislative history that would support this view. Second, in addition to our general rulemaking authority to prescribe regulations which may be necessary to carry out the purposes of the Medicare and Medicaid programs, there is specific authority within the provisions of nursing home reform to support the additional drug therapy requirements (see e.g., sections 1819(c), 1819(d)(4), 1819(f), 1919(c), 1919(d)(4), 1919(f)). Specifically, sections 1819(c)(1)(A)(ii) and 1919(c)(1)(A)(ii) assure a resident's right to be free from "physical and mental abuse," and any "chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms." Thus, Congress essentially required that nursing facilities ensure that drugs, which when improperly utilized, could be characterized as physical abuse or chemical restraints, not be prescribed unless required to treat medical symptoms. The regulations, requiring that a resident's drug regimen be free from unnecessary drugs, merely implement this specific prohibition.

Moreover, the statute provides that nursing facilities must ensure any other rights which we establish (see sections 1819(c)(1)(A)(x) and 1919(c)(1)(A)(x); see also sections 1819(d)(4) and 1919(d)(4)). As noted in the proposed and final rule, in order to assure patient health and safety, each resident's drug regimen must be free from unnecessary drugs and significant medication errors. Accordingly, a facility must ensure that drugs are not given to residents unless necessary or required to treat a specific medical condition.

Comment: Several commenters contend that the drug therapy regulations constitute Federal interference with the practice of medicine. They contend that the regulations establish rules which will require nursing facilities to exercise medical judgments that would interfere with a physician's treatment decisions.

Response: We disagree. The rules, in defining unnecessary drugs, essentially call for physicians, not nursing facilities, to make judgments as to what drugs are indicated, or needed to treat in the first instance a specific medical condition. (see 54 FR 5335). The regulations do not require nursing facilities to exercise such medical judgments in place of physicians. Rather, they require that facilities enforce Medicare and Medicaid standards for the use of drugs on residents and ensure that physicians make reasonable medical judgments that these standards have been met before prescribing drugs to the facility's residents.

Comment: One commenter expressed concern that this regulation prohibits the use of antipsychotic drugs unless an antipsychotic drug is necessary to treat a specific condition. One commenter suggested that a provision be added which requires that the specific condition for which the drug is used must be documented in the clinical record.

Response: We agree and we have modified § 483.25(1)(2)(i) accordingly. It now reads, "Residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record."

Comment: Several commenters suggested changing the provision which requires residents who are taking antipsychotic drugs to receive gradual dose reductions, drug holidays, and behavioral programming. The commenters stated that although a drug

holiday is a form of dose reduction, it is not necessarily "gradual."

Others stated that drug holidays are not well defined in the regulations and that gradual dose reduction is the concept that we should capture in these regulations. Several other commenters stated that behavioral programming is not appropriate for use with demented residents because it depends on reservoirs of memory which they do not have. The key to dealing with demented residents, commenters state, is a change in the "environment," including physical environment and staff behavior.

Response: We agree with the commenters who want to delete the requirement for drug holidays, and have done so. We also agree with the commenters who would like to change the term "behavioral programming." We have changed this term to "behavioral interventions," which can include changed staff behavior toward residents but can also mean behavioral programming for those clients for which this is an appropriate intervention.

Comment: With regard to medication errors in § 483.25(m), a number of commenters wanted "significant" defined. Three commenters, representing both consumer and provider groups, specifically suggested that significant medication error rates should not exceed five percent.

Response: Regarding a facility's responsibility to prevent significant error rates, we have modified § 483.25(m) to state that facilities may not have error rates of five percent or greater. This definition has been used in interpretive guidelines by HCFA since May of 1984 (appendix N, part 2 State Operations Manual Transmittal No. 165). It is used as a measure of a facility's drug distribution system, which encompasses the entire spectrum of ordering, transcribing, dispensing, preparing, and administering drugs to residents. It has enabled HCFA to establish an outcome measure for the entire process of drug distribution in long-term care facilities. HCFA does not regulate who may prescribe, dispense, or administer drugs. HCFA does not regulate what type of drug distribution system must be used (e.g., unit dose, floor stock). HCFA has only minimal requirements for drug labeling and no requirement as to how an individual administering drugs must go about preparing drugs for administration. HCFA has left a facility free to create and manage its own system in any way it sees fit as long as it does not make "significant" medication errors and has an overall medication error rate of less than five percent.

The impact this outcome-oriented standard has had on facilities has been very positive. Historically, facilities would correct various perceived defects in the drug distribution system when they were faulted by surveyors. These corrections had little to do with medication error rates, as judged by a medication error rate study HCFA conducted in 1980 (Medication Errors in Nursing Homes and Hospitals; Am. J. Hosp. Pharm., 1982; 39:987–91). In May, 1984, when HCFA began applying this five percent error rate, facilities began to examine their systems of drug distribution, the staff that operate the systems, the pharmacies that provide the drugs, and myriad other issues in order to reduce medication error rates. Anecdotal data indicate that medication error rates are falling as a result of this policy.

Since medication errors vary in their significance (e.g., from significant errors such as a double dose of a potent cardiac drug like digoxin to a small error in the dose of an antacid like milk of magnesia), we have based sanctions on two different criteria. First, if a facility has a significant medication error, then it is sanctioned. This policy satisfies consumers, who maintain that a five percent tolerance in medication errors is too lenient and that one medication error could be disastrous for a resident. Second, a facility is sanctioned if it has an error rate of five percent or greater. This satisfies providers who maintain that there must be some tolerance of errors because all systems have some errors. The five percent limit on medication errors applies to both significant and non-significant errors. When a facility experiences a five percent or greater medication error rate, even if all errors are insignificant, it is a sign that the system has flaws that may eventually lead to a significant, perhaps disastrous error.

A significant medication error is judged by a surveyor, using factors which have been described in interpretive guidelines since May 1984. The three factors are: (1) Drug category. Did the error involve a drug that could result in serious consequences for the resident? (2) Resident condition. Was the resident compromised in such a way that he or she could not easily recover from the error? (3) Frequency of error. Is there any evidence that the error occurred more than once? Using these criteria, an example of a significant medication error might be as follows: A resident received twice the correct dose of digoxin, a potentially toxic drug. The resident already had a slow pulse rate, which the drug would further lower. The error occurred three times last week.

Summary of Changes to § 483.25

As a result of our evaluation of comments, in addition to minor editorial changes, we are making the following changes:

- In § 483.25(d), we are removing paragraph (d)(1) as redundant and redesignating the following two paragraphs.
- In § 483.25(f), we are clarifying terminology to emphasize that the requirements concern mental and psychosocial functioning and to require treatment and services to correct the assessed problem.
- In § 483.25(k), we have revised "podiatric" care to "foot" care to remove emphasis on who may provide the proper treatment.
- In § 483.25(l)(1), we define unnecessary drug and add a provision that each resident's drug regimen must be adequately monitored. In paragraph (1)(2)(a), concerning antipsychotic drugs, we added a requirement that the need for an antipsychotic drug be diagnosed and documented in the clinical record. We also deleted, as suggested, the requirement for drug holidays.
- In § 483.25(m), we require that facilities ensure medication error rates are below five percent.

Section 483.28 Nursing Services—Skilled Nursing Facilities and Section 483.29 Nursing Services—Intermediate Care Facilities

These two sections contain requirements effective through September 30, 1990. They were established in the February 2, 1989 rule, which, initially was to be effective August 1, 1989. As described elsewhere in this preamble, the effective date of the rule is now October 1, 1990. Accordingly, we are deleting them as out-of-date.

Section 483.30 Nursing Services

Summary of Provisions

Section 483.30 specifies that the facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and pyschological well-being of each resident, as determined by resident assessments and individual plans of care. Sections 483.30 (a) and (b) specify need for sufficient staff and for a registered nurse.

Section 483.30(c) provides for waiver of the requirement that a facility provide a registered nurse for at least 8 hours a day, 7 days a week, and licensed nurses

on a 24-hour basis to the extent that a facility is unable to meet these requirements. Section 483.30(c) also specifies that the State agency granting a waiver of the requirements provides notice of the waiver to the State long term care ombudsman and the protection and advocacy system in the State for the mentally ill and mentally retarded.

Section 483.30(d) provides for waiver of the requirement to provide service of a registered nurse, for more than 40 hours a week. Sections 483.30 (c) and (d) also specify that the facility that is granted such a waiver notifies residents of the facility and members of their immediate families.

Comments and Responses

Comment: Several commenters objected to the requirement that facilities requesting waivers must demonstrate that they are offering wages at the community prevailing rate for nursing facilities.

Response: The words "offering wages at the community prevailing rate for nursing facilities" are taken verbatim from sections 1819(b)(4)(C) and 1919(b)(4)(C) of the Act. We therefore are not altering the requirement.

Comment: Several commenters suggested that HCFA has not provided enough regulatory guidance to facilities on the exact criteria that will be used in implementing the waiver requirements.

Response: HCFA is currently in the process of developing a proposed rule to address these issues. There will be an opportunity for public comment on the proposed criteria before the final rule is developed.

Summary of Changes to § 483.30

We are making the appropriate changes to § 483.30(c) as required by OBRA '90 to specify that a State may waiver 24-hour nursing service if the facility is unable to meet the requirements of paragraphs (a)(2) and (b)(1) of this section.

We are adding § 483.30(c)(6) as required by section 4801(e)(5)(D)(iv) of OBRA '90 to specify that the State agency granting a waiver of the requirements provides notice of the waiver to the State long term care ombudsman and the protection and advocacy system in the State for the mentally ill and mentally retarded.

We are adding § 483.30(c)(7) as required by section 4801(e)(5)(D)(v) of OBRA '90 to specify that the nursing facility that is granted such a waiver by a State notifies residents of the facility and members of their immediate families

We are adding § 483.30(d)(iv) as required by sections 4801(e)(5)(D)(v) and 4008(e)(v) of OBRA '90 to specify that the facility that is granted a waiver notifies residents of the facility and members of their immediate families.

We are also making minor editorial changes to delete unnecessary dates.

Section 483.35 Dietary Service

Summary of Provisions

Section 483.35 requires that a facility must provide each resident with a nourishing palatable, well-balanced diet including modified and specially prescribed diets.

Section 483.35(a) requires that a facility must employ a qualified dietitian either full-time, part-time, or on a consultant basis.

Section 483.35(b) requires that a facility must employ sufficient support personnel competent to carry out the functions of the dietary services.

Section 483.35(d) specifies the requirements of the facility for food preparation and service for each resident.

Section 483.35(f) specifies the facility must provide each resident at least three meals daily, at regular times comparable to normal mealtimes in the community.

Comments and Responses

Comment: There were approximately 40 comments addressing the dietary services requirements. The majority of these comments opposed staffing qualifications at § 483.25 (a)(1) and (a)(2). Many of these commenters opposed the general personnel qualifications which allowed a dietitian to be qualified on the basis of education, training, or experience. They opposed this provision for the following reasons:

- Nonspecific requirements could lead to qualifying individuals without required preparation.
- There is a correlation within certain States between the levels of dietary deficiency among residents and the State's dietitian qualifications requirements.
- Dietitians are educated in the fields of physiology and disease processes, thus they are able to make appropriate recommendations relative to diet to physicians as needed.
- A general definition of dietitian opens the way for health care providers to utilize individuals who may have marginally related educational background such as certification as dietary managers or dietary technicians with inadequate skills in identifying nutrition care problems and appropriate nutrition care intervention.

Response: We recognize that section 4801(d) of OBRA '90 provides, in part, that any regulation promulgated by the Secretary after OBRA '87 with respect to dietary services shall include requirements that are at least as stringent as the requirements in effect prior to the enactment of OBRA '87. We believe, however, that the new rules are at least as stringent as those in effect prior to OBRA '87. In fact, the United States District Court for the District of Columbia specifically concluded that the standards appearing in the final rule are at least as stringent as those in existence prior to the enactment of OBRA '87. See *Gray Panthers Advocacy Committee, et al.* v. *Sullivan,* Civil Action No. 89–0605–NHJ (D.D.C. Sept. 17, 1990). Our objective in these rules is to focus on outcome as recommended by the IoM report. With the previous regulation, there was no assurance that each resident was receiving nutritious or quality meals. Under these rules, since high quality services are the standard, this weakness has been alleviated.

Accordingly, current regulations at 42 CFR 405.1101 allow individuals other than a qualified dietitian to manage or direct the dietary services whereas the final rule at § 483.35(a) requires the facility to employ a qualified dietitian either full-time, part-time, or on a consultant basis. We have retained the language which permits an individual to qualify as a dietitian either through registration by the Commission on Dietetic Registration of the American Dietetic Association (ADA) or on the basis of education, training, or experience in identification of dietary needs, planning, and implementation of dietary programs because we believe that there are some individuals not registered by the ADA who are appropriate for employment as dietitians. However, the survey guidelines contain a list of the specific experience requirements that persons not registered by the ADA must meet, a number of which are specific to the needs of geriatric and physically impaired persons and to health care institutional settings. Additionally, the objective of the final rule is to require that the dietetic services assure that the meals meet the nutritional and special dietary needs of each resident and that services meet "professional standards of quality." This is in keeping with the emphasis of the final rule which focuses on outcome, not process, thus avoiding undue reliance on staff qualifications. Also, we have added requirements to the regulation within the resident assessment section at § 483.20(b)(2)(v)

to assure that dietary issues are considered.

Comment: A number of commenters noted that based upon the requirement at § 483.75(i)(2) (now § 483.75(g)), "professional staff must be licensed, certified, or registered in accordance with applicable State laws." The general dietitian definition published in the Federal Register would not meet this requirement.

Response: The statement, "on the basis of education, training, or experience," does not relieve the facility from adhering to State and local laws as stated at § 483.75(b) which requires compliance with Federal, State and local laws, regulations and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility. If State licensure law requires higher personnel qualifications for dietitians than are established in this regulation, those qualifications must be met.

Comment: Commenters recommended modifying § 483.35(a)(2) to create a new dietary position in the regulations. This individual would be a dietary service supervisor, who is:

- A dietitian as identified in § 483.35 (a)(1) or (a)(2); or
- A dietitian technician registered or eligible for registration with the Commission on Dietetic Registration of the American Dietetic Association; or
- A certified dietary manager or one who is eligible with the Certifying Board for Dietary managers; or
- A graduate of a Dietary Managers Association approved dietary manager training program; or
- A graduate of a State approved course that provided 90 or more hours classroom instruction.

Response: In keeping with our emphasis on proper outcomes, we decided not to include specific qualifications for dietetic service supervisor where that individual is other than a dietitian. As noted below, however, we have strengthened the requirement for consultation where the dietetic service supervisor is not a dietitian.

Comment: Commenters recommended that we also define a qualified as one who has a baccalaureate degree with major studies in food and nutrition, dietetics, or food service management and has one year of supervisory experience in the dietetic services of a health care institution and participates annually in continuing dietetic education.

Response: We do not believe this definition for dietitian should be added since the current definition provides sufficient latitude for such individuals to be employed as dietitians if they have sufficient experience.

Comment: Section 483.35(a)(1) requires that "if a dietitian is not employed full-time, the facility must designate a person to serve as the director of food service." Several commenters opposed the deletion of the requirement that the director of food services be a qualified dietitian and, if not, receive frequent consultation from one so qualified. One commenter recommended the establishment of qualifications for the director of food service to be at a minimum of a 90-hour training course.

Response: Inasmuch as we have required every facility to retain a qualified dietitian on a part-time, full-time, or consultant basis, we do not believe it would impose an additional burden on the facility to require that when the facility designates an individual (who is not a qualified dietitian) to serve as director of food service he or she receives consultation from a qualified dietitian. Thus, we revised § 483.35(a)(1) to read: "If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food service who receives frequent consultation from a qualified dietitian." We do not believe it is necessary to specify completion of a 90-hour training course or other specific requirements.

Comment: One commenter recommended we modify § 483.35(b) to state: "There should be sufficient dietary staff on duty for 12 hours per day."

Response: The fundamental basis for having dietary staff on duty 12 hours per day was to prevent a facility from hiring dietary staff for only one eight-hour shift and compressing all three meals into that shift. We have chosen not to continue this requirement because dietary staff coverage over a 12-hour period does not necessarily equate with a meal span (from breakfast to dinner) of 12 hours. Because time is necessary for preparation and clean-up, 12-hour coverage by dietary staff could equate to a meal span (from breakfast to dinner) of substantially less than 12 hours. Instead, we have relied on a standard at § 483.35(f) which limits the period of time between an evening meal and breakfast to 14 hours. Thus, a 10-hour meal span from breakfast to dinner is required. We believe this standard is consistent with the regulation's emphasis on quality of care, rather than on the mere capacity to provide such care. By limiting the period of time between meals, a facility is required to provide meals at appropriate times throughout the day. Such a requirement is in keeping with the objective of the final rule, which is to look at the care actually received by each resident, and thus to prevent any undue reliance on staff qualifications as an assurance that high quality care is in fact rendered to nursing home patients.

Comment: One commenter asked us to specify the number of choices that must be offered to residents in response to the requirement that each resident receives and the facility provides substitutes offered of similar nutritive value to residents who refuse food served.

Response: We believe the commenter's recommendation is unduly restrictive. We chose not to enumerate the number of choices the facility should provide but expect that a reasonable effort should be made to accommodate the residents.

Comment: One commenter suggested that we substitute at § 483.35(f)(3) "snack will be available" in lieu of "must offer" in the requirement that provides that "the facility must offer snacks at bedtime daily." Another recommended adding at the end of the statement, "unless medically contraindicated."

Response: The availability of snacks is not sufficient since the condition of the residents may not allow them to obtain the snacks. However, offering the snacks provides an opportunity for the residents to exercise choice by accepting or declining them. The resident's plan of care would provide the necessary constraints, thus adding "unless medically contraindicated" would be unnecessary. Because we want to assure that care planners recognize the need to deal with these issues, we have added a sentence to § 483.20(d)(1) that makes this point.

Comment: Section 483.35(f)(2) provides that there must be no more than 14 hours between a substantial evening meal and breakfast the following day except as provided in § 483.35(f)(4) that specifies: When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day if a resident group agrees to this meal span. A commenter opposed allowing the 16 hour time span.

Response: We did not accept this comment because the regulation only allows a 16 hour time span when a nourishing snack is served and when the resident group agrees. Thus, the flexibility here is only at the discretion of the residents.

Summary of Changes to § 483.35

As a result of our evaluation of comments we are adding a requirement

to § 483.35(a)(1). We now require if a qualified dietitian is not employed full time the person designated to serve as director of food service must receive frequently scheduled consultation from a qualified dietitian.

Section 483.4 Physician Services

Summary of Provisions

Section 483.40 specifies that a physician must personally approve in writing a recommendation that an individual be admitted to a facility, and that each resident must remain under the care of a physician, and if possible, designate a personal physician.

Section 483.40(a) specifies that the facility must ensure medical supervision of each resident by a physician.

Section 483.40(b) specifies that the physician must review the resident's total program of care at each visit; write, sign and date progress notes; and sign all orders.

Section 483.40(c) specifies that the physician must see the resident at least every 30 days for the first 90 days after admission and at least once every 60 days thereafter.

Section 483.40(e) specifies when a physician may delegate tasks to a physician assistant, clinical nurse specialist, or nurse practitioner.

Comments and Responses

Comment: We received a number of general comments regarding the physician services portion of the regulations. Some indicated that the regulations appear to restrict the physician's professional judgment, resulting in a general decrease in physician control of the resident's medical regimen. Another suggested that HCFA convene an emergency conference with providers, consumers, and leading specialists in geriatrics on ways to increase the quantity and quality of physician involvement in nursing homes. Others asserted that the nursing facility should not be held accountable for lack of compliance with the regulations by the physician, over whom the facility has no control. One commenter suggested that the introductory statement, which requires that a physician "personally approve" an admission recommendation, be clarified to indicate that this merely requires the physician's written approval, not the physician's physical presence at the time the individual is admitted.

Response: The commenters who felt that the regulations diminish physician control of the resident's medical regimen did not offer any specific examples to support their contention. Such a result was not the intent of the physician services requirements, and we do not believe that the regulations will have this effect in practice. Regarding the suggestion for an emergency conference on physician services in nursing homes, we appreciate the need to encourage the increased involvement of physicians in this setting, an aim which was reflected in the Institute of Medicine report on nursing home regulation. With this in mind, we have attempted, where possible, to develop requirements that would facilitate physician involvement by being less burdensome (e.g., allowing a variance of several days in the required visit schedule) and more flexible (e.g., permitting increased delegation of tasks to physician extenders) than the requirements that they replaced. While convening such a conference may prove useful after the regulations have been fully implemented, we believe that there should first be time to assess the impact of these new requirements on physician activity in the nursing home setting. With regard to the issue of holding the facility accountable for the compliance of the physician, we reiterate the point made in the preamble to the February 2 final rule (54 FR 5340): the nature of the current survey and certification process is such that our enforcement mechanism is primarily through the facility itself rather than through the individual practitioners that serve the facility's residents. We would welcome suggestions on ways to ensure greater direct accountability by individual practitioners, consistent with the need to encourage greater involvement by physicians in the nursing home setting. Finally, we are accepting the comment which requested that the introductory statement be clarified, and are revising the statement to require that the physician "personally approve in writing" a recommendation to admit an individual.

Comment: One commenter expressed general support for the provision in § 483.40(a) that the facility ensure medical supervision of every resident. Two others asked that we restore the previous SNF requirement for a medical evaluation/physicial examination within 48 hours of admission, unless performed no more than 5 days prior to admission.

Response: We believe that the requirement in the regulations (§ 483.20) for a comprehensive resident assessment will subsume the function of the previous SNF requirement, i.e., the compilation of relevant information on the residents medical status within a relatively short time after admission occurs.

Comment: One commenter agreed with the provisions of § 483.40(b) regarding physician visits as proposed. Two commenters interpreted the provision as requiring the physician himself or herself to review the care plan, write progress notes, and sign orders at each visit, which would conflict with regulations at § 483.40 (c)(4) and (e)(2) by not allowing a physician extender to perform these functions under delegation from the physician. Another commenter suggested that the regulations add a requirement for the facility to provide adequate, comfortable, and private space for examinations and treatment. One commenter suggested that § 483.40(b)(3) be revised to require the physician to date as well as sign all orders, and another indicated that the regulations should require a mandatory reassessment any time a physician orders a physical or chemical restraint.

Response: The commenters who believe that this provision precludes the physician from delegating these functions misunderstand the provision at § 483.40(e)(2). In prohibiting the delegation of any tasks which the regulations specify must be performed personally, § 483.40(e)(2) refers only to those provisions in the regulations text that actually use the word "personally." Since the text of § 483.40(b) does not say that the physician must "personally" review care plans, write progress notes, or sign orders, these functions can be delegated under § 483.40(e). As for the need to provide adequate and private space for examinations and treatment, the regulations already address this. Section 483.10(e)(1) requires personal privacy in several areas, including medical treatment, and § 483.70(c)(1) requires the facility to have sufficient space to provide residents with needed health services. We are accepting the suggestion to revise § 483.40(b)(3) to require that the physician sign and date all orders. With regard to mandatory reassessment of orders for physical and chemical restraints, we are currently developing a separate proposed rule that will consider this issue.

Comment: One commenter was not sure whether § 483.40(c) concerning frequency of physician visits requires the physician to make an actual face-to-face visit to the resident or merely review the resident's chart on site; however, another commenter correctly interpreted the wording that the resident "must be seen" by the physician as requiring an actual, face-to-face visit, and expressed support for this requirement. One commenter suggested the regulation should specify that a

resident must be seen by the physician at the time of admission.

Response: As indicated in the preamble to the February 2, 1989 final rule (54 FR 5341), the wording of the regulation, which states that the resident "must be seen" by the physician, requires an actual, face-to-face contact. However, we are not requiring that the resident be seen by the physician at the time of admission since the decision to admit an individual to a nursing facility (whether from a hospital or from the individual's own residence) generally involves physician contact during the period immediately preceding the admission. Further, we would note that the resident assessment requirement at § 483.20(a) does require the facility to have, at the time of admission, physician orders for the resident's immediate care.

Comment: Several commenters expressed support for the added flexibility introduced by allowing the 10-day variance in the required physician visit schedule (although some expressed a continued preference for wording the schedule in terms of months rather than days). Two commenters suggested that the maximum allowable variance should be reduced from 10 to 5 days. One commenter objected to allowing the variance in NFs, where 90-day visit intervals apply.

Response: We believe that the variance provides needed flexibility in implementing the required physician visit schedule, and that it is appropriate in the NF setting as well as in SNFs. We also believe that it would be less feasible, in attempting to provide this flexibility, to word the visit schedule requirement in terms of months rather than days. For example, requiring a visit "every 2 months" rather than "every 60 days" could result in significantly more than 60 days elapsing between visits. In choosing 10 days as the maximum length of the variance, we modeled this provision after section 1903(g)(6)(C) of the Act, which allows a similar 10-day variance for the completion of required physician certifications and recertifications.

Comment: Several commenters supported the provision allowing alternate visits to be delegated to physician extenders (PEs), while one commenter opposed it. One commenter indicated that PEs should be allowed to perform this function independently of the physician, while another expressed concern that there should be adequate physician supervision of any delegated tasks.

Response: As indicated at 54 FR 5342 of the preamble to the February 2, 1989 final rule, we believe that to the extent possible, the regulations should allow for the effective utilization of PEs in the nursing home setting. However, we also believe that the physician continues to exercise supervision in this area, in keeping with the statutory requirement (at section 1819(b)(6)(A) of the Act) for the medical care of every SNF resident to be provided under the supervision of a physician. Therefore, we are leaving this provision unchanged for SNFs. However, we are revising the provisions that govern the delegation of physician tasks in NFs, to reflect the recent amendment of section 1919(b)(6)(A) of the Act, as discussed below.

Comment: Some commenters indicated that requiring physician visits every 90 days in NFs is too frequent, and will increase the burden on rural physicians. Another indicated that 90-day intervals are too infrequent, and recommended restoring the previous 60-day requirement, with an exception when the physician documents that this frequency is not necessary. Another commenter supported the 90-day visit interval. Two commenters suggested that, in keeping with the OBRA '87 emphasis on uniform requirements for Medicare and Medicaid facilities, the physician visit schedule should be made the same for SNFs and for ICFs/NFs; they noted that under the final rule, the visit schedules for SNFs and for ICFs/NFs diverge after the first 90 days. Two other commenters suggested that the frequency of the visit schedule be based on the status of the resident (e.g., SNF-level vs. ICF-level) rather than that of the facility. Another indicated that the regulations should require a physician to visit more frequently than the prescribed intervals when a resident's condition warrants it.

Response: We note that under OBRA '87, the distinction between SNFs and ICFs under the Medicaid program cease, effective October 1, 1990, and all such facilities will be categorized as NFs. Therefore, we do not believe that distinctions between the SNF- and ICF-level status of residents should serve as the basis for determining the applicable physician visit schedule. Further, we believe that the creation of a single facility category under Medicaid, which will include many facilities that have been participating in the Medicaid program as SNFs, supports the view of the commenters who advocate a uniform-physician visit schedule for both Medicare SNFs and Medicaid NFs. We believe that this change, plus the generally increasing acuity of nursing home residents, argues in favor of using the more stringent SNF visit schedule uniformly in Medicaid NFs as well as Medicare SNFs, and we are revising § 483.40(c) of the regulations to accomplish this. With regard to requiring a physician to visit more frequently when a resident's condition warrants it, we note that the regulations require that residents be seen by a physician "at least" at the prescribed intervals. The intent of this wording is that the physician should make visits in excess of the prescribed minimum when warranted by the resident's medical needs, and we would expect that surveyors will ascertain whether such additional visits are, in fact, made when these circumstances apply.

Comment: Two commenters expressed general support for the idea of allowing physician delegation of tasks to PEs, while one opposed it. Several commenters urged the addition of clinical nurse specialists (CNSs) to the categories of personnel to whom tasks can be delegated, citing section 4218 of OBRA '87, which allows CNSs to perform the required certifications and recertifications for Medicaid nursing home patients. One commenter, though supporting the general idea of physician delegation of tasks to PEs, opposed the provision in the regulations which would permit a facility to set its own policy on delegation that is more restrictive than Federal or State policies.

Response: With regard to SNFs, we are revising § 483.40(c) and (e) to extend the applicability of the physician delegation provision to individuals who are licensed by the State as CNSs, subject to the same requirements that apply to the other categories of personnel included in this provision. We are leaving unchanged the provision allowing a facility to set its own policies regarding physician delegation. We believe it is appropriate to allow the facility some measure of discretion in this area. We would also note that this provision appeared verbatim in the proposed rule that was published on October 16, 1987, and no objections to it were expressed in the large volume of comments that we received on that proposed rule.

The requirements for physician services in NFs are affected by a recent amendment to section 1919(b)(6)(A) of the Act, which serves as the statutory basis for these requirements. Prior to its amendment, this section of the Act was identical to section 1819(b)(6)(A) (for SNFs) in requiring that each resident's care be provided under the supervision of a physician. However, section 4801(d) of OBRA '90 has created an alternative to physician supervision in NFs, by giving States the option of permitting supervision by "* * * a nurse practitioner, clinical nurse specialist, or physician assistant who is not an

employee of the facility but who is working in collaboration with a physician * * *." This means that the statutory requirement for physician supervision in NFs, as well as the full range of regulatory requirements on physician services in NFs that flows from this statutory requirement, can now be satisfied when performed by the types of physician extenders specified in the law, if a State so elects. Therefore, we are adding a new paragraph (f) "Performance of physician tasks in NFs," to this section to indicate that, at State discretion, any physician requirement in a NF (including tasks which the regulations specify must be performed personally by the physician, such as physician visits and admission recommendations) may also be satisfied when performed by the types of physician extenders specified in the law, working in collaboration with a physician. (In this context, we intend to use the definition of "collaboration" contained in section 1861(aa) (4) of the Act, which will be implemented in a separate set of regulations. When those regulations are published, we will insert a cross-reference to them in § 483.40(f).)

In view of our broad objective of making requirements for SNFs and NFs as similar as possible, it may be asked whether these new provisions should be extended to SNFs as well as NFs. Congress, however, in amending the NF provision at section 1919(b)(6)(A) of the Act, declined to make a similar amendment to the corresponding SNF provision at section 1819(b)(6)(A), thus leaving unchanged the existing requirement for physician supervision in SNFs. Therefore, we are leaving intact the existing provisions on physician delegation of tasks contained in paragraph (e) of this section, but we are revising that paragraph to clarify that it now applies only to Medicare SNFs. This means that the extent to which physician services are delegated to physician extenders in SNFs will continue to be determined by the provisions of § 483.40(e), while the extent to which these services are performed by physician extenders in NFs will be determined by the individual States under new § 483.40(f).

Summary of Changes to § 483.40

As a result of our evaluation of comments, we are making the following changes in addition to minor technical or editorial versions:

- In the introductory material in § 483.40, we clarify that the physician's approval of a recommendation to admit a person must be in writing.
- In § 483.40(b)(3), we add the requirement that the physician must date all orders.
- In § 483.40(c), we eliminate the frequency of visit interval applicable to Medicaid NFs and apply the requirements, formerly applicable to SNF residents, to all long term care facilities.
- In § 483.40 (c) and (e), we add clinical nurse specialist as an individual to whom a physician may delegate tasks. We also clarify that paragraph (e) applies only to physician services in SNFs.
- In § 483.40(f), we are adding a provision which deals with performance of physician services in NFs.

Section 483.45 Specialized Rehabilitative Services

Summary of Provisions

Section 483.45 specifies that facilities that provide rehabilitative services must either furnish them directly or arrange to obtain them from a provider of rehabilitative services. The rule indicates in the introductory statement that a facility must provide rehabilitative services to every resident it admits and includes examples of rehabilitative services. Section 483.45 also includes requirements dealing with provision of services and qualifications.

Comments and Responses

Comment: Many commenters objected to requiring that facilities provide rehabilitative services to all residents and recommended that these services be provided only to patients who need them.

Response: We agree that these services should be provided only to patients who need them, and we indicated in § 483.45(a) of the February 2 rule that these services are to be provided when they are required in a resident's comprehensive plan of care. To remove ambiguity, we have removed the introductory statement that appeared to conflict with § 483.45(a) and incorporated the examples into § 483.45(a).

Comment: A number of commenters suggested that the section on specialized rehabilitative services be expanded to include mental health services. Some of them suggested that the term "psychiatric rehabilitation" be used in this section to describe the services to be provided.

Response: We agree with the commenters that these services are required under sections 1819(b)(4) and 1919(b)(4) of the law and, in the February 2 rule we included them under the quality of care section. We also agree that the specialized rehabilitative services section should be revised to reflect these services. The OBRA '90 amendments to these sections confirm our view. Therefore, we have added the words rehabilitative services for mental illness and mental retardation to the list of services in this section.

Comment: A few commenters stated that HCFA should only require specialized rehabilitative services to the extent that the services are otherwise covered in the State plan.

Response: Specialized rehabilitative services are considered a nursing facility service and, thus, are included within the scope of facility services. They must be provided to facility patients who need them even when the services are not specifically enumerated in the State plan. That is, such services are covered NF services and eligible for Federal Financial Participation when provided to Medicaid residents of an NF. Therefore, no change has been made in response to these comments.

Comment: A few commenters asked that we clarify whether a fee can be charged for rehabilitative services in order to insure adequate reimbursement to the facility.

Response: No fee can be charged to a Medicaid recipient for specialized rehabilitative services because they are covered facility services.

Comment: Two commenters indicated that HCFA should require that rehabilitative services be provided to every patient.

Response: We do not believe that these services should be provided to any patient who does not need them, and we believe the deletion of the introductory statement referred to earlier clarified the rule to reflect this policy.

Comment: One commenter stated that HCFA should not require that every facility provide specialized rehabilitative services.

Response: A facility does not have to provide rehabilitative services if it does not have residents who require these services. If a resident develops a need for these services after admission, the facility must either arrange to provide the services, or, where appropriate, arrange to transfer the patient to a facility that can provide the services.

Comment: One commenter suggested that we include a reference to the transfer requirements under § 483.12 for facilities that are unable to meet a resident's rehabilitative service needs.

Response: This is the appropriate reference for facilities that must transfer patients to obtain needed services. We have not added a cross-reference in this section because we do not believe that it

is necessary; facilities should have an awareness of the transfer requirements which may need to be met in a number of situations.

Comment: One commenter suggested that we add respiratory care as an example of rehabilitative services, an another suggested that we add audiology as an example.

Response: We have not added these examples because we believe that the examples already included are sufficient; this group of examples is not intended to be an inclusive list of services.

Comment: One commenter suggested that we delete the term "specialized" since it seems unnecessary.

Response: We have not deleted this term. It serves to differentiate these services from general rehabilitative services provided by nurses.

Comment: One commenter suggested that we require under § 483.45(b) that qualified personnel be certified or licensed.

Response: All professional staff must be licensed, certified, or registered in accordance with applicable State laws as required under § 483.75(g)(2).

Comment: One commenter requested that we link rehabilitative services to the multidisciplinary assessment and the quality of care and quality of life requirements. This commenter also suggested that we require adequate staff to support professional rehabilitative service providers. Finally, it was suggested we retain our current requirements for a safe and adequate space to provide these services.

Response: All services are to be considered in the quality of care and quality of life requirements; we do not believe it is necessary to cross refer every service to these requirements. We have not added specific requirements relating to space because we believe that the requirement at § 483.70(c)(1) already requires sufficient space for health services. As for support personnel we believe that under an outcome approach to regulation it is preferable to allow facilities maximum flexibility in these matters.

Comment: Two commenters requested that we reinstate previous requirements relating to progress notes and personnel qualifications.

Response: We do not believe that requirements concerning progress notes are appropriate in an outcome-oriented regulation. The personnel qualifications requirements are now in § 483.75(g)(2).

Summary of Changes to § 483.45

As a result of our evaluation of comments we are making the following changes:

- We are deleting the introductory material of § 483.45 and adding corresponding material to paragraph (a). We also list rehabilitative services for mental illness and mental retardation in the list of examples of specialized services.

Section 483.55 Dental Services

Summary of Provision

Section 483.55 requires that facilities assist residents in obtaining routine and emergency dental care, and ensure that a dentist is available, and if necessary, assist residents in making appointments and in arranging for transportation to and from the dentist's office.

We received comments expressing a variety of concerns about the provisions of the final regulations contained in § 483.55 (a), advisory dentist, and (b), outside services. These paragraphs were to be in effect only during the period prior to October 1, 1990. Since Congress has now imposed a moratorium on implementing any portion of the final regulations prior to October 1, 1990, the concerns expressed about these provisions have been rendered moot, and we are deleting § 483.55 (a) and (b) from the regulations. We also received comments regarding the possible prospective application, as of October 1, 1990, of individual provisions contained in these two sections, as discussed below.

Section 483.55(c) (redesignated to § 483.55(a) in this final rule) specifies that an SNF must provide or obtain from an outside resource routine and emergency service to meet the needs of each resident, and may charge an additional amount for the services.

Section 483.55(d) (redesignated to § 483.55(b) in this final rule) specifies that an NF must provide or obtain from an outside resource, routine dental services (to the extent covered under the State plan) and emergency dental services for each resident.

Comments and Responses

Comment: Several commenters asked why the requirement for an advisory dentist (in regulations at § 405.1129(a) only through September 30, 1990) is discontinued and suggested retaining the requirement beyond that date.

Response: The elimination of the advisory dentist requirement, effective October 1, 1990, is part of the dental services regulations overall shift in emphasis effective on that date. Prior to October 1, 1990, under the SNF regulations a facility must assist its residents in obtaining dental services on their own; thus, making it necessary to specify the involvement of an advisory dentist in order to ensure that facility staff receive appropriate advice and consultation on dental issues. Effective October 1, 1990, however, facilities are directly responsible for the dental care needs of their residents, as specified in OBRA '87. (In addition, § 483.20(b)(2)(ix) specifies a resident's dental condition as one of the required elements of the comprehensive resident assessment.) Effective October 1, 1990, when the facility assumes direct responsibility for the dental care needs of its residents, it is responsible as well for seeing that such services are furnished in accordance with accepted professional standards and principles (see § 483.75(b)). Therefore, we believe that a separate, prescriptive requirement for obtaining professional consultation and advice on dental matters is no longer necessary after October 1, 1990.

Comment: Some commenters noted that the provisions of § 483.55(b) (1) through (4) state that they are in effect only after October 1, 1990. They inquired whether these service requirements and those listed in § 405.1129(b) of the SNF regulations (assistance with arranging appointments and transportation), which also are not in effect as of October 1, 1990, will be required after October 1, 1990.

Response: Based on the original effective date of October 1, 1989, contained in the February 2, 1989 rules, these requirements were intended to clarify what service requirements apply during the interval October 1, 1989 to October 1, 1990. We did not intend to discontinue the requirements concerning assistance in making appointments, arranging for transportation and referring patients with lost or damaged dentures. These requirements were intended to remain in effect after October 1, 1990, and we are revising the dental services regulations that become effective on October 1, 1990, to include an explicit reference to them.

Comment: One commenter expressed support for the introductory statement's requirement that the facility assist residents in obtaining routine and 24-hour emergency dental care. Several commenters noted that the wording of § 483.55(c)(2), which permits SNFs to charge an additional amount only for emergency dental services, does not appear consistent with the text at the end of section 1819(b)(4)(A) of the Act, which refers to routine as well as emergency dental services. Others suggested that the wording should be made more similar to that of the law by stating that the SNF "is not required to provide or arrange for" these services without additional charge.

Response: We agree with the commenter that the wording is not consistent with the corresponding portion of section 1819 of the Act, and we are revising it to conform to that provision. Due to removal of outdated material, the change appears at new § 483.55(a)(2).

Comment: Some commenters expressed concern with § 483.55(d)(1) (redesignated to § 483.55(b)(1) in this final rule) which requires Medicaid NFs, effective October 1, 1990, to furnish routine dental services, but only to the extent that such services are covered under the Medicaid State plan. Several commenters requested clarification regarding the facility's financial responsibility for dental services generally, and specifically with regard to routine dental services that are not covered in the State plan. Another commenter suggested that the regulations be revised to include the qualification contained in the law, that services are only required to the extent that they are needed to fulfill the resident's plan of care.

Response: We believe that section 1919(b)(4)A)(vi) of the Act clearly specifies that NFs are responsible for providing or arranging for routine dental services only to the extent that such services are covered under the Medicaid State plan, and that the wording of the new § 483.55(b) reflects this. Similarly, the wording of the new § 483.55(a), as we are revising it, will make clear that Medicare SNFs will be allowed to impose an additional charge for furnishing routine and emergency dental services. With regard to the comment on the plan of care, we agree that sections 1819(b)(4)(A)(vi) and 1919(b)(4)(A)(vi) of the Act make the facility responsible for providing dental services only to the extent that they are needed to fulfill the resident's plan of care. However, as described in sections 1819(b)(2) and 1919(b)(2), the objective of the plan of care is to "attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident * * *" Further, the operative wording in the dental services clause in the law itself refers to the provision of dental services "to meet the needs of each resident", which we believe is consistent with the stated objective of the plan of care. Consistent with the statute, this wording is already reflected in the regulations describing dental services requirements for NFs, and we are adding it to the regulations for SNFs.

Summary of Changes to § 483.55

We are deleting material that is out-of-date and pertains to services prior to October 1, 1990. This required editorial revisions and redesignation of paragraphs.

As a result of our evaluation of comments we are making the following changes:

- In § 483.55(a)(2) (redesignated from § 483.55(c)(2)), we are conforming the requirement concerning allowable charges to the patient for dental services to the wording in section 1819(b)(4)(A) of the Act.
- We are revising § 483.55(a)(3), (a)(4), and (b) to reflect changes made as a result of OBRA '87 provisions.

Section 483.60 Pharmacy Services

Summary of Provisions

Section 483.60 requires a facility to provide routine and emergency drugs and biologicals to its residents.

Section 483.60(a) concerning methods and procedures and § 483.60(c) concerning pharmaceutical services committee are deleted since they were only intended to be in effect until October 1, 1990. Section 483.60(b) has been redesignated as § 483.60(a), and paragraphs (d) through (g) have been redesignated as (b) through (e), respectively.

Section 483.60(e), redesignated as § 483.60(c) requires a pharmacist to conduct a monthly drug regimen review and report any irregularities to the attending physician and director of nursing.

Section 483.60(f), redesignated as § 483.60(d), requires the facility to label drugs and biologicals in accordance with accepted professional principles.

Comments and Responses

Comment: Eight commenters were concerned about a requirement of the pharmacist-conducted drug regimen review. It stated that reports must be sent to the attending physician or the director of nursing or both. Commenters objected, saying that all reports should go to both.

Response: Commenters have convinced us that what is important to the physician is always important to the director of nursing and vice-versa. Therefore, we have modified the regulation to require that drug regimen review reports go to both the attending physician and the director of nursing.

Comment: Five commenters were concerned because this requirement stated that facilities are responsible for labeling drugs. The commenters thought that the regulations should state that the pharmacies are responsible for this task.

Response: Ultimately, a facility is responsible for the quality and timeliness of all the services received by its residents (see § 483.75(h)), but the commenters are correct that it is also a pharmacy responsibility to label drug containers accurately. We have therefore modified redesignated § 483.60(d) to state, "Drugs and biologicals used in a facility must be labeled in accordance with currently accepted professional principles." This will impose currently accepted labeling requirements on facilities even though the pharmacies will be immediately responsible for accomplishing the task.

Comment: Six commenters expressed concern about the requirement that all drug labels contain an expiration date. Their concern stems from the fact that at least one State Board of Pharmacy does not require expiration dates on drug labels if it is anticipated that a drug will be consumed within a short period of time (e.g., 7 days).

Response: Formerly, the regulations required expiration dates "when applicable". We deleted "when applicable" from the February 2 final rule because the vast majority of drugs approved by the Food and Drug Administration must have expiration dates on the manufacturer's container (see 21 CFR 211.137). We do not wish to supersede State Law in matters of drug labeling. Therefore, we are adding to redesignated § 483.60(d) the term "when applicable", which will mean that expiration dates must be on the labels of drugs used in long-term care facilities unless State law stipulates otherwise.

Summary of Changes to § 483.60

We are deleting material that is out-of-date and pertains to services prior to October 1, 1990.

As a result of our evaluation of comments we are making the following changes:

- In redesignated § 483.60(c) we add the requirement that drug regimen review reports go to both the attending physician and the director of nursing.
- We are clarifying redesignated § 483.60(d) to state, "Drugs and biologicals used in a facility must be labeled in accordance with currently accepted professional principles." We are also adding to § 483.60(d) the term "when applicable".

Section 483.65 Infection Control

Summary of Provisions to § 483.65

Section 483.65 requires that the facility provide a sanitary environment.

Section 483.65(a) requires a facility to establish an infection control program, under which it investigates, controls, and prevents infections, decides on isolation procedures, and maintains a

record of incidents and corrective actions related to infections.

Comments and Responses

Comment: A number of commenters suggested that the requirement that the facility have an infection control program that prevents infections is unreasonable since total prevention of infections is not possible in all circumstances.

Response: We have not accepted these comments. The word "prevents" does not absolutely mean that residents will never experience infections. We therefore feel that a change in the wording would not change the intent or enforceability of the regulation.

Summary of Changes to § 483.65

Except for minor editorial revisions, the rule is unchanged.

Section 483.70 Physical Environment

Summary of Provisions

Section 483.70 requires that the facility must be constructed, equipped and maintained to protect the health and ensure the safety of residents, personnel and the public.

Section 483.70(d) requires that resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents.

Comments and Responses

Comment: Several commenters felt that the requirement at § 483.70(d)(1)(v) for facilities certified after August 1, 1989 to have "ceiling suspended curtains which extend around the bed to provide total visual privacy in combination with adjacent walls and curtains" should be waived in private rooms where full visual privacy may be assured by closing the door.

Response: We have accepted these comments and have changed the final rule to state an exception for private rooms. We also change the certification date to March 31, 1991, since our intention was that this provision apply to facilities certified when these regulations are effective.

Comment: The requirement at § 483.70(d)(3)(i) allows the survey agency to permit variations in requirements relating to the number of residents in the room and the size of the rooms when the facility demonstrates that the variations are required by the special needs of the residents and will not adversely affect their health and safety. The commenter stated the wording of this requirement is more stringent than that which was previously stated at 42 CFR 405.1134(e).

Response: It was not our intent to make this requirement more stringent than what was previously written. Thus, we are revising this requirement to reflect the previous wording of the regulation to state: "That such variations are in accordance with the special needs of the residents * * *"

Summary of Changes to § 483.70

We are making minor editorial changes, cross reference conforming changes, and deleting outdated material.

- In § 483.70(d)(1)(iii) we are clarifying the language to reflect the Life Safety Code requirement that specifies a resident's room must have direct access to a corridor that leads to an exit from the building.
- In § 483.70(d)(1)(v) we have added an exception for private rooms.
- In § 483.70(d)(3)(i) we are revising the requirement to reflect previous wording of the regulations that permits variations in accordance with the special needs of the residents.

Section 483.75 Administration

Summary of Provisions

Section 483.75 specifies the 22 requirements required by the Act that a facility must follow to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

Section 483.75(e) (redesignated to § 483.75(d) in this final rule) specifies that a facility must have a governing body or designated person functioning as a governing body that is legally responsible for establishing, implementing and making available to residents and the public written policies regarding management and operation of the facility.

Section 483.75(g) (redesignated to § 483.75(e) in this final rule) specifies certain requirements for the training and competency evaluation of nurse aides.

Section 483.75(l) (redesignated to § 483.75(j) in this final rule) specifies that SNFs must provide or obtain clinical laboratory services to meet the needs of their residents.

Section 483.75(m) (redesignated to § 483.75(k) in this final rule) specifies that a facility must provide or obtain radiology and other diagnostic services to meet the needs of the residents.

Section 483.75(n) (redesignated to § 463.75(l) in this final rule) specifies that the facility maintain clinical records on each resident with accepted professional standards and practices.

Section 483.75(o) (redesignated to § 483.75(m) in this final rule) specifies that the facility must have detailed written plans and procedures to meet all potential emergencies and train employees in emergency procedures.

Section 483.75(p) (redesignated to § 483.75(n) in this final rule) specifies transfer agreement requirements.

Section 483.75(r) (redesignated to § 483.75(o) in this final rule) specifies that a facility must maintain a quality assessment and assurance committee, composition of the committee, and committee responsibility.

Comments and Responses

Comments: Section 483.75(e)(2)(i) (redesignated to § 483.75(d)(2)(i) in this final rule) provides that the governing body appoints the administrator who is licensed by the State. Commenters from hospital-based skilled nursing facilities (SNFs) objected to this requirement since hospital administrators of such units traditionally have not been required to obtain additional licensure as nursing home administrators, and this provision would have had that effect.

Response: With regard to administrator of hospital-based SNFs, we do not intend in this requirement to impose a more stringent standard for licensure than existed previously. We note that section 1908 of the Act contains a longstanding requirement for licensure of every nursing home administrator in a manner provided for by each State. The regulations (42 CFR 431.700ff.) issued on March 29, 1972 (37 FR 6450) to implement this provision specifically exempt the administrator of a distinct part of a hospital from the requirement for licensure as a nursing home administrator when the distinct part itself is not licensed separately under State law from the surrounding hospital. As the Preamble to those regulations notes,

> * * * the hospital administrator who has basic responsibility for the entire institution has qualifications of education and experience that assure competent administration of the whole institution, including the "distinct part."

Thus, in review of the longstanding policy of following the provisions of State licensure laws in this area, we are modifying redesignated § 483.75(d)(2)(i) to mandate licensure as a nursing home administrator only when so required by the State.

Comment: One commenter pointed out that the requirement for facilities to file in the clinical record signed and dated reports of clinical laboratory services would be difficult if not impossible to implement due to the many laboratories that produces computer generated laboratory reports.

Response: We do not want to discourage the use of computerized records and reports in any way. We therefore have accepted this comment

and have changed the regulation at § 483.75(1)(2)(iv) (redesignated to § 483.75(j)(2)(iv) in this final rule) to read, "File in the resident's clinical record laboratory reports that are dated and contain the name and address of the issuing laboratory."

Comment: A number of comments suggested that the requirement holding the facility responsible for the quality and timeliness of the services obtained from outside laboratories is unfair.

Response: We have not accepted these comments. A facility that obtains outside clinical laboratory services should obtain such services from a laboratory that meets the criteria for quality and timeliness of services. If the laboratory providing the services does not meet these criteria, the facility should make arrangements to obtain services from a laboratory that does meet these criteria. Further, we note that once the forthcoming final regulations implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88) become effective, a laboratory's certification under the CLIA '88 standards will in itself represent satisfactory assurance that it does, in fact, meet these criteria.

We are, however, amending the regulations at § 483.75(j)(1)(iv), which discuss facilities that do not provide lab service onsite, by adding physician office labs (POLs) to the description of acceptable offsite settings for obtaining lab services. As a result of the longstanding reference to POLs contained in the previous Medicare SNF conditions of participation at 42 CFR 405.1128(a), it has become a common practice for SNFs to obtain offsite lab services from these entities. When the interim final regulations were published on February 2, 1989, we deleted the existing reference to POLs without fully realizing the effect this action could have on the many SNFs and NFs which have well-established relationships with POLs. It was not our intent, however, to disrupt the prevailing practice of utilizing this setting as a source of offsite lab services. Further, the use of POLs is addressed in forthcoming final regulations that will establish specific standards for them in connection with implementation of CLIA '88. Therefore, we are restoring a reference to POLs to these final regulations. Of course, as with any service that it obtains from an outside source, when a facility chooses to obtain lab services from a physician's office, the facility remains responsible for the quality and timeliness of the service (see § 483.75(h)(2)).

Comment: Commenters were concerned that we did not require staffing of the clinical records service by qualified professionals.

Response: As discussed in the preamble to the February 2 final regulation, commenters convinced us that we should defer to State law concerning professional qualifications. The IoM also concluded that it is inappropriate to prescribe detailed staffing standards. We, therefore, are not specifying qualifications for medical records personnel. The medical records department and the other departments in the facility must, in accordance with § 483.75(i) (redesignated to § 483.75(g) in this final rule), employ professionals necessary to carry out the provisions in the regulations and these professionals must be licensed, certified, or registered in accordance with applicable State laws.

Comment: Several commenters felt that the requirements to train all employees to carry out staff drills using emergency procedures should include the requirement for unannounced drills on all shifts.

Response: The purpose of a staff drill is to test the efficiency, knowledge, and response of institutional personnel in the event of an emergency. We agree with commenters that unannounced staff drills can be effective, although care must be exercised not to disturb or excite patients. We have revised the regulations at § 483.75(o)(2) (redesignated in this final rule as § 483.75(m)(2)) to require unannounced staff drills. As indicated above, these drills are directed at the facility's staff, and need not affect or involve its residents.

Response: We are prepared to accept these comments and add a statement to § 483.75(r)(3) (redesignated in this final rule as § 483.75(o)(3)) to read, "Good faith attempts by the committee to identify and correct quality deficiencies will not be used as a basis for sanctions." However, section 4008(h)(2)(B) of OBRA '90 specifically prohibits the State or the Secretary from requiring disclosure of records of the quality assessment or assurance committee except in so far as such disclosure is related to compliance of such committee with the requirements of the statute. Therefore, we are revising § 483.75(a)(3) to incorporate the statutory language.

Summary of Changes to § 483.75

We are deleting material that is out-of-date and pertains to services prior to October 1, 1990. This required editorial revisions and redesignations of paragraphs.

As a result of our evaluation of comments and editorial revisions we are making the following changes:

- We are deleting § 483.75(a)(1)(ii), which provided an option for a facility to be "approved" (rather than actually licensed) by the State or local licensing authority. OBRA '87 has now eliminated this option from the law, effective October 1, 1990.
- In redesignated § 483.75(e) we are changing the effective date of when facilities must comply with the nurse aide training provisions of this section from January 1, 1990 to October 1, 1990. This change is mandated by section 6901(b)(1) of OBRA '89. We have also added several requirements mandated by OBRA '90. The nurse aide training and competency evaluation requirements in this final rule are intended to state statutory requirements for facilities. Complete requirements for nurse aide training and competency evaluation are addressed in a separate regulations. Requirements enunciated in those regulations supersede the requirements in this rule.
- We are revising redesignated § 483.75(j)(2)(iv) to require a facility to file in the resident's clinical record laboratory reports that are dated and contain the name and address of the issuing laboratory.
- In redesignated § 483.75(k) we are revising the provision to require that both nursing facilities and skilled nursing facilities must provide or obtain radiology and other diagnostic services to meet the needs of their residents. We are making this change to reflect the provisions of OBRA '87 and the definition of facility in the regulation at § 483.5. Through technical error, we omitted nursing facilities in the February 2 rule.
- In redesignated § 483.75(l) we are deleting provisions relating to inspection and copying of records to avoid redundancy. Upon review of this section we found that a duplicate requirement is in paragraph (b) (i) and (ii) of § 483.10, Resident's rights.
- We are revising redesignated § 483.75(m)(2) to require the facility to have unannounced staff drills.
- We are revising designated § 483.75(n) to reflect the provisions of the paragraph following section 1919(a)(3) of the Act. This paragraph specifies that the requirement for a facility to have in effect a transfer agreement with a hospital does not apply to a nursing facility which is located in a State on an Indian reservation.
- We are deleting paragraph (q) concerning utilization review which does not apply after September 30, 1990.
- We are adding to redesignated

§ 483.75(o) a new paragraph (3) that is based on amendments to the Act mandated by OBRA '90 which states that a State or the Secretary may not require disclosure of the records of such committee except where disclosure is related to the compliance of such committee with the requirements of this section.

• We are deleting paragraph (t) concerning independent medical review and audit which does not apply after September 30, 1990.

Comments on Part 442, Standards for Payment for Skilled Nursing and Intermediate Care Facility Services

There were no public comments on part 442. Nonetheless, some technical corrections are needed to conform our regulations with changes made by OBRA '87, essentially eliminating the distinction between Medicaid SNFs and ICFs. We are renaming part 442 as "Conditions for Payment for Nursing Facility and Intermediate Care Facility Services for the Mentally Retarded" to reflect current nomenclature.

Where necessary, we delete references to "SNFs" and "ICFs" and replace them with "NF" or "facility." Provisions, formerly applicable to all intermediate care facilities, are specifically applied to ICFs for the mentally retarded (ICFs/MR) now. These conforming changes, and updates of cross references, have resulted in changes to §§ 442.1, 442.2, 442.12(a), 442.13(c), 442.30, 442.40 (b) and (c), 442.42(a); 442.101, 442.105, 442.110(a), 442.117, and 442.118.

In addition, we are making the following technical revisions to part 442. In § 442.13(b), which concerns the effective date of a provider agreement, we are adding a statement that the provider must meet any other requirements imposed by the Medicaid agency. Previous wording may have incorrectly implied that an agreement would be effective on the date Federal requirements are met even if additional or more stringent State requirements were not. In § 442.105 we revise the heading to, "Certification with standard level deficiencies: General provisions." Previous wording may have incorrectly implied that a facility would be certified even if it was out of compliance with a statutory condition of participation or coverage.

Comments on Part 447, Payments for Services

Section 447.253 Other Requirements

Summary of Provisions

Section 447.253 specifies that the Medicaid State Agency must comply with all other requirements of subpart C in order to receive HCFA approval of a State plan change. In the February 2 regulations we added a new paragraph (b)(1)(iii) to require that the method and standards used by the Medicaid agency to establish payment for NF services take into account certain requirements of part 483.

Comments and Responses

Comment: One commenter expressed concern that the methodologies being employed by States are, in many instances, inadequate based on preliminary information relative to the individual State Medicaid agencies' attempts at costing out the various provisions of OBRA. Commenters stated that unless very specific guidance is provided by HCFA, litigation will be undertaken in many States to assure adequate reimbursement. The commenter recommended that HCFA spell out in detail how costs of compliance with OBRA's provisions must be "taken into account" by each State since the commenter believes this approach is very inefficient as well as expensive for all concerned.

Response: In March 1990, we revised part 6 of the State Medicaid Manual by adding a new section 6002.3. This section provided instructions and guidance to States regarding what was required to demonstrate that payment rates to nursing facilities, as of October 1, 1990, account for the additional costs incurred by facilities in complying with each of the specific requirements described in sections 1919(b) (other than paragraph (3)(F) thereof), 1919(c), and 1919(d) of the Act. These instructions were included in the State Medicaid Manual because we believe this is the appropriate vehicle for this information.

Comment: One commenter recommended that the language in § 447.253(b)(1) that requires the method and standards used by the Medicaid agency to establish payment for nursing facility services take into account not only "the cost" but "the specific, and actual reasonable costs" of complying with the requirements of part 483 of subpart B.

Response: Current regulations at 42 CFR 447.253(b)(1) require that payment rates are reasonable and adequate to meet the costs that must be incurred by efficiently and economically operated providers to provide services in conformity with applicable State and Federal laws, regulations and quality and safety standards. The basis for this requirement is found in section 1902(a)(13)(A) of the Act. In this respect, we do not believe it necessary or appropriate to add the commenter's suggested additional qualifiers.

Comment: One commenter requested that the following language be substituted in § 447.253(b)(1): "With respect to long-term care facility services, the methods and standards used to determine payment rates must assure that the specific, actual and reasonable costs of complying with all requirements of subsections (b) (other than paragraph 3F thereof), (c), and (d) of section 1919 of the Act are met by including, on a prospective per-patient day basis, an immediate increase above the existing payment rate which will cover in full the costs as incurred in complying with said requirements. The State must include all relevant factors in making the rate determination including studies which assure that the rate will allow the facility to be in full compliance with the requirements of the Act. The separately identified costs must be in addition to, or as an add-on to, the rate which is otherwise determined by the State plan and not affected by any limitations described in the State plan."

Response: We do not believe there is any need to change the current language of § 447.253(b)(1)(iii)(A). Section 6002.3 of the State Medicaid Manual transmittal, issued in March 1990, addresses the concerns indicated in the above comment. We also do not believe that OBRA related costs should be treated any differently than other facility costs. Rates proposed in State plan amendments must, as of October 1, 1990, account for these additional costs.

Comment: One commenter was concerned that the OBRA '87 requirement for States to assure that payment rates to nursing facilities take into account the costs of compliance with the law (other than the costs of active treatment) has not been provided to appropriate State agencies. The commenter recommended that a State Operations Manual Issuance pertaining to this assurance, including the timing requirements for State plan amendments and availability of methodology for establishing payment rates, should be published to better assure adequate facility payment for all of the new requirements established by this regulation.

Response: As indicated above, section 6002.3 of the State Medicaid Manual as revised in March 1990, provides instructions and guidance to States regarding what is required in order to ensure compliance with the new requirements.

Comment: One commenter recommended that § 447.272 be amended to exclude ICFs/MR from the

provisions regarding Medicare upper payment limits.

Response: We disagree. The upper payment limits are based upon costs that would have been paid under Medicare payments principles. The fact that Medicare has no program similar to the Medicaid ICF/MR program is immaterial. Medicare payment principles need to be applied.

Summary of Changes to Part 447

We are revising part 447 to replace the terms SNF and ICF with NF or otherwise delete the SNF and ICF terminology when no longer applicable. We also update cross references and delete outdated material. Revisions occur in §§ 447.251, 447.253, 447.255 and 447.272.

Comments on Part 488, Survey and Certification Procedures

There were no public comments on part 488. Nonetheless, some technical corrections are needed to conform our regulation with changes made by OBRA '87, essentially eliminating the distinction between Medicaid SNF and ICFs. We also update terminology and cross-references.

Corrections are being made to the authority citation and the following: §§ 488.1, 488.3, 488.10(a)(1), 488.11, 488.18 (a) and (b), 488.20 (a) and (c), 488.24 (a) and (b), 488.26(a), 488.28 (a) and (b), 488.50(a), and 488.56 (a) and (b).

Comments on Part 498, Appeals Procedures for Determinations That Affect Participation in the Medicare Program

There were no public comments on part 498. Nonetheless, we are making a technical correction to substitute "NFs" for "ICFs" in § 498.3 to reflect the nomenclature change required by OBRA '87.

III. Regulatory Impact Analysis

A. Introduction

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

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

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all Medicare and Medicaid long term care providers as small entities. Individuals and states are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of Section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

When we published both the proposed (October 16, 1987) and final (February 2, 1989) rules, we prepared an analysis intended to conform to the objectives of E.O. 12291 and the RFA. In these analyses, we made the same general point regarding the cost of implementing the nursing home reform provisions that was made by the Institute of Medicine in its report. In fact, we quoted it as follows:

> The effects of the recommendations on the costs of regulation and on the costs of providing care to residents are not easily calculated for two reasons: (1) The quantitative and qualitative changes to behavior of the various actors in the system, and the effects on efficiency of the regulatory agencies and nursing homes, cannot be predicted on the basis of current data; (2) current data about staffing and costs in nursing homes and in state regulatory agencies are not available in sufficient detail; and (3) some immediate costs are likely to produce long-term savings that cannot be estimated. Given these uncertainties, any estimates made—even with the assistance of a very elaborate cost model—would have to present a wide range of costs to account for interactions of varying assumptions. (Page 214)

We also discussed in the case of the NPRM our estimate of the cost of increased nurse staffing, which was approximately $100 million a year. In the case of the final regulation, we noted that the changes made since publication of the NPRM were virtually all explicitly required by OBRA '87. We noted one exception (privacy curtains) and explained that the requirement would apply only to new NFs, thus minimizing the cost.

This final rule revises the February 2, 1989, final rule with comment period based on comments submitted by the public. Charges made as a result of comments received are summarized in section II of this preamble. We do not believe that any of the changes incorporated into this final rule as a result of the comments would have any significant impact and we are therefore not preparing an analysis with respect to them.

Although we do not believe that the changes in this document would have a significant impact, we do have additional information about the potential cost of the changes contained in OBRA '87, as reflected by the February 2, 1989 final regulation and other OBRA '87 requirements that have been implemented on the basis of the statute or instructions pending the completion of rulemaking.

Our information flows from the data submitted by States pursuant to the OBRA '87 requirement that they revise their State Medicaid plans to include additional costs to be incurred by NFs as a result of the OBRA '87 provisions. We have received 49 amendments, of which 36 have been approved, 5 disapproved, and 8 are pending further action. Of the plans that have been submitted and approved, the rate increases average $1.44 per day. These 36 States anticipate spending an additional $338.8 million for NF care in FY 1991. The increases in spending vary sufficiently from State to State so that it is not possible to anticipate, based on the plans approved to date, the increases of the remaining States or to estimate the total with accuracy. Nonetheless, it is clear from the information available to date that the OBRA '87 provisions have resulted in anticipated State payments high enough to constitute the February 2, 1989 final regulation as a major rule within the meaning of the Executive order.

B. Reporting Requirements

Sections 483.13(c), 483.60(b)(2), 483.65(a)(3), 483.75(h), 483.75(j)(1)(iv), 483.75(j)(2)(iv), 483.75(k)(1)(ii), 483.75(k)(2)(iv), 483.75(m), and 483.75(n) of this final rule contain information collections that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. Long-term care facilities must provide documentation to assure compliance with the requirements in order to receive Federal funds for Medicare and Medicaid. Public reporting burden for this collection of information is estimated to be 1,167,500 hours for approximately 15,500 facilities. (Comparable reporting burden for information collection requirements in

existing regulations is 2,585,317 hours annually.) A notice will be published in the **Federal Register** when approval for the reduced burden is obtained.

List of Subjects

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 447

Accounting, Administrative practice and procedure, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

Chapter IV—Health Care Financing Administration, Department of Health and Human Services

42 CFR chapter IV is amended as follows:

PART 442—CONDITIONS FOR PAYMENT FOR NURSING FACILITY AND INTERMEDIATE CARE FACILITY SERVICES FOR THE MENTALLY RETARDED

A. Part 442 is amended as follows:

1. The authority citation for part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2–3. In subpart A, § 442.1, paragraph (a) is revised to read as follows:

Subpart A—General Provisions

§ 442.1 Basis and purpose.

(a) This part states requirements for provider agreements and facility certification relating to the provision of services furnished by nursing facilities and intermediate care facilities for the mentally retarded. This part is based on the following sections of the Act:

Section 1902(a)(4), administrative methods for proper and efficient operation of the State plan;
Section 1902(a)(27), provider agreements;
Section 1902(a)(28), skilled nursing facility standards;
Section 1902(a)(33)(B), State survey agency functions;
Section 1902(i), circumstances and procedures for denial of payment and termination of provider agreements in certain cases;
Section 1905 (c) and (d), definition of intermediate care facility services;
Section 1905 (f) and (i), definition of skilled nursing facility services;
Section 1910, certification and approval of SNFs and of RHCs;
Section 1913, hospital providers of skilled nursing and intermediate care services, and
Section 1922, correction and reduction plans for intermediate care facilities for the mentally retarded.

* * * * *

4. In subpart A, § 442.2 the definition of "Facility", is revised as follows;

§ 442.2 Terms.

In this part—

Facility refers to a nursing facility, and an intermediate care facility for the mentally retarded or persons with related conditions (ICF/MR).

* * * * *

5. In subpart B, § 442.12(a) is revised to read as follows:

§ 442.12 Provider agreement: General requirements.

(a) *Certification and recertification.* Except as provided in paragraph (b) of this section, a Medicaid agency may not execute a provider agreement with a facility for nursing facility services nor make Medicaid payments to a facility for those services unless the Secretary or the State survey agency has certified the facility under this part to provide those services. (See § 442.101 for certification by the Secretary or by the State survey agency).

6. Section 442.13 (b) and (c)(2) are revised to read as follows:

§ 442.13 Effective date of agreement.

* * * * *

(b) *All Federal requirements are met on the date of the survey.* The agreement must be effective on the date the onsite survey is completed (or on the day following the expiration of a current agreement) if, on the date of the survey the provider meets all Federal requirements and any other requirements imposed by the Medicaid agency.

(c) * * *

(2) The date on which a NF or an ICF/MR is found to meet all conditions of participation, and the facility submits an acceptable correction plan for lower level deficiencies, or an approvable waiver request, or both.

* * * * *

§ 442.20 [Removed]

6a. Section 442.20 is removed.

7. In subpart B, § 442.30(a) introductory text and paragraph (a)(1) are revised to read as follows:

§ 442.30 Agreement as evidence of certification.

(a) Under §§ 440.40(a) and 440.150 of this chapter, FFP is available in expenditures for NF and ICF/MR services only if the facility has been certified as meeting the requirements for Medicaid participation, as evidenced by a provider agreement executed under this part. An agreement is not valid evidence that a facility has met those requirements if HCFA determines that—

(1) The survey agency failed to apply the applicable requirements under part 483 for NFs or subpart D of part 483 of this chapter, which sets forth the conditions of participation for ICFs/MR.

* * * * *

8. Section 442.40 (b) and (c) are revised to read as follows:

§ 442.40 Availability of FFP during appeals.

* * * * *

(b) *Scope, applicability, and effective date*—(1) *Scope.* This section sets forth the extent of FFP in State Medicaid payments to a NF or an ICF/MR after its provider agreement has been terminated or has expired and not be renewed.

(2) *Applicability.* (i) This section and § 442.42 apply only when the Medicaid agency, of its own volition, terminates o does not a renew a provider agreement, and only when the survey agency certifies that there is no jeopardy to recipient health and safety. When the survey agency certifies that there is jeopardy to recipient health and safety, or when it fails to certify that there is no jeopardy, FFP ends on the effective date of termination or expiration.

(ii) When the State acts under instructions from HCFA, FFP ends on the date specified by HCFA (HCFA instructs the State to terminate the Medicaid provider agreement when HCFA in validating a State survey agency certification, determines that a NF or an ICF/MR does not meet the requirements for participation.)

(3) *Effective date.* This section and § 442.42 apply to terminations or expirations that are effective on or after September 28, 1987. For terminations or nonrenewals that were effective before that date, FFP may continue for up to 120 days from September 28, 1987, or 12 months from the effective date of termination or nonrenewal, whichever is earlier.

(c) *Basic rules.* (1) Except as provided in paragraphs (d) and (e) of this section, FFP in payments to a NF or an ICF/MR ends on the effective date of termination of the facility's provider agreement, or if the agreement is not terminated, on the effective date of expiration.

(2) If State law, or a Federal or State court order or injunction, requires the agency to extend the provider agreement or continue payments to a facility after the dates specified in paragraph (d) of this section, FFP is not available in those payments.

§ 442.42 [Amended]

9. In § 442.42(a), the phrase "a NF or an ICF/MR" is substituted for the phrase "a SNF or ICF".

10. The heading of subpart C is revised to read as follows:

Subpart C—Certification of NFs and ICFs/MR

11. In subpart C, § 442.101 is revised to read as follows:

§ 442.101 Obtaining certification.

(a) This section states the requirements for obtaining notice of an ICF/MR's certification before a Medicaid agency executes a provider agreement under § 442.12.

(b) The agency must obtain notice of certification from the Secretary for an ICF/MR located on an Indian reservation.

(c) The agency must obtain notice of certification from the survey agency for all other ICF/MR.

(d) The notice must indicate that one of the following provisions pertains to the ICF/MR:

(1) An ICF/MR meets the conditions of participation set forth in subpart D of part 483 of this chapter.

(2) The ICF/MR has been granted a waiver or variance by HCFA or the survey agency under subpart D.

(3) An ICF/MR has been certified with standard-level deficiencies and

(i) All conditions of participation are found met; and

(ii) The facility submits an acceptable plan of correction covering the remaining deficiencies, subject to other limitations specified in § 442.105.

(e) The failure to meet one or more of the applicable conditions of participation is cause for termination or non-renewal of the ICF/MR provider agreement.

12. Section 442.105 is revised to read as follows:

§ 442.105 Certification with deficiencies: General provisions.

If a survey agency finds a facility deficient in meeting the requirements for NFs or the standards (for ICFs/MR), as specified under Subparts B and D of Part 483 of this chapter, the agency may certify the facility for Medicaid purposes under the following conditions:

(a) The agency finds that the facility's deficiencies, individually or in combination, do not jeopardize the patient's health and safety, nor seriously limit the facility's capacity to give adequate care. The agency must maintain a written justification of these findings.

(b) The agency finds acceptable the facility's written plan for correcting the deficiencies.

(c) If a facility was previously certified with a deficiency and has a different deficiency at the time of the next survey, the agency documents that the facility—

(1) Was unable to stay in compliance with the standard (for ICFs/MR) or requirements (for NFs) for reasons beyond its control, or despite intensive efforts to comply; and

(2) Is making the best use of its resources to furnish adequate care.

(d) If a facility has the same deficiency it had under the prior certification, the agency documents that the facility—

(1) Did achieve compliance with the standard (for ICFs/MR) or requirements (for NFs) at some time during the prior certification period;

(2) Made a good faith effort, as judged by the survey agency, to stay in compliance; and

(3) Again became out of compliance for reasons beyond its control.

(e) If a NF or ICF/MR has a deficiency of the types specified in § 442.111 or § 442.112 that requires a plan of correction extending beyond 12 months, the agency documents that the conditions of those sections are met.

13. In § 442.110, the section heading and paragraph (a) are revised to read as follows:

§ 442.110 Certification period: Facilities with deficiencies.

(a) Facilities with deficiencies may be certified under § 442.105 for the period specified in either paragraph (b) or (c) of this section. However, NFs with deficiencies that may require more than 12 months to correct may be certified under § 442.112.

* * * * *

§ 442.111 [Removed]

13a. Section 442.111 is removed.

14. In § 442.117, the section heading and paragraph (a)(1) are revised to read as follows:

§ 442.117 Termination of certification for NFs and ICFs/MR whose deficiencies pose immediate jeopardy.

(a) * * *

(1) The facility no longer meets applicable requirements for NFs or conditions of participation for ICFs/MR as specified in subpart B or D of part 483 of this chapter.

* * * * *

15. In § 442.118, paragraphs (a), (b)(1) and (b)(3)(i) are revised to read as follows:

§ 442.118 Denial of payments for new admissions.

(a) *Basis for denial of payments.*

The Medicaid agency may deny payment for new admissions to a NF or an ICF/MR that no longer meets the applicable conditions of participation specified under subpart B or D of part 483 of this chapter.

(b) * * *

(1) Provide the facility up to 60 days to correct the cited deficiencies and comply with the requirements (for NFs) or conditions of participation (for ICFs/MR).

* * * * *

(3) * * *

(i) The opportunity for the facility to present, before a State Medicaid official who was not involved in making the initial determination, evidence or documentation, in writing or in person, to refute the decision that the facility is out of compliance with the applicable requirements (for NFs) or conditions of participation (for ICFs/MR).

* * * * *

PART 447—PAYMENTS FOR SERVICES

B. Part 447 is amended as follows:

1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

Subpart C—Payment for Inpatient Hospital and Long-Term Care Facility Services

Payment Rates

2. In Subpart C, § 447.251 is amended by revising the definition of "long term care facility services" as follows:

§ 447.251 Definitions.

* * * * *

Long-term care facility services means intermediate care facility services for the mentally retarded (ICF/MR) and nursing facility (NF) services.

* * * * *

3. Section 447.255 is amended by revising paragraph (a) to read as follows:

§ 447.255 Related information.

* * * * *

(a) The amount of the estimated average proposed payment rate for each type or provider (hospital, ICF/MR, or nursing facility), and the amount by which that estimated average rate increased or decreased relative to the average payment rate in effect for each type of provider for the immediately preceding rate period;

* * * * *

4. Section 447.272 is amended by revising paragraphs (a) and (b) to read as follows:

§ 447.272 Application of upper payment limits.

(a) *General rule.* Except as provided in paragraph (c) of this section, aggregate payments by an agency to each group of health care facilities (that is, hospitals, nursing facilities and ICFs for the mentally retarded (ICFs/MR), may not exceed the amount that can reasonably be estimated would have been paid for those services under Medicare payment principles.

(b) *State operated facilities.* In addition to meeting the requirement of paragraph (a) of this section, aggregate payments to each group of State-operated facilities (that is, hospitals, nursing facilities and ICFs/MR) may not exceed the amount that can reasonably be estimated would have been paid under Medicare payment principles.

* * * * *

SUBCHAPTER E—STANDARDS AND CERTIFICATION

C. Part 483 is amended as follows:

1. The authority citation for part 483 is revised to read as follows:

Authority: Sec. 1102, 1819 (a)–(d), 1861 (j) and (1), 1863, 1871, 1902(a)(28), 1905 (a) and (c), and 1919 (a)–(d) of the Social Security Act (42 U.S.C. 1302, 1395(i) (3)(a)–(d), 1395x (j) and (1), 1395hh, 1396(a)(a)(28), and 1396d(c) and 1396r (a)–(d)), unless otherwise noted.

PART 483—REQUIREMENTS FOR LONG TERM CARE FACILITIES

Subpart B—Requirements for Long Term Care Facilities

2–3. In subpart B, §§ 483.1, 483.5, 483.10, 483.12, 483.13, 483.15, 483.20, and 483.25 are revised as follows:

§ 483.1 Basis and scope.

(a) *Basis in legislation.* (1) Sections of the Act 1819 (a), (b), (c), and (d) provide that—

(i) Skilled nursing facilities participating in Medicare must meet certain specified requirements; and

(ii) The Secretary may impose additional requirements (see section 1819(d)(4)(B)) if they are necessary for the health and safety of individuals to whom services are furnished in the facilities.

(2) Sections 1919 (a), (b), (c), and (d) of the Act provide that nursing facilities participating in Medicaid must meet certain specific requirements.

(b) *Scope.* The provisions of this part contain the requirements that an institution must meet in order to qualify to participate as a SNF in the Medicare program, and as a nursing facility in the Medicaid program. They serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid.

§ 483.5 Definitions.

For purposes of this subpart—

Facility means, a skilled nursing facility (SNF) or a nursing facility (NF) which meets the requirements of sections 1819 and 1919 (a), (b), (c), and (d) of the Act. "Facility" may include a distinct part of an institution specified in § 440.40 or § 440.150 of this chapter, but does not include an institution for the mentally retarded or persons with related conditions described in § 440.150(c) of this chapter. For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of a larger institution. For Medicare, a SNF (see section 1819(a)(1)), and for Medicaid, a NF (see section 1919(a)(1)) may not be an institution for mental diseases as defined in § 435.1009.

§ 483.10 Resident rights.

The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident, including each of the following rights:

(a) *Exercise of rights.*

(1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(3) In the case of a resident adjudged incompetent under the laws of a State by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed under State law to act on the resident's behalf.

(4) In the case of a resident who has not been adjudged incompetent by the State court, any legal-surrogate designated in accordance with State law may exercise the resident's rights to the extent provided by State law.

(b) *Notice of rights and services.*

(1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The facility must also provide the resident with the notice (if any) of the State developed under section 1919(e)(6) of the Act. Such notification must be made prior to or upon admission and during the resident's stay. Receipt of such information, and any amendments to it, must be acknowledged in writing;

(2) The resident or his or her legal representative has the right—

(i) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within 24 hours; and

(ii) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or any portions of them upon request and 2 working days advance notice to the facility.

(3) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition;

(4) The resident has the right to refuse treatment, and to refuse to participate in experimental research; and

(5) The facility must—

(i) Inform each resident who is entitled to Medicaid benefits, in writing, at the time of admission to the nursing facility or, when the resident becomes eligible for Medicaid of—

(A) The items and services that are included in nursing facility services under the State plan and for which the resident may not be charged;

(B) Those other items and services that the facility offers and for which the resident may be charged, and the amount of charges for those services; and

(ii) Inform each resident when changes are made to the items and services specified in paragraphs (5)(i)(A) and (B) of this section.

(6) The facility must inform each resident before, or at the time of admission, and periodically during the resident's stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare or by the facility's per diem rate.

(7) The facility must furnish a written description of legal rights which includes—

(i) A description of the manner of protecting personal funds, under paragraph (c) of this section;

(ii) A description of the requirements and procedures for establishing eligibility for Medicaid, including the right to request an assessment under section 1924(c) which determines the extent of a couple's non-exempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to Medicaid eligibility levels;

(iii) A posting of names, addresses, and telephone numbers of all pertinent State client advocacy groups such as the State survey and certification agency, the State licensure office, the State ombudsman program, the protection and advocacy network, and the Medicaid fraud control unit; and

(iv) A statement that the resident may file a complaint with the State survey and certification agency concerning resident abuse, neglect, and misappropriation of resident property in the facility.

(8) The facility must inform each resident of the name, specialty, and way of contacting the physician responsible for his or her care.

(9) The facility must prominently display in the facility written information, and provide to residents and applicants for admission oral and written information about how to apply for and use Medicare and Medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) *Notification of changes.* (i) A facility must immediately inform the resident; consult with the resident's physician; and if known, notify the resident's legal representative or an interested family member when there is—

(A) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(B) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications);

(C) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(D) A decision to transfer or discharge the resident from the facility as specified in § 483.12(a).

(ii) The facility must also promptly notify the resident and, if known, the resident's legal representative or interested family member when there is—

(A) A change in room or roommate assignment as specified in § 483.15(e)(2); or

(B) A change in resident rights under Federal or State law or regulations as specified in paragraph (b)(1) of this section.

(iii) The facility must record and periodically update the address and phone number of the resident's legal representative or interested family member.

(c) *Protection of Resident Funds.* (1) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(2) *Management of personal funds.* Upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility, as specified in paragraphs (c)(3)–(8) of this section.

(3) *Deposit of funds.* (i) *Funds in excess of $50.* The facility must deposit any residents' personal funds in excess of $50 in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts, and that credits all interest earned on resident's funds to that account. (In pooled accounts, there must be a separate accounting for each resident's share.)

(ii) *Funds less than $50.* The facility must maintain a resident's personal funds that do not exceed $50 in a non-interest bearing account, interest-bearing account, or petty cash fund.

(4) *Accounting and records.* The facility must establish and maintain a system that assures a full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

(i) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(ii) The individual financial record must be available through quarterly statements on request to the resident or his or her legal representative.

(5) *Notice of certain balances.* The facility must notify each resident that receives Medicaid benefits—

(i) When the amount in the resident's account reaches $200 less than the SSI resource limit for one person, specified in section 1611(a)(3)(B) of the Act; and

(ii) That, if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one person, the resident may lose eligibility for Medicaid or SSI.

(6) *Conveyance upon death.* Upon the death of a resident with a personal fund deposited with the facility, the facility must convey within 30 days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate.

(7) *Assurance of financial security.* The facility must purchase a surety bond, or otherwise provide assurance satisfactory to the Secretary, to assure the security of all personal funds of residents deposited with the facility.

(8) *Limitation on charges to personal funds.* The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Medicaid or Medicare.

(d) *Free choice.* The resident has the right to—

(1) Choose a personal attending physician;

(2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being; and

(3) Unless adjudged incompetent or otherwise found to be incapacitated under the laws of the State, participate in planning care and treatment or changes in care and treatment.

(e) *Privacy and confidentiality.* The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups, but this does not require the facility to provide a private room for each resident;

(2) Except as provided in paragraph (e)(3) of this section, the resident may approve or refuse the release of personal and clinical records to any individual outside the facility;

(3) The resident's right to refuse release of personal and clinical records does not apply when—

(i) The resident is transferred to another health care institution; or

(ii) Record release is required by law.

(f) *Grievances.* A resident has the right to—

(1) Voice grievances without discrimination or reprisal. Such grievances include those with respect to treatment which has been furnished as well as that which has not been furnished; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.

(g) *Examination of survey results.* A resident has the right to—

(1) Examine the results of the most recent survey of the facility conducted by Federal or State surveyors and any plan of correction in effect with respect to the facility. The results must be made available for examination by the facility in a place readily accessible to residents; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contract these agencies.

(h) *Work.* The resident has the right to—

(1) Refuse to perform services for the facility;

(2) Perform services for the facility, if he or she chooses, when—

(i) The facility has documented the need or desire for work in the plan of care;

(ii) The plan specifies the nature of the services performed and whether the services are voluntary or paid;

(iii) Compensation for paid services is at or above prevailing rates; and

(iv) The resident agrees to the work arrangement described in the plan of care.

(i) *Mail.* The resident has the right to privacy in written communications, including the right to—

(1) Send and promptly receive mail that is unopened; and

(2) Have access to stationery, postage, and writing implements at the resident's own expense.

(j) *Access and visitation rights.* (1) The resident has the right and the facility must provide immediate access to any resident by the following:

(i) Any representative of the Secretary;

(ii) Any representative of the State:

(iii) The resident's individual physician;

(iv) The Sate long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965);

(v) The agency responsible for the protection and advocacy system for developmentally disabled individuals (established under part C of the Developmental Disabilities Assistance and Bill of Rights Act);

(vi) The agency responsible for the protection and advocacy system for mentally ill individuals (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(vii) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(viii) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The facility must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at anytime.

(3) The facility must allow representatives of the State Ombudsman, described in paragraph (j)(1)(iv) of this section, to examine a resident's clinical records with the permission of the resident or the resident's legal representative, and consistent with State law.

(k) *Telephone.* The resident has the right to have reasonable access to the use of a telephone where calls can be made without being overheard.

(l) *Personal property.* The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(m) *Married couples.* The resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement

(n) *Self-Administration of Drugs.* An individual resident may self-administer drugs if the interdisciplinary team, as defined by § 483.20(d)(2)(ii), has determined that this practice is safe.

(o) *Refusal of certain transfers.* (1) An individual has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is to relocate—

(i) A resident of a SNF from the distinct part of the facility that is a SNF to a part of the facility that is not a SNF, or

(ii) If a resident of a NF from the distinct part of the facility that is a NF to a distinct part of the facility that is a SNF.

(2) A resident's exercise of the right to refuse transfer under paragraph (o)(1) of this section does not affect the individual's eligibility or entitlement to Medicaid benefits.

§ 483.12 Admission, transfer and discharge rights.

(a) Transfer and discharge—

(1) *Definition:* Transfer and discharge includes movement of a resident to a bed outside of the certified facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same certified facility.

(2) *Transfer and discharge requirements.* The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless—

(i) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(ii) The transfer or discharge is appropriate because the resident's health has improved sufficiently so the resident no longer needs the services provided by the facility;

(iii) The safety of individuals in the facility is endangered;

(iv) The health of individuals in the facility would otherwise be endangered;

(v) The resident has failed, after reasonable and appropriate notice, to pay for (or to have paid under Medicare or Medicaid) a stay at the facility. For a resident who becomes eligible for Medicaid after admission to a facility, the facility may charge a resident only allowable charges under Medicaid; or

(vi) The facility ceases to operate.

(3) *Documentation.* When the facility transfers or discharges a resident under any of the circumstances specified in paragraphs (a)(2)(i) through (v) of this section, the resident's clinical record must be documented. The documentation must be made by—

(i) The resident's physician when transfer or discharge is necessary under paragraph (a)(2)(i) or paragraph (a)(2)(ii) of this section; and

(ii) A physician when transfer or discharge is necessary under paragraph (a)(2)(iv) of this section.

(4) *Notice before transfer.* Before a facility transfers or discharges a resident, the facility must—

(i) Notify the resident and, if known, a family member or legal representative of the resident of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand.

(ii) Record the reasons in the resident's clinical record; and

(iii) Include in the notice the items described in paragraph (a)(6) of this section.

(5) *Timing of the notice.* (i) Except when specified in paragraph (a)(5)(ii) of this section, the notice of transfer or discharge required under paragraph (a)(4) of this section must be made by the facility at least 30 days before the resident is transferred or discharged.

(ii) Notice may be made as soon as practicable before transfer or discharge when—

(A) the safety of individuals in the facility would be endangered under paragraph (a)(2)(iii) of this section;

(B) The health of individuals in the facility would be endangered, under paragraph (a)(2)(iv) of this section;

(C) The resident's health improves sufficiently to allow a more immediate transfer or discharge, under paragraph (a)(2)(ii) of this section;

(D) An immediate transfer or discharge is required by the resident's urgent medical needs, under paragraph (a)(2)(ii) of this section; or

(E) A resident has not resided in the facility for 30 days.

(6) *Contents of the notice.* For nursing facilities, the written notice specified in paragraph (a)(4) of this section must include the following:

(i) The reason for transfer or discharge;

(ii) The effective date of transfer or discharge;

(iii) The location to which the resident is transferred or discharged;

(iv) A statement that the resident has the right to appeal the action to the State;

(v) The name, address and telephone number of the State long term care ombudsman;

(vi) For nursing facility residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under Part C of the Developmental Disabilities Assistance and Bill of Rights Act; and

(vii) For nursing facility residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the Protection and Advocacy for Mentally Ill Individuals Act.

(7) *Orientation for transfer or discharge.* A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(b) *Notice of bed-hold policy and readmission*—(1) *Notice before transfer.* Before a nursing facility transfers a resident to a hospital or allows a resident to go on therapeutic leave, the nursing facility must provide written information to the resident and a family member or legal representative that specifies—

(i) The duration of the bed-hold policy under the State plan, if any, during which the resident is permitted to return and resume residence in the nursing facility; and

(ii) The nursing facility's policies regarding bed-hold periods, which must be consistent with paragraph (b)(3) of this section, permitting a resident to return.

(2) *Bed-hold notice upon transfer.* At the time of transfer of a resident for hospitalization or therapeutic leave, a nursing facility must provide to the resident and a family member or legal representative written notice which specifies the duration of the bed-hold policy described in paragraph (b)(1) of this section.

(3) *Permitting resident to return to facility.* A nursing facility must establish and follow a written policy under which a resident, whose hospitalization or therapeutic leave exceeds the bed-hold period under the State plan, is readmitted to the facility immediately upon the first availability of a bed in a semi-private room if the resident—

(i) Requires the services provided by the facility; and

(ii) Is eligible for Medicaid nursing facility services.

(c) *Equal access to quality care.*

(1) A facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services under the State plan for all individuals regardless of source of payment;

(2) The facility may charge any amount for services furnished to non-Medicaid residents consistent with the notice requirement in § 483.10(b)(5)(i) and (b)(6) describing the charges; and

(3) The State is not required to offer additional services on behalf of a resident other than services provided in the State plan.

(d) *Admissions policy.*

(1) The facility must—

(i) Not require residents or potential residents to waive their rights to Medicare or Medicaid; and

(ii) Not require oral or written assurance that residents or potential residents are not eligible for, or will not apply for, Medicare benefits.

(2) The facility must not require a third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.

(3) In the case of a person eligible for Medicaid, a nursing facility must not charge, solicit, accept, or receive, in addition to any amount otherwise required to be paid under the State plan, any gift, money, donation, or other consideration as a precondition of admission, expedited admission or continued stay in the facility. However,—

(i) A nursing facility may charge a resident who is eligible for Medicaid for items and services the resident has requested and received, and that are not specified in the State plan as included in the term "nursing facility services" so long as the facility gives proper notice of the availability and cost of these services to residents and does not condition the resident's admission or continued stay on the request for and receipt of such additional services; and

(ii) A nursing facility may solicit, accept, or receive a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to a Medicaid eligible resident or potential resident, but only to the extent that the contribution is not a condition of admission, expedited admission, or continued stay in the facility for a Medicaid eligible resident.

(4) States or political subdivisions may apply stricter admissions standards under State or local laws than are specified in this section, to prohibit discrimination against individuals entitled to Medicaid.

§ 483.13 Resident behavior and facility practices.

(a) *Restraints.* The resident has the right to be free from any physical or chemical restraints imposed for purposes of discipline or convenience, and not required to treat the resident's medical symptoms.

(b) *Abuse.* The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(c) *Staff treatment of residents.* The facility must develop and implement written policies and procedures that prohibit mistreatment, neglect, and abuse of residents and misappropriation of resident property.

(1) The facility must—

(i) Not use verbal, mental, sexual, or physical abuse, corporal punishment, or involuntary seclusion;

(ii) Not employ individuals who have been—

(A) Found guilty of abusing, neglecting, or mistreating individuals by a court of law; or

(B) Have had a finding entered into the State nurse aide registry concerning abuse, neglect, mistreatment of residents or misappropriation of their property; and

(iii) Report any knowledge it has of actions by a court of law against an employee, which would indicate unfitness for service as a nurse aide or other NF staff to the State nurse aide registry or licensing authorities.

(2) The facility must ensure that all alleged violations involving mistreatment, neglect, or abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures (including to the State survey and certification agency).

(3) The facility must have evidence that all alleged violations are thoroughly investigated, and must prevent further potential abuse while the investigation is in progress.

(4) The results of all investigations must be reported to the administrator or his designated representative and to other officials in accordance with State law (including to the State survey and certification agency) within 5 working days of the incident, and if the alleged violation is verified appropriate corrective action must be taken.

§ 483.15 Quality of life.

A facility must care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life.

(a) *Dignity.* The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(b) *Self-determination and participation.* The resident has the right to—

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(2) Interact with members of the community both inside and outside the facility; and

(3) Make choices about aspects of his or her life in the facility that are significant to the resident.

(c) *Participation in resident and family groups.*

(1) A resident has the right to organize and participate in resident groups in the facility;

(2) A resident's family has the right to meet in the facility with the families of other residents in the facility;

(3) The facility must provide a resident or family group, if one exists, with private space;

(4) Staff or visitors may attend meetings at the group's invitation;

(5) The facility must provide a designated staff person responsible for providing assistance and responding to written requests that result from group meetings;

(6) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(d) *Participation in other activities.* A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(e) *Accommodation of needs.* A resident has the right to—

(1) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(2) Receive notice before the resident's room or roommate in the facility is changed.

(f) *Activities.*

(1) The facility must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident.

(2) The activities program must be directed by a qualified professional who—

(i) Is a qualified therapeutic recreation specialist or an activities professional who is—

(A) Licensed or registered, if applicable, by the State in which practicing; and

(B) Eligible for certification as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body on October 1, 1990; or

(ii) Has 2 years of experience in a social or recreational program within the last 5 years, 1 of which was full-time in a patient activities program in a health care setting; or

(iii) Is a qualified occupational therapist or occupational therapy assistant; or

(iv) Has completed a training course approved by the State.

(g) *Social Services.* (1)—The facility must provide medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(2) A facility with more than 120 beds must employ a qualified social worker on a full-time basis.

(3) *Qualifications of social worker.* A qualified social worker is an individual with—

(i) A bachelor's degree in social work or a bachelor's degree in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology; and

(ii) One year of supervised social work experience in a health care setting working directly with individuals.

(h) *Environment.*

The facility must provide—

(1) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Clean bed and bath linens that are in good condition;

(4) Private closet space in each resident room, as specified in § 483.70(d)(2)(iv) of this Part;

(5) Adequate and comfortable lighting levels in all areas;

(6) Comfortable and safe temperature levels. Facilities initially certified after October 1, 1990 must maintain a temperature range of 71–81°F; and

(7) For the maintenance of comfortable sound levels.

§ 483.20 Resident assessment.

The facility must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity.

(a) *Admission orders.* At the time each resident is admitted, the facility must have physician orders for the resident's immediate care.

(b) *Comprehensive assessments.*

(1) The facility must make a comprehensive assessment of a resident's needs, which—

(i) Is based on a uniform data set specified by the Secretary and uses an instrument that is specified by the State and approved by the Secretary; and

(ii) Describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

(i) Medically defined conditions and prior medical history;

(ii) Medical status measurement;

(iii) Physical and mental functional status;

(iv) Sensory and physical impairments;

(v) Nutritional status and requirements;

(vi) Special treatments or procedures;

(vii) Mental and psychosocial status;

(viii) Discharge potential;

(ix) Dental condition;

(x) Activities potential;

(xi) Rehabilitation potential;

(xii) Cognitive status; and

(xiii) Drug therapy.

(3) [Reserved]

(4) *Frequency.* Assessments must be conducted—

(i) No later than 14 days after the date of admission;

(ii) For current NF residents not later than October 1, 1991;

(iii) For current SNF residents not later than January 1, 1991;

(iv) Promptly after a significant change in the resident's physical or mental condition; and

(v) In no case less often than once every 12 months.

(5) *Review of assessments.* The nursing facility must examine each resident no less than once every 3 months, and as appropriate, revise the resident's assessment to assure the continued accuracy of the assessment.

(6) *Use.* The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care, under paragraph (d) of this section.

(7) *Coordination.* The facility must coordinate assessments with any State-required preadmission screening program to the maximum extent practicable to avoid duplicative testing and effort.

(c) *Accuracy of assessments.* (1) *Coordination.* (i) Each assessment must be conducted or coordinated with the appropriate participation of health professionals.

(ii) Each assessment must be conducted or coordinated by a registered nurse who signs and certifies the completion of the assessment.

(2) *Certification.* Each individual who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(3) *Penalty for Falsification.* An individual who willfully and knowingly certifies (or causes another individual to certify) a material and false statement in a resident assessment is subject to civil money penalties. The implementing regulations for this statutory authority are located in Part 1003 of this chapter.

(4) *Use of independent assessors.* If a State determines, under a survey or otherwise, that there has been a knowing and willful certification of false statements under paragraph (c)(3) of this section, the State may require (for a period specified by the State) that resident assessments under this paragraph be conducted and certified by individuals who are independent of the facility and who are approved by the State.

(d) *Comprehensive care plans.* (1) The facility must develop a comprehensive care plan for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment.

The plan of care must deal with the relationship of items or services ordered to be provided (or withheld) to the facility's responsibility for fulfilling other requirements in these regulations.

(2) A comprehensive care plan must be—

(i) Developed within 7 days after completion of the comprehensive assessment;

(ii) Prepared by an interdisciplinary team, that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and, to the extent practicable, the participation of the resident, the resident's family or the resident's legal representative; and

(iii) Periodically reviewed and revised by a team of qualified persons after each assessment.

(3) The services provided or arranged by the facility must—

(i) Meet professional standards of quality; and

(ii) Be provided by qualified persons in accordance with each resident's written plan of care.

(e) *Discharge summary.* When the facility anticipates discharges a resident must have a discharge summary that includes—

(1) A recapitulation of the resident's stay;

(2) A final summary of the resident's status to include items in paragraph (b)(2) of this section, at the time of the discharge that is available for release to authorized persons and agencies, with the consent of the resident or legal representative; and

(3) A post-discharge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

(f) *Preadmission screening for mentally ill individuals and individuals with mental retardation.*

(1) A nursing facility must not admit, on or after January 1, 1989, any new resident with—

(i) Mental illness as defined in paragraph (f)(2)(i) of this section, unless the State mental health authority has determined, based on an independent physical and mental evaluation performed by a person or entity other than the State mental health authority, prior to admission,

(A) That, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility; and

(B) If the individual requires such level of services, whether specialized services the individual requires active treatment for mental illness; or

(ii) Mental retardation, as defined in paragraph (f)(2)(ii) of this section, unless the State mental retardation or developmental disability authority has determined prior to admission—

(A) That, because of the physical and mental condition of the individual, the individual requires the level of services provided by a nursing facility; and

(B) If the individual requires such level of services, whether the individual requires active treatment for mental retardation.

(2) *Definition.* For purposes of this section—

(i) An individual is considered to have "mental illness" if the individual has a serious mental illness as defined in § 483.102(b)(1).

(ii) An individual is considered to be "mentally retarded" if the individual is mentally retarded as defined in § 483.102(b)(3) or is a person with a related condition as described in 42 CFR 435.1009.

§ 483.25 Quality of care.

Each resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) *Activities of daily living.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the resident's ability to—

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet;

(iv) Eat; and

(v) Use speech, language, or other functional communication systems.

(2) A resident is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (a)(1) of this section; and

(3) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(b) *Vision and hearing.* To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the facility must, if necessary, assist the resident—

(1) In making appointments, and

(2) By arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(c) *Pressure sores.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A resident having pressure sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

(d) *Urinary Incontinence.* Based on the resident's comprehensive assessment, the facility must ensure that—

(1) A resident who enters the facility without an indwelling catheter is not catheterized unless the resident's clinical condition demonstrates that catheterization was necessary; and

(2) A resident who is incontinent of bladder receives appropriate treatment and services to prevent urinary tract infections and to restore as much normal bladder function as possible.

(e) *Range of motion.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who enters the facility without a limited range of motion does not experience reduction in range of motion unless the resident's clinical condition demonstrates that a reduction in range of motion is unavoidable; and

(2) A resident with a limited range of motion receives appropriate treatment and services to increase range of motion and/or to prevent further decrease in range of motion.

(f) *Mental and Psychosocial functioning.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who displays mental or psychosocial adjustment difficulty, receives appropriate treatment and services to correct the assessed problem, and

(2) A resident whose assessment did not reveal a mental or psychosocial adjustment difficulty does not display a pattern of decreased social interaction and/or increased withdrawn, angry, or depressive behaviors, unless the resident's clinical condition demonstrates that such a pattern was unavoidable.

(g) *Naso-gastric tubes.* Based on the comprehensive assessment of a resident, the facility must ensure that—

(1) A resident who has been able to eat enough alone or with assistance is not fed by naso-gastric tube unless the resident's clinical condition demonstrates that use of a naso-gastric tube was unavoidable; and

(2) A resident who is fed by a naso-gastric or gastrostomy tube receives the appropriate treatment and services to prevent aspiration pneumonia, diarrhea, vomiting, dehydration, metabolic abnormalities, and nasal-pharyngeal ulcers and to restore, if possible, normal feeding function.

(h) *Accidents.* The facility must ensure that—

(1) The resident environment remains as free of accident hazards as is possible; and

(2) Each resident receives adequate supervision and assistance devices to prevent accidents.

(i) *Nutrition.* Based on a resident's comprehensive assessment, the facility must ensure that a resident—

(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(2) Receives a therapeutic diet when there is a nutritional problem.

(j) *Hydration.* The facility must provide each resident with sufficient fluid intake to maintain proper hydration and health.

(k) *Special needs.* The facility must ensure that residents receive proper treatment and care for the following special services:

(1) Injections;

(2) Parenteral and enteral fluids;

(3) Colostomy, ureterostomy, or ileostomy care;

(4) Tracheostomy care;

(5) Tracheal suctioning;

(6) Respiratory care;

(7) Foot care; and

(8) Prostheses.

(l) *Unnecessary drug*—(1) *General.* Each resident's drug regimen must be free from unnecessary drugs. An unnecessary drug is any drug when used:

(i) In excessive dose (including duplicate drug therapy); or

(ii) For excessive duration; or

(iii) Without adequate monitoring; or

(iv) Without adequate indications for its use; or

(v) In the presence of adverse consequences which indicate the dose should be reduced or discontinued; or

(vi) Any combinations of the reasons above.

(2) *Antipsychotic Drugs.* Based on a comprehensive assessment of a resident, the facility must ensure that—

(i) Residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and

(ii) Residents who use antipsychotic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs.

(m) *Medication Errors*—The facility must ensure that—

(1) It is free of medication error rates of five percent or greater; and

(2) Residents are free of any significant medication errors.

§§ 483.28 and 483.29 [Removed]

4. Sections 483.28 and 483.29 are removed.

5. In Subpart B, §§ 483.30, 483.35, 483.40, 483.45, 483.55, 483.60, 483.65, 483.70 and 483.75 are revised as follows:

§ 483.30 Nursing services.

The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental,

and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care.

(a) *Sufficient staff.* (1) The facility must provide services by sufficient numbers of each of the following types of personnel on a 24-hour basis to provide nursing care to all residents in accordance with resident care plans:

(i) Except when waived under paragraph (c) of this section, licensed nurses; and

(ii) Other nursing personnel.

(2) Except when waived under paragraph (c) of this section, the facility must designate a licensed nurse to serve as a charge nurse on each tour of duty.

(b) *Registered nurse.* (1) Except when waived under paragraph (c) or (d) of this section, the facility must use the services of a registered nurse for at least 8 consecutive hours a day, 7 days a week.

(2) Except when waived under paragraph (c) or (d) of this section, the facility must designate a registered nurse to serve as the director of nursing on a full time basis.

(3) The director of nursing may serve as a charge nurse only when the facility has an average daily occupancy of 60 or fewer residents.

(c) *Nursing facilities: Waiver of requirement to provide licensed nurses on a 24-hour basis.* To the extent that a facility is unable to meet the requirements of paragraphs (a)(2) and (b)(1) of this section, a State may waive such requirements with respect to the facility if—

(1) The facility demonstrates to the satisfaction of the State that the facility has been unable, despite diligent efforts (including offering wages at the community prevailing rate for nursing facilities), to recruit appropriate personnel;

(2) The State determines that a waiver of the requirement will not endanger the health or safety of individuals staying in the facility;

(3) The State finds that, for any periods in which licensed nursing services are not available, a registered nurse or a physician is obligated to respond immediately to telephone calls from the facility;

(4) A waiver granted under the conditions listed in paragraph (c) of this section is subject to annual State review;

(5) In granting or renewing a waiver, a facility may be required by the State to use other qualified, licensed personnel;

(6) The State agency granting a waiver of such requirements provides notice of the waiver to the State long term care ombudsman (established under section 307(a)(12) of the Older Americans Act of 1965) and the protection and advocacy system in the State for the mentally ill and mentally retarded; and

(7) The nursing facility that is granted such a waiver by a State notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

(d) *SNFs: Waiver of the requirement to provide services of a registered nurse for more than 40 hours a week.*

(1) The Secretary may waive the requirement that a SNF provide the services of a registered nurse for more than 40 hours a week, including a director of nursing specified in paragraph (b) of this section, if the Secretary finds that—

(i) The facility is located in a rural area and the supply of skilled nursing facility services in the area is not sufficient to meet the needs of individuals residing in the area;

(ii) The facility has one full-time registered nurse who is regularly on duty at the facility 40 hours a week; and

(iii) The facility either—

(A) Has only patients whose physicians have indicated (through physicians' orders or admission notes) that they do not require the services of a registered nurse or a physician for a 48-hours period, or

(B) Has made arrangements for a registered nurse or a physician to spend time at the facility, as determined necessary by the physician, to provide necessary skilled nursing services on days when the regular full-time registered nurse is not on duty;

(iv) The Secretary provides notice of the waiver to the State long term care ombudsman (established under section 307(a)(12) of the Older American Act of 1965) and the protection and advocacy system in the State for the mentally ill and mentally retarded; and

(v) The facility that is granted such a waiver notifies residents of the facility (or, where appropriate, the guardians or legal representatives of such residents) and members of their immediate families of the waiver.

(2) A waiver of the registered nurse requirement under paragraph (d)(1) of this section is subject to annual renewal by the Secretary.

§ 483.35 Dietary services.

The facility must provide each resident with a nourishing, palatable, well-balanced diet that meets the daily nutritional and special dietary needs of each resident.

(a) *Staffing.* The facility must employ a qualified dietitian either full-time, part-time, or on a consultant basis.

(1) If a qualified dietitian is not employed full-time, the facility must designate a person to serve as the director of food service who receives frequently scheduled consultation from a qualified dietitian.

(2) A qualified dietitian is one who is qualified based upon either registration by the Commission on Dietetic Registration of the American Dietetic Association, or on the basis of education, training, or experience in identification of dietary needs, planning, and implementation of dietary programs.

(b) *Sufficient staff.* The facility must employ sufficient support personnel competent to carry out the functions of the dietary service.

(c) *Menus and nutritional adequacy.* Menus must—

(1) Meet the nutritional needs of residents in accordance with the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;

(2) Be prepared in advance; and

(3) Be followed.

(d) *Food.* Each resident receives and the facility provides—

(1) Food prepared by methods that conserve nutritive value, flavor, and appearance;

(2) Food that is palatable, attractive, and at the proper temperature;

(3) Food prepared in a form designed to meet individual needs; and

(4) Substitutes offered of similar nutritive value to residents who refuse food served.

(e) *Therapeutic diets.* Therapeutic diets must be prescribed by the attending physician.

(f) *Frequency of meals.* (1) Each resident receives and the facility provides at least three meals daily, at regular times comparable to normal mealtimes in the community.

(2) There must be no more than 14 hours between a substantial evening meal and breakfast the following day, except as provided in (4) below.

(3) The facility must offer snacks at bedtime daily.

(4) When a nourishing snack is provided at bedtime, up to 16 hours may elapse between a substantial evening meal and breakfast the following day if a resident group agrees to this meal span, and a nourishing snack is served.

(g) *Assistive devices.* The facility must provide special eating equipment and utensils for residents who need them.

(h) *Sanitary conditions.* The facility must—

(1) Procure food from sources approved or considered satisfactory by Federal, State, or local authorities;

(2) Store, prepare, distribute, and serve food under sanitary conditions; and

(3) Dispose of garbage and refuse properly.

§ 483.40 Physician services.

A physician must personally approve in writing a recommendation that an individual be admitted to a facility. Each resident must remain under the care of a physician.

(a) *Physician supervision.* The facility must ensure that—

(1) The medical care of each resident is supervised by a physician; and

(2) Another physician supervises the medical care of residents when their attending physician is unavailable.

(b) *Physician visits.* The physician must—

(1) Review the resident's total program of care, including medications and treatments, at each visit required by paragraph (c) of this section;

(2) Write, sign, and date progress notes at each visit; and

(3) Sign and date all orders.

(c) *Frequency of physician visits.*

(1) The resident must be seen by a physician at least once every 30 days for the first 90 days after admission, and at least once every 60 days thereafter.

(2) A physician visit is considered timely if it occurs not later than 10 days after the date the visit was required.

(3) Except as provided in paragraphs (c)(4) and (f) of this section, all required physician visits must be made by the physician personally.

(4) At the option of the physician, required visits in SNFs after the initial visit may alternate between personal visits by the physician and visits by a physician assistant, nurse practitioner, or clinical nurse specialist in accordance with paragraph (e) of this section.

(d) *Availability of physicians for emergency care.* The facility must provide or arrange for the provision of physician services 24 hours a day, in case of an emergency.

(e) *Physician delegation of tasks in SNFs.* (1) Except as specified in paragraph (e)(2) of this section, a physician may delegate tasks to a physician assistant, nurse practitioner, or clinical nurse specialist who—

(i) Meets the applicable definition in § 491.2 of this chapter or, in the case of a clinical nurse specialist, is licensed as such by the State;

(ii) Is acting within the scope of practice as defined by State law; and

(iii) Is under the supervision of the physician.

(2) A physician may not delegate a task when the regulations specify that the physician must perform it personally, or when the delegation is prohibited under State law or by the facility's own policies.

(f) *Performance of physician tasks in NFs.* At the option of the State, any required physician task in a NF (including tasks which the regulations specify must be performed personally by the physician) may also be satisfied when performed by a nurse practitioner, clinical nurse specialist, or physician assistant who is not an employee of the facility but who is working in collaboration with a physician.

§ 483.45 Specialized rehabilitative services.

(a) *Provision of services.* If specialized rehabilitative services such as but not limited to physical therapy, speech-language pathology, occupational therapy, and health rehabilitative services for mental illness and mental retardation, are required in the resident's comprehensive plan of care, the facility must—

(1) Provide the required services; or

(2) Obtain the required services from an outside resource (in accordance with § 483.75(j) of this part) from a provider of specialized rehabilitative services.

(b) *Qualifications.* Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

§ 483.55 Dental services.

The facility must assist residents in obtaining routine and 24-hour emergency dental care.

(a) *Skilled nursing facilities.* A facility (1) Must provide or obtain from an outside resource, in accordance with § 483.75(h) of this part, routine and emergency dental services to meet the needs of each resident;

(2) May charge a Medicare resident an additional amount for routine and emergency dental services;

(3) Must if necessary, assist the resident—

(i) In making appointments; and

(ii) By arranging for transportation to and from the dentist's office; and

(4) Promptly refer residents with lost or damaged dentures to a dentist.

(b) *Nursing facilities.* The facility (1) Must provide or obtain from an outside resource, in accordance with § 483.75(h) of this part, the following dental services to meet the needs of each resident:

(i) Routine dental services (to the extent covered under the State plan); and

(ii) Emergency dental services;

(2) Must, if necessary, assist the resident—

(i) In making appointments; and

(ii) By arranging for transportation to and from the dentist's office; and

(3) Must promptly refer residents with lost or damaged dentures to a dentist.

§ 483.60 Pharmacy services.

The facility must provide routine and emergency drugs and biologicals to its residents, or obtain them under an agreement described in § 483.75(h) of this part. The facility may permit unlicensed personnel to administer drugs if State law permits, but only under the general supervision of a licensed nurse.

(a) *Procedures.* A facility must provide pharmaceutical services (including procedures that assure the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals) to meet the needs of each resident.

(b) *Service consultation.* The facility must employ or obtain the services of a licensed pharmacist who—

(1) Provides consultation on all aspects of the provision of pharmacy services in the facility;

(2) Establishes a system of records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation; and

(3) Determines that drug records are in order and that an account of all controlled drugs is maintained and periodically reconciled.

(c) *Drug regimen review.* (1) The drug regimen of each resident must be reviewed at least once a month by a licensed pharmacist.

(2) The pharmacist must report any irregularities to the attending physician and the director of nursing, and these reports must be acted upon.

(d) *Labeling of drugs and biologicals.* Drugs and biologicals used in the facility must be labeled in accordance with currently accepted professional principles, and including the appropriate accessory and cautionary instructions, and the expiration date when applicable.

(e) *Storage of drugs and biologicals.*

(1) In accordance with State and Federal laws, the facility must store all drugs and biologicals in locked compartments under proper temperature controls, and permit only authorized personnel to have access to the keys.

(2) The facility must provide separately locked, permanently affixed compartments for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention and Control Act of 1976 and other drugs

subject to abuse, except when the facility uses single unit package drug distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.

§ 483.65 Infection control.

The facility must establish and maintain an infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(a) *Infection control program.* The facility must establish an infection control program under which it—

(1) Investigates, controls, and prevents infections in the facility;

(2) Decides what procedures, such as isolation, should be applied to an individual resident; and

(3) Maintains a record of incidents and corrective actions related to infections.

(b) *Preventing spread of infection.* (1) When the infection control program determines that a resident needs isolation to prevent the spread of infection, the facility must isolate the resident.

(2) The facility must prohibit employees with a communicable disease or infected skin lesions from direct contact with residents or their food, if direct contact will transmit the disease.

(3) The facility must require staff to wash their hands after each direct resident contact for which handwashing is indicated by accepted professional practice.

(c) *Linens.* Personnel must handle, store, process, and transport linens so as to prevent the spread of infection

§ 483.70 Physical environment.

The facility must be designed, constructed, equipped, and maintained to protect the health and safety of residents, personnel and the public.

(a) *Life safety from fire.* Except as provided in paragraph (a)(1) or (a)(3) of this section, the facility must meet the applicable provisions of the 1985 edition of the Life Safety Code of the National Fire Protection Association (which is incorporated by reference). Incorporation of the 1985 edition of the National Fire Protection Association's Life Safety Code (published February 7, 1985; ANSI/NFPA) was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 that govern the use of incorporations by reference.[1]

(1) A facility is considered to be in compliance with this requirement as long as the facility—

(i) On November 26, 1982, complied with or without waivers, with the requirements of the 1967 or 1973 editions of the Life Safety Code and continues to remain in compliance with those editions of the Code; or

(ii) On May 9, 1988, complied, with or without wavers, with the 1981 edition of the Life Safety Code and continues to remain in compliance with that edition of the Code.

(2) After consideration of State survey agency findings, HCFA, or in the case of a nursing facility (including a dually participating facility), the State survey agency may waive specific provisions of the Life Safety Code which, if rigidly applied would result in unreasonable hardship upon the facility, but only if the waiver does not adversely affect the health and safety of residents or personnel.

(3) The provisions of the Life Safety Code do not apply in a State where HCFA finds, in accordance with applicable provisions of sections 1819(d)(2)(B)(ii) and 1919(d)(2)(B)(ii) of the Act, that a fire and safety code imposed by State law adequately protects patients, residents and personnel in long term care facilities.

(b) *Emergency power.*

(1) An emergency electrical power system must supply power adequate at least for lighting all entrances and exits; equipment to maintain the fire detection, alarm, and extinguishing systems; and life support systems in the event the normal electrical supply is interrupted.

(2) When life support systems are used, the facility must provide emergency electrical power with an emergency generator (as defined in NFPA 99, Health Care Facilities) that is located on the premises.

(c) *Space and equipment.* The facility must—

(1) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide residents with needed services as required by these standards and as identified in each resident's plan of care; and

(2) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(d) *Resident rooms.* Resident rooms must be designed and equipped for adequate nursing care, comfort, and privacy of residents.

(1) Bedrooms must—

(i) Accommodate no more than four residents;

(ii) Measure at least 80 square feet per resident in multiple resident bedrooms, and at least 100 square feet in single resident rooms;

(iii) Have direct access to an exit corridor;

(iv) Be designed or equipped to assure full visual privacy for each resident;

(v) In facilities initially certified after September 30, 1990, except in private rooms, each bed must have ceiling suspended curtains, which extend around the bed to provide total visual privacy in combination with adjacent walls and curtains;

(vi) Have at least one window to the outside; and

(vii) Have a floor at or above grade level.

(2) The facility must provide each resident with—

(i) A separate bed of proper size and height for the convenience of the resident;

(ii) A clean, comfortable mattress;

(iii) Bedding appropriate to the weather and climate; and

(iv) Functional furniture appropriate to the resident's needs, and individual closet space in the resident's bedroom with clothes racks and shelves accessible to the resident.

(3) HCFA, or in the case of a nursing facility the survey agency, may permit variations in requirements specified in paragraphs (d)(1) (i) and (ii) of this section relating to rooms in individual cases when the facility demonstrates in writing that the variations—

(i) Are in accordance with the special needs of the residents; and

(ii) Will not adversely affect residents' health and safety.

(e) *Toilet facilities.* Each resident room must be equipped with or located near toilet and bathing facilities.

(f) *Resident call system.* The nurse's station must be equipped to receive resident calls through a communication system from—

(1) Resident rooms; and

(2) Toilet and bathing facilities.

(g) *Dining and resident activities.* The facility must provide one or more rooms designated for resident dining and activities. These rooms must—

(1) Be well lighted;

(2) Be well ventilated, with nonsmoking areas identified;

(3) Be adequately furnished; and

(4) Have sufficient space to accommodate all activities.

(h) *Other environmental conditions.* The facility must provide a safe, functional, sanitary, and comfortable

[1] The Code is available for inspection at the Office of the Federal Register Information Center, room 8301, 1110 L Street NW., Washington, DC Copies may be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02200. If any changes in this code are also to be incorporated by reference, a notice to that effect will be published in the **Federal Register**.

environment for the residents, staff and the public. The facility must—

(1) Establish procedures to ensure that water is available to essential areas when there is a loss of normal water supply;

(2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;

(3) Equip corridors with firmly secured handrails on each side; and

(4) Maintain an effective pest control program so that the facility is free of pests and rodents.

§ 483.75 Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(a) *Licensure.* A facility must be licensed under applicable State and local law.

(b) *Compliance with Federal, State, and local laws and professional standards.* The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.

(c) *Relationship to other HHS regulations.* In addition to compliance with the regulations set forth in this subpart, facilities are obliged to meet the applicable provisions of other HHS regulations, including but not limited to those pertaining to nondiscrimination on the basis of race, color, or national origin (45 CFR part 80); nondiscrimination on the basis of handicap (45 CFR part 84); nondiscrimination on the basis of age (45 CFR part 91); protection of human subjects of research (45 CFR part 46); and fraud and abuse (42 CFR part 455). Although these regulations are not in themselves considered requirements under this part, their violation may result in the termination or suspension of, or the refusal to grant or continue payment with Federal funds.

(d) *Governing body.* (1) The facility must have a governing body, or designated persons functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the facility; and

(2) The governing body appoints the administrator who is—

(i) Licensed by the State where licensing is required; and

(ii) Responsible for management of the facility.

(e) *Required training of nurse aides*—(1) *General rule.* Effective October 1, 1990, a facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time, temporary, per diem, or other basis, unless:

(i) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State, and

(ii) That individual is competent to provide nursing and nursing related services.

(2) *Rule for non-full-time employees.* A facility may not use an individual as a nurse aide on a temporary, per diem, leased, or any basis other than a permanent employee after January 1, 1991 unless the individual meets the requirements in paragraph (e)(1) (i) and (ii) of this section.

(3) *Competency evaluation programs for current employees.* A facility must provide, for individuals used as nurse aides as of January 1, 1990, a competency evaluation program approved by the State, and preparation necessary for the individual to complete the program by October 1, 1990.

(4) *Competency.* Effective October 1, 1990, a facility may permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when—

(i) The individual is in a training or competency evaluation program approved by the State; and

(ii) The facility has asked and not yet evaluated a reply from the State registry for information concerning the individual.

(5) *State nurse aide registries checks.* A facility must check with all State nurse aide registries it has reason to believe contain information on an individual before using that individual as a nurse aide.

(6) *Required retraining.* When an individual has not performed paid nursing or nursing-related services for a continuous period of 24 consecutive months since the most recent completion of a training and competency evaluation program, the facility must require the individual to complete a new training and competency evaluation program.

(7) *Regular in-service education.* The facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. In-service education must include training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

(8) *Definition of nurse aide.* For purposes of this section, the term, *nurse aide,* means any individual providing nursing or nursing-related services to residents in a facility. This definition does not include an individual who volunteers to provide such services without pay, who is a registered dietitian, or who is a licensed health professional.

(9) *Definition of licensed health professional.* For purposes of this section, the term "licensed health professional" means a physician; physician assistant; nurse practitioner; physical, speech, or occupational therapy assistant; registered professional nurse; licensed practical nurse; or licensed or certified social worker.

(f) *Proficiency of Nurse aides.* The facility must ensure that nurse aides are able to demonstrate competency in skills and techniques necessary to care for residents' needs, as identified through resident assessments, and described in the plan of care.

(g) *Staff qualifications.* (1) The facility must employ on a full-time, part-time or consultant basis those professionals necessary to carry out the provisions of these requirements.

(2) Professional staff must be licensed, certified, or registered in accordance with applicable State laws.

(h) *Use of outside resources.* (1) If the facility does not employ a qualified professional person to furnish a specific service to be provided by the facility, the facility must have that service furnished to residents by a person or agency outside the facility under an arrangement described in section 1861(w) of the Act or an agreement described in paragraph (h)(2) of this section.

(2) Arrangements as described in section 1861(w) of the Act or agreements pertaining to services furnished by outside resources must specify in writing that the facility assumes responsibility for—

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in such a facility; and

(ii) The timeliness of the services.

(i) *Medical director.* (1) The facility must designate a physician to serve as medical director.

(2) The medical director is responsible for—

(i) Implementation of resident care policies; and

(ii) The coordination of medical care in the facility.

(j) *Laboratory services.* (1) The facility must provide or obtain clinical laboratory services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own laboratory services, the services must meet the applicable conditions for coverage of the services furnished by laboratories specified in part 493 of this chapter;

(ii) If the facility provides blood bank and transfusion services, it must meet the requirements for laboratories specified in part 493 of this chapter.

(iii) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory must be approved or licensed to test specimens in the appropriate specialties and/or subspecialties of service in accordance with part 493 of this chapter;

(iv) If the facility does not provide laboratory services on site, it must have an agreement to obtain these services only from a laboratory that meets the requirements of part 493 of this chapter or from a physician's office.

(2) The facility must—

(i) Provide or obtain laboratory services only when ordered by the attending physicians;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance.

(iv) File in the resident's clinical record laboratory reports that are dated and contain the name and address of the issuing laboratory.

(k) *Radiology and other diagnostic services.* (1) The facility must provide or obtain radiology and other diagnostic services to meet the needs of its residents. The facility is responsible for the quality and timeliness of the services.

(i) If the facility provides its own diagnostic services, the services must meet the applicable conditions of participation for hospitals contained in § 482.26 of this subchapter.

(ii) If the facility does not provide its own diagnostic services, it must have an agreement to obtain these services from a provider or supplier that is approved to provide these services under Medicare.

(2) The facility must—

(i) Provide or obtain radiology and other diagnostic services only when ordered by the attending physician;

(ii) Promptly notify the attending physician of the findings;

(iii) Assist the resident in making transportation arrangements to and from the source of service, if the resident needs assistance; and

(iv) File in the resident's clinical record signed and dated reports of x-ray and other diagnostic services.

(l) *Clinical records.* (1) The facility must maintain clinical records on each resident in accordance with accepted professional standards and practices that are—

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized.

(2) Clinical records must be retained for—

(i) The period of time required by State law; or

(ii) Five years from the date of discharge when there is no requirement in State law; or

(iii) For a minor, three years after a resident reaches legal age under State law.

(3) The facility must safeguard clinical record information against loss, destruction, or unauthorized use;

(4) The facility must keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by—

(i) Transfer to another health care institution;

(ii) Law;

(iii) Third party payment contract; or

(iv) The resident.

(5) The clinical record must contain—

(i) Sufficient information to identify the resident;

(ii) A record of the resident's assessments;

(iii) The plan of care and services provided;

(iv) The results of any preadmission screening conducted by the State; and

(v) Progress notes.

(m) *Disaster and emergency preparedness.* (1) The facility must have detailed written plans and procedures to meet all potential emergencies and disasters, such as fire, severe weather, and missing residents.

(2) The facility must train all employees in emergency procedures when they begin to work in the facility, periodically review the procedures with existing staff, and carry out unannounced staff drills using those procedures.

(n) *Transfer agreement.* (1) In accordance with section 1861(l) of the Act, the facility (other than a nursing facility which is located in a State on an Indian reservation) must have in effect a written transfer agreement with one or more hospitals approved for participation under the Medicare and Medicaid programs that reasonably assures that—

(i) Residents will be transferred from the facility to the hospital, and ensured of timely admission to the hospital when transfer is medically appropriate as determined by the attending physician; and

(ii) Medical and other information needed for care and treatment of residents, and, when the transferring facility deems it appropriate, for determining whether such residents can be adequately cared for in a less expensive setting than either the facility or the hospital, will be exchanged between the institutions.

(2) The facility is considered to have a transfer agreement in effect if the facility has attempted in good faith to enter into an agreement with a hospital sufficiently close to the facility to make transfer feasible.

(o) *Quality assessment and assurance.* (1) A facility must maintain a quality assessment and assurance committee consisting of—

(i) The director of nursing services;

(ii) A physician designated by the facility; and

(iii) At least 3 other members of the facility's staff.

(2) The quality assessment and assurance committee—

(i) Meets at least quarterly to identify issues with respect to which quality assessment and assurance activities are necessary; and

(ii) Develops and implements appropriate plans of action to correct identified quality deficiencies.

(3) A State or the Secretary may not require disclosure of the records of such committee except in so far as such disclosure is related to the compliance of such committee with the requirements of this section.

(p) *Disclosure of ownership.*

(1) The facility must comply with the disclosure requirements of §§ 420.206 and 455.104 of this chapter.

(2) The facility must provide written notice to the State agency responsible for licensing the facility at the time of change, if a change occurs in—

(i) Persons with an ownership or control interest, as defined in §§ 420.201 and 455.101 of this chapter;

(ii) The officers, directors, agents, or managing employees;

(iii) The corporation, association, or other company responsible for the management of the facility; or

(iv) The facility's administrator or director of nursing.

(3) The notice specified in paragraph (p)(2) of this section must include the

identity of each new individual or company.

PART 488—SURVEY AND CERTIFICATION PROCEDURES

D. Part 488 is amended as follows:

1. The authority citation for part 488 is revised to read as follows:

Authority: Secs. 1102 1814, 1861, 1865, 1866, 1871, 1880, 1881, 1883, 1913 of the Social Security Act (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr and 1395tt).

§ 488.1 [Amended]

2–3. In § 488.1, in the definition of "Certification," "NFs" is substituted for "ICFs," and in the definition of "Provider of services or provider," "nursing facility," is added after the phrase "skilled nursing facility."

4. In § 488.3, the section heading and paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 488.3 Conditions of participation: Conditions for coverage and requirements for SNFs and NFs.

(a) * * *

(1) Meet the applicable statutory definition in section 1861, section 1819, or section 1919, section 1881 of the Act; and

(2) Be in compliance with the applicable conditions or requirements (for SNFs and NFs) prescribed in Subpart N, Q, or U of part 405, subpart C of part 418, part 482, or part 483, part 484, subpart A of part 491 or part 493 of this chapter.

* * * * *

§ 488.10 [Amended]

5. In 488.10, paragraph (a)(1), the phrase "or requirements (for SNFs and NFs)" is added after the phrase "conditions of participation".

6. Section 488.11 is revised to read as follows:

§ 488.11 State survey agency functions.

State and local agencies that have agreements under section 1864(a) of the Act—

(a) Survey and make recommendations regarding the issues listed in § 488.10;

(b) Conduct validation surveys as provided in § 488.6; and

(c) Perform other surveys and other appropriate activities and certify their findings to HCFA.

7. In § 488.18, paragraphs (a) and (b) are revised to read as follows:

§ 488.18 Documentation of findings.

(a) The findings of the State agency with respect to each of the conditions of participation or level A requirements (for SNFs and NFs) or conditions for coverage shall be adequately documented. Where the State agency certifies to the Secretary that a provider or supplier is not in compliance with the conditions or requirements (for SNFs and NFs), and therefore not eligible to participate in the program, such documentation includes, in addition to the description of the specific deficiencies which resulted in the agency's recommendation, a report of all consultation which has been undertaken in an effort to assist the provider or supplier to comply with the conditions, a report of the provider's or supplier's responses with respect to the consultation, and the State agency's assessment of the prospects for such improvements as to enable the provider or supplier to achieve compliance with the conditions or requirements (for SNFs and NFs) within a reasonable period of time. (See § 488.28 of this part.)

(b) If a provider or supplier is certified by the State agency as in compliance with the conditions or level A requirements (for SNFs and NFs) or as meeting the requirements for special certification (see § 488.54 of this part), with deficiencies not adversely affecting the health and safety of patients, the following information will be incorporated into the finding:

(1) A statement of the deficiencies which were found, and

(2) A description of further action which is required to remove the deficiencies, and

(3) A time-phased plan of correction developed by the provider and supplier and concurred with by the State agency, and

(4) A scheduled time for a resurvey of the institution or agency to be conducted by the state agency within 90 days following the completion of the survey.

§ 488.20 [Amended]

8. In § 488.20, paragraphs (a) and (c), "NFs" is substituted for "ICFs."

§ 488.24 [Amended]

9. In § 488.24, paragraphs (a) and (b), "NFs" is substituted for "ICFs."

§ 488.26 [Amended]

10. In § 488.26(a), "NFs" is substituted for "ICFs."

§ 488.28 [Amended]

11. In § 488.28, paragraphs (a) and (b), "NFs" is substituted for "ICFs."

12. In § 488.50, the introductory text in paragraph (a) is revised to read as follows:

Subpart B—Special Requirements

§ 488.50 Special requirements applicable to skilled nursing facilities with deficiencies.

(a) Where the facility is not in full compliance with the level B requirements contained in subpart B of part 483, the period of certification shall:

* * * * *

§ 488.56 [Amended]

13. In § 488.56, paragraph (a) the reference "483.20" is substituted for the reference "§ 405.1124" and in paragraph (b), introductory text, and (b)(2), the reference "§ 488.75(k)" is substituted for the reference "§ 405.1122".

PART 489—PROVIDER AGREEMENTS UNDER MEDICARE

G. Part 489 is amended as follows:

1. The authority citation for Part 489 is revised to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa. 1395cc, and 1395hh).

§ 489.53 [Amended]

2. In subpart E, § 489.53(a)(3), "NFs" is substituted for "ICFs" and in paragraph (b)(1), the phrase "Part 483, Part B" is substituted for the phrase "Part 405, Subpart K".

§ 489.60 [Amended]

3. In Subpart F, § 489.60(a), introductory text, the phrase "level A requirement specified in Subpart B of Part 483" is substituted for "level A requirement specified in Subpart K of Part 405".

PART 489—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM

E. Part 498 is amended as follows:

1. The authority citation for Part 498 continues to read as follows:

Authority: Secs. 205(a), 1102, 1869(c) 1871, and 1872 of the Social Security Act (42 U.S.C. 405(a), 1302, 1395ff(c), 1395hh and 1395ii, unless otherwise noted).

§ 498.3 [Amended]

2. In § 498.3, (b)(8), (d)(1), (2) and (10), "NFs" is substituted for "ICFs."

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare Hospital Insurance, No. 93.774, Medical Assistance Program)

Dated: January 31, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: February 25, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-22274 Filed 9-25-91; 8:45 am]

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42 CFR Parts 431, 433 and 483

RIN: 0938-AE50

[BPD-662-F]

Medicare and Medicaid Programs; Nurse Aide Training and Competency Evaluation Programs

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

ACTION: Final rule.

SUMMARY: This rule amends the Medicare and Medicaid regulations pertaining to facilities to incorporate Federal requirements that States have training and competency evaluation programs for nurse aides employed by Medicare participating skilled nursing facilities and Medicaid participating nursing facilities and also have a nurse aide registry.

The purpose of these provisions is to ensure that nurse aides have the education, practical knowledge, and skills needed to care for residents of facilities participating in the Medicare and Medicaid programs. These requirements implement, in part, sections 4201(a) and 4211(a) of the Omnibus Budget Reconciliation Act of 1987, section 6901(b) of the Omnibus Budget Reconciliation Act of 1989, and sections 4008 and 4801 of the Omnibus Budget Reconciliation Act of 1990.

EFFECTIVE DATE: These regulations are effective April 1, 1992. This effective date does not relieve States and facilities from their obligation to perform certain activities effective on earlier dates specified by the statute. A summary of statutory effective dates is given in the preamble of these regulations.

State agencies have until 90 days after receipt of a revised State plan preprint to submit their plan amendments and required attachments. We will not hold a State to be out of compliance with the requirements of these final regulations if the State submits the necessary preprint plan material by that date.

FOR FURTHER INFORMATION CONTACT: Martha Kuespert (301) 966-1782.

SUPPLEMENTARY INFORMATION:

I. Background

Facilities participating in the Medicare and Medicaid programs (skilled nursing facilities (SNFs) under Medicare and nursing facilities (NFs) under Medicaid) agree, as a requirement of participation, to comply with the requirements included in our regulations at 42 CFR part 483, Requirements for Long-Term Care Facilities. These requirements were recently revised to implement section 4201 and 4211 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Pub. L. 100-203), enacted on December 22, 1987. OBRA '87 made substantive changes to the requirements of participation for Medicare and Medicaid facilities, the process by which they are surveyed and certified, and the actions permissible as a result of enforcement of those requirements.

As part of these sweeping revisions to the long-term care regulations, OBRA '87 added certain provisions to the Social Security Act (the Act) relating to nurse aide competency evaluation programs (CEPs) and nurse aide training and competency evaluation programs (NATCEPs). Prior to the enactment of OBRA '87, there were no Federal requirements concerning training and competency evaluation of nurse aides. Rather, conditions of participation for Medicare at 42 CFR 405.1121(h) and conditions for coverage for Medicaid at § 442.314 required only that all staff be suitably and appropriately trained.

Sections 4201(a) and 4211(a) of OBRA '87 added new sections 1819(b)(5), 1819(e)(1), 1819(f)(2), 1919(b)(5), 1919(e)(1), and 1919(f)(2) to the Act that—

- Prohibit facilities participating in the Medicare and Medicaid programs from using an individual as a nurse aide in the facility for more than four months unless the individual has completed a NATCEP or a CEP approved by the State and is competent to provide such services.
- Require the Secretary to establish standards for the training and competency evaluation of nurse aides.
- Require States to grant approvals only of CEPs and NATCEPs that meet the standards established by the Secretary. The failure of the Secretary to establish requirements does not relieve States of their responsibility to specify programs that meet the requirements in sections 1819(f)(2) and 1919(f)(2) of the Act.
- Prohibit States from approving a program offered by or in a SNF or NF that has been determined to be out of compliance with Federal long-term care facility requirements within the previous two years.
- Prohibit States from approving a program offered by or in a SNF or NF unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in SNFs or NFs.
- Require States to maintain a registry of all individuals who have successfully completed a NATCEP or a CEP.

Section 4211(d) of OBRA '87 also amended section 1903(a)(2) of the Act to specify the Federal financial participation (FFP) matching rate for NATCEP and CEP expenditures, and the availability of enhanced funding for those expenditures.

The Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101-239), enacted December 19, 1989, made several changes to the OBRA '87 nurse aide training and competency evaluation requirements. Specifically, section 6901 of OBRA '89—

- Delayed until October 1, 1990, the requirement that nurse aides be trained and competent (section 6901(b)(1)).
- Allowed an individual to be considered to meet the requirements of completing a NATCEP under certain circumstances (section 6901(b)(4)(B) and (C)).
- Allowed States to waive the competency evaluation requirements in the case of nurse aides who, as of December 19, 1989 (the enactment date of OBRA '89) had worked for 24 consecutive months in the State for one or more facilities of the same employer (section 6901(b)(4)(D)).
- Clarified that NATCEPs must address care to cognitively impaired residents (section 6901(b)(3)(A)).
- Required NATCEPs and CEPs to offer nurse aides alternatives to a written examination (section 6901(b)(3)(D)).
- Prohibited approval of programs that charge nurse aides for course materials or testing (section 6901(b)(3)(D)).

Section 6901(b)(5) of OBRA '89 also amended section 1903(a)(2)(B) of the Act to clarify further the time period that temporary enhanced Federal funding is available for NATCEPs and CEPs. Section 1903(a)(2)(B) of the Act specifies that Federal financial participation (FFP) for NATCEPs and CEPs is available in the following amounts: for calendar quarters beginning on or after July 1, 1988 and before July 1, 1990, the

lesser of 90 percent or the Federal medical assistance percentage (FMAP) plus 25 percentage points; for calendar quarters beginning on or after July 1, 1990, 50 percent.

The Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101-508) made several additional changes to the OBRA '87 nurse aide training and competency evaluation requirements. Specifically, sections 4008 and 4801 of OBRA '90—

- Clarified sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act to prohibit facilities from using non-permanent employees as nurse aides unless they have completed a NATCEP or CEP and are competent to provide nursing and nursing-related services. (Sections 4008(h)(1)(B) and 4801(a)(2)—effective January 1, 1991.)
- Modified sections 1819(b)(5)(C) and 1919(b)(5)(C) of the Act to require facilities to seek information from all State nurse aide registries established under sections 1819(e)(2)(A) or 1919(e)(2)(A) of the Act the facility has reason to believe will contain information on an individual prior to using that individual as a nurse aide. (Sections 4008(h)(1)(C) and 4801(a)(3)—effective October 1, 1990.)
- Amended sections 1819(b)(5)(D) and 1919(b)(5)(D) of the Act to indicate that nurse aides who have performed no nursing or nursing-related services for monetary compensation for a period of 24 consecutive months since their most recent completion of a NATCEP must take either a new NATCEP or a new CEP. (Sections 4008(h)(1)(D) and 4801(a)(4)—effective October 1, 1990.)
- Clarified sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act to indicate that registered dietitians are not nurse aides. (Sections 4008(h)(2)(F) and 4801(e)(6)—effective October 1, 1990.)
- Amended sections 1819(e)(1)(A) and 1919(e)(1)(A) of the Act to indicate that States must use all the requirements in sections 1819(f)(2) and 1919(f)(2) of the Act in specifying the programs they approve. (Sections 4008(h)(2)(J) and 4801(e)(18)—effective January 1, 1989.)
- Amended sections 1819(e)(2)(A) and 1919(e)(2)(A) of the Act to indicate that the nurse aide registry must include individuals who have met certain requirements. (Sections 4008(h)(2)(K) and 4801(e)(12)—effective January 1, 1989.)
- Added to sections 1819(e)(2) and 1919(e)(2) of the Act a requirement prohibiting States from charging nurse aides for registration costs. (Sections 4008(h)(2)(K) and 4801(e)(12)—effective January 1, 1989.)
- Amended sections 1818(f)(2)(A)(iv)(II) and 1919(f)(2)(A)(iv)(II) of the Act to specify that States may not approve NATCEPs and CEPs that charge any nurse aide who is employed by or who has an offer of employment from a facility on the date on which the nurse aide begins the program. (Sections 4008(h)(1)(E) and 4801(a)(5)—effective January 1, 1989.)
- Added to sections 1819(f)(2)(A)(iv) and 1919(f)(2)(A)(iv) of the Act a requirement that States must provide for the reimbursement of the costs incurred in completing a NATCEP or CEP for certain nurse aides who become employed by or obtain an offer of employment from a facility not later than 12 months after completing a program. Reimbursement is on a pro rata basis during the period in which the individual is employed as a nurse aide. (Sections 4008(h)(1)(E) and 4801(a)(5)—effective January 1, 1989.)
- Modified requirements in sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act to remove the prohibition of State approval of NATCEPs and CEPs offered by or in a facility that has been out of compliance with certain requirements within the previous 24 months and prohibit State approval of NATCEPs and CEPs offered by or in certain facilities. (Sections 4008(h)(1)(F) and 4801(a)(6).)
- Clarified sections 1819(f)(2)(B)(iii) and 1919(f)(2)(B)(iii) of the Act to indicate that States may not delegate, through subcontract or otherwise, determinations of competency to facilities. (Sections 4008(h)(1)(G) and 4801(a)(7).)
- Amended section 1903(a)(2)(B) of the Act to extend the period for which enhanced matching rates are available through calendar quarters beginning before October 1, 1990. (Section 4801(a)(8).)

II. Proposed Regulations

On March 23, 1990, we published in the **Federal Register** (55 FR 10938) a notice of proposed rulemaking (NPRM) to solicit comments on proposed modifications to Medicare and Medicaid regulations pertaining to facilities. The NPRM proposed changes to incorporate, in part, sections 4201(a) and 4211(a) of OBRA '87 and section 6901(b) of OBRA '89. OBRA '87, as amended by OBRA '89, added new sections 1819(b)(5), 1819(e)(1), 1819(f)(2), 1919(b)(5), 1919(e)(1), and 1919(f)(2) to the Act, as discussed above, that require the Secretary to establish standards for training and competency of nurse aides, require States to grant approvals of CEPs and NATCEPs only in accordance with those standards, and require that States review and approve NATCEPs and CEPs. The failure of the Secretary to issue requirements does not relieve States of their responsibility to specify programs that meet the requirements of sections 1819(f)(2) and 1919(f)(2) of the Act. (Prior to the enactment of OBRA '90, States were required to specify those programs that they approve as meeting the requirements of sections 1819(f)(2)(A) (i) and (ii) and 1919(f)(2)(A) (i) and (ii) of the Act. Sections 4008(h)(2)(J) and 4801(e)(18) of OBRA '90 indicate that States must consider all of the requirements of sections 1819(f)(2) and 1919(f)(2) of the Act in approving programs. Sections 4008(h)(2)(J) and 4801(e)(18) of OBRA '90 have a statutory effective date of January 1, 1989.)

To implement the OBRA '87 and OBRA '89 provisions, we proposed to amend the Medicare and Medicaid regulations under 42 CFR parts 431, 433, and 483 to—

- Amend Part 431, State Organization and General Administration, to add a new § 431.120, State requirements with respect to nursing facilities, which specifies State Medicaid agency responsibilities with respect to statutory requirements in sections 4201(a) and 4211(a) of OBRA '87.
- Amend Part 433, State Fiscal Administration, by revising § 433.15 to specify the FFP rates for administration associated with NATCEPs and CEPs specified in OBRA '89.
- Amend Part 483, subpart B, Requirements for States and Long-Term Care Facilities, by revising § 483.75(g) to reflect statutory implementation dates and other ways nurse aide competency can be established, as required by OBRA '89.
- Further amend part 483 by redesignating existing subpart D, which concerns intermediate care facilities for the mentally retarded, as subpart I, and establish a new subpart D entitled, Requirements That Must Be Met by States and States' Agencies: Nurse Aide Training and Competency Evaluation. We proposed that the subpart would contain §§ 483.150 through 483.158, which specify State requirements with respect to nurse aide training and competency evaluation and establishing a nurse aide registry.

Following is a summary of the major proposed requirements under part 483.

- In § 483.75(g), Level B requirement: Required training of nurse aides, we proposed that—

Effective October 1, 1990, a facility must not use any individual working in the facility as a nurse aide for more than four months unless that individual is competent to provide nursing and nursing-related services; has completed a NATCEP or CEP approved by the

State as meeting requirements we specified in regulations; or has been deemed competent as provided in our regulations.

Effective January 1, 1990, a facility must provide, for individuals used as nurse aides, a CEP approved by the State, and preparation necessary for the individual to complete the program by October 1, 1990.

Effective October 1, 1990, a facility must permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when the individual is in a NATCEP or a CEP approved by the State; and the facility has asked and not yet evaluated a reply from the State registry for information concerning the individual.

Effective October 1, 1990, when an individual has not performed paid nursing or nursing-related services for a continuous period of 24 consecutive months since the most recent completion of a NATCEP, the facility must require the individual to complete a new NATCEP. Effective October 1, 1990, the facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. We proposed that in-service education must include training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

For purposes of our requirements, we intend for the term "nurse aide" to mean any individual providing nursing or nursing-related services to residents in a facility, except that this definition does not include an individual who volunteers to provide such services without pay.

• In new § 483.150, Deemed meeting of requirements, waiver of requirements, we proposed three exceptions to the requirements that all aides complete a NATCEP or CEP approved by the State. Specifically, we proposed to allow an individual to be considered to meet the requirements of completing a NATCEP approved by the State under sections 1819(e)(1)(A) or 1919(e)(1)(A) of the Act if either (1) the aide would have satisfied the requirement as of July 1, 1989, if a number of hours (not less than 60 hours) were substituted for "75 hours" in section 1819(f)(2) and 1919(f)(2) of the Act, respectively, and if the aide had received, before July 1, 1989, at least the difference in the number of hours in the course and 75 hours in supervised practical nurse aide training or in regular in-service nurse aide education; or (2) the aide was found competent (whether or not by the State), before July 1, 1989, after the completion of a course of nurse aide training of at least 100 hours duration.

We also proposed in § 483.150 that a State may waive the requirement for an individual to complete a CEP approved by the State if that individual can prove to the satisfaction of the State that he or she has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before December 19, 1989 (the date of the enactment of OBRA '89).

• We proposed to add a new § 483.151, State review and approval of nurse aide training and competency evaluation programs, which would contain requirements for: State review and administration; approval of programs not offered by the State; timely action on requests for approval; length of the approval period; and withdrawal of approval.

We proposed to require that the State offer a NATCEP and/or a CEP, and/or specify State-approved NATCEPs or CEPs that meet the requirements of our regulations at § 483.152 or § 483.154 (summarized below).

We proposed that the State may not delegate or subcontract the approval of NATCEPs or CEPs to an entity outside of the State government, and that, if the State does not choose to offer one or both of the programs specified in this section, the State survey agency or another State government entity must review and approve or disapprove NATCEPs and CEPs when requested to do so by a Medicare participating SNF or a Medicaid participating NF. We further proposed that the State survey agency, in the course of all surveys, determine whether the nurse aide training and competency evaluation requirements of § 483.75(g) are met.

We proposed to require that before a State approves a NATCEP or a CEP, the State must make at least one on-site visit to the entity providing the training or performing the competency evaluation; determine whether the NATCEP or CEP meets the course requirements of § 483.152 or § 483.154, respectively; and not approve a NATCEP performed by a SNF or NF that has been out of compliance with any requirement for participation within any of the 24 consecutive months prior to the State's review of the facility-based program.

We proposed to require the State to respond to a facility's request for review and approval of a NATCEP or CEP within 90 days of the date of the facility's request, or within 90 days of the receipt of additional information requested by the State.

The State would not be permitted to grant approval of a program for a period longer than two years and must withdraw approval of a facility-based NATCEP when it determines that the facility is out of compliance with a requirement for participation, as specified in part 483, subpart B; or the entity providing the program refuses to permit unannounced visits by the State to review the program. The State may withdraw approval of a NATCEP or CEP if it determines that the programs fail to meet any of the applicable requirements of §§ 483.152 or 483.154.

• In § 483.152, Requirements for approval of a nurse aide training and competency evaluation program, we proposed the requirements that must be met by a NATCEP that is offered or approved by a State. Specifically, we proposed that for a nurse aide training and competency evaluation program to be approved by the State, it must, at a minimum, consist of no less than 75 hours of training; include at least the subjects specified in § 483.152(b); and include at least 16 hours of supervised practical training, which we proposed to define as training in a clinical setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse (RN) or a licensed practical nurse (LPN).

The training of nurse aides would be required to be performed by or under the general supervision of an RN who has a minimum of two years of nursing experience, at least one year of which must be in the provision of long-term care services. In a facility-based program, we would permit the training of nurse aides to be performed by or under the supervision of the director of nursing for the facility. We would require that a NATCEP contain competency evaluation procedures that are specified in § 483.154.

To be approved by the State, we proposed to require that the curriculum of the nurse aide training program include at least 16 hours of training in the following areas prior to any direct contact with a resident:

Communication and interpersonal skills; Infection control; Safety/emergency procedures; Promoting residents' independence; and Respecting residents' rights.

The remainder of the 75 hours of training would be required to include:

Basic nursing skills:

—Taking and recording vital signs;
—Measuring and recording height and weight;
—Caring for the residents' environment;

—Recognizing abnormal signs and symptoms of common diseases and conditions; and
—Caring for residents when death is imminent. Personal care skills, including, but not limited to:
—Bathing;
—Grooming, including mouth care;
—Dressing;
—Toileting;
—Assisting with eating and hydration;
—Proper feeding techniques;
—Skin care; and
—Transfers, positioning, and turning.

Mental health and social service needs:

—Modifying aide's behavior in response to residents' behavior;
—Identifying developmental tasks associated with the aging process;
—Behavior management by reinforcing appropriate behavior and reducing or eliminating inappropriate behavior;
—Allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and
—Using the resident's family as a source of emotional support.

Care of cognitively impaired residents:

—Techniques for addressing the unique needs and behaviors of individuals with dementia (Alzheimer's and others);
—Communicating with cognitively impaired residents;
—Understanding the behavior of cognitively impaired residents;
—Appropriate responses to the behavior of cognitively impaired residents; and
—Methods of reducing the effects of cognitive impairments.

Basic restorative services:

—Training the resident in self care according to the resident's abilities;
—Use of assistive devices in transferring, ambulation, eating, and dressing;
—Maintenance of range of motion;
—Proper turning and positioning in bed and chair;
—Bowel and bladder training; and
—Care and use of prosthetic and orthotic devices.

Residents' Rights:

—Providing privacy and maintenance of confidentiality;
—Promoting the residents' right to make personal choices to accommodate their needs;
—Giving assistance in resolving grievances and disputes;
—Providing needed assistance in getting to and participating in resident and family groups and other activities;
—Maintaining care and security of residents' personal possessions;
—Providing care which maintains the resident free from abuse, mistreatment, and neglect, and the need to report any such instance to appropriate facility staff; and
—Maintaining the resident's environment and care to avoid the need for restraints.

We proposed that no nurse aide may be charged for any portion of a NATCEP, including any fees for textbooks or other required course materials.

• In § 483.154, Nurse aide competency evaluation programs, we proposed to include the requirements for NATCEPs to be offered or approved by the State. We would require that the State inform in advance any individual who takes the competency evaluation that a record of the successful completion of the evaluation will be included in the State's nurse aide registry established under § 483.156.

We proposed that the competency evaluation must allow an aide to establish competency through methods other than passing a written examination; address each course requirement specified; be developed from a pool of test questions, only a portion of which is used in any one examination; and maintain the integrity of examinations and the examination process. The competency evaluation must include a demonstration of the tasks that the individual will be expected to perform as part of his or her function as a nurse aide.

We proposed specific requirements that govern the administration of the competency evaluation. We would require that only the State or a State-approved entity which is neither a Medicare SNF or a Medicaid NF administer and evaluation the competency evaluation. We would require the skills demonstration part of the evaluation be performed in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide, and be administered and evaluated by a registered nurse with at least one year's experience in providing care of the elderly or the chronically ill of any age.

We proposed that nurse aides may be permitted to have the competency evaluation performed at the facility in which they are or will be employed unless the facility is out of compliance with any of the requirements of participation within any of the 24 months prior to the evaluations. We would authorize the State to permit the examination to be proctored by facility personnel if the State finds that the procedure adopted by the facility ensures that the CEP is secure from tampering; is standardized and scored by a testing, education, or other organization approved by the State; and requires no scoring by the facility personnel. The State would not be permitted to have facility personnel proctor the skills demonstration portion of the evaluation. The State would be required to retract the right to proctor nurse aide competency evaluations from facilities in which the State finds any evidence of impropriety, including evidence of tampering by facility staff.

We would permit the State to establish the overall standard for satisfactory completion of its approved CEP but would require States, at a minimum, to require the individual to complete successfully all of the personal care skills specified in § 483.152(b)(3) and any others they would be permitted to perform in the facility. We also proposed to require that a record of successful completion of the CEP be included in the nurse aide registry established under § 483.156 within 30 days of the date the individual is found to be competent.

We would require the State to advise any individual who fails to complete the examination satisfactorily of the areas of inadequacy and that he or she has at least three opportunities to take the evaluation. The State would be permitted to impose a maximum (but no less than three) upon the number of times an individual may attempt to complete the competency evaluation successfully.

• In § 483.156, Registry of nurse aides, we proposed requirements concerning the establishment, operation and content of the nurse aide registry, and disclosure of information from the registry to facilities and other interested parties. We proposed that the registry, which at State option could include home health aides who have successfully completed a home health aide competency evaluation program approved by the State, be accessible to the public and health providers on a fixed schedule set by the State of at least six hours per day between the hours of 7 a.m. and 6 p.m., local time, Monday through Friday, except for State and Federal holidays, and notify facilities in advance of changes in the hours of operations; include a process to respond timely to written and telephone inquiries that request information from the registry; and provide that any response to an inquiry that includes a finding of abuse, neglect, or misappropriation of property also include any statement made by the nurse aide disputing the finding.

We would permit the State to contract the daily operation and maintenance of the registry to a non-State entity, provided the State maintains accountability for overall operation of the registry and compliance with our requirements. However, only the State survey and certification agency would be permitted to place findings of abuse, neglect, and misappropriation of property on the registry. We would require that the State renew a nurse aide's registration at least once every two years on a schedule set by the State. The State would be allowed to charge registration fees from individuals listed in the registry.

We proposed the nurse aide registry at a minimum include the individual's full name, maiden name and any other surnames used, last known home address, and date of birth; the individual's last known employer and the date of hiring and termination by that employer; the date that the individual passed the competency evaluation or an explanation of how the individual met the criteria for waiver, and the date of the expiration of the individual's current registration; and the name and address of the entity that administered the competency evaluation. We also proposed to require States to include specified information on any finding by the State of abuse, neglect, or misappropriation of property by an individual nurse aide.

The State could, at its option, exclude registry entries for individuals whose registrations have expired or for individuals who have ceased to function as nurse aides, unless the registry entry includes documented findings of abuse, neglect, or misappropriation of property.

We proposed to require the State to provide the nurse aide with a copy of all information contained in the registry and permit the nurse aide to correct any misstatements or inaccuracies. The State would be required to timely disclose to any requester whether an individual is included on the registry, the date of the competency evaluation and the name of the entity that performed the competency evaluation.

- In new § 483.158, we proposed that nurse aide training and competency evaluation expenditures are State administrative costs, and clarified that FFP is only available for the training and competency evaluation of nurse aides who are employed by a facility or who have a commitment to be employed by a facility.

III. Discussion of Comments

We received more than 2,050 comments in response to the March 23, 1990 proposed rule. Comments were submitted from State agencies, various associations and organizations representing facilities, and medical and other professional individuals. Except for a discussion of general comments, we summarize briefly, in the numerical order of the regulation, the provisions of the rule generating the comments, indicate individual comments and responses, and summarize changes, if any, to our rules.

General Comments

Comment: A few commenters asked that HCFA delay implementation of these requirements for various periods of time. A few commenters asked that these requirements not be implemented retroactively.

Response: We have established an effective date of April 1, 1992, for these regulations and have not implemented these requirements retroactively. However, we note that there are certain statutory requirements which became effective on dates specified in the statute, regardless of the Secretary's issuance of regulations. Because the effective dates for these provisions are statutorily mandated, the Secretary does not have the authority to delay them. The provisions in sections 1819(b)(5) and 1919(b)(5) of the Act have a statutory effective date of October 1, 1990. Also, according to sections 1819(e) and 1919(e) of the Act, States must have specified approved CEPs and NATCEPs by January 1, 1989, must have provided for review and approval of programs by January 1, 1990, and must have established a nurse aide registry by January 1, 1989. Until the effective date of these regulations, the only requirements that are effective are those at sections 1819(b)(5), 1919(b)(5), 1819(e)(1) and (2), 1919(e)(1) and (2), 1819(f)(2), and 1919(f)(2) of the Act. We note that prior to OBRA '90, sections 1819(e)(1) and 1919(e)(1) of the Act only required States to use the requirements of sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act in approving programs if the Secretary had not issued regulations. Sections 4008(h)(2)(J) and 4801(e)(18) of OBRA '90 amended sections 1819(e)(1) and 1919(e)(1) of the Act to indicate that all requirements in sections 1819(f)(2) and 1919(f)(2) of the Act must be considered by States in approving programs, regardless of whether the Secretary has issued regulations. Sections 4008(h)(2)(J) and 4801(e)(18) of OBRA '90 have a statutory effective date of January 1, 1989. Although the change in the requirements that States must consider in approving NATCEPs and CEPs was made effective on January 1, 1989, we wish to emphasize that those individuals who, prior to the issuance of this regulation, completed a program based on pre-OBRA '90 requirements are not required to be retrained or retested. We believe it would be unreasonable and burdensome to apply requirements unknown to States at the time programs were approved and offered.

Comment: One commenter disagreed with the statement in the preamble of the NPRM that the OBRA '87 requirements were essentially self-implementing.

Response: Sections 4201(a) and 4211(a) of OBRA '87, as well as section 6901(b) of OBRA '89, specify statutory dates for the implementation of the provisions contained in sections 1819(b)(5), 1819(e)(1), 1919(b)(5), and 1919(e)(1) of the Act. In addition, although sections 1819(f)(2) and 1919(f)(2) of the Act charge the Secretary with establishing requirements for the review and approval of NATCEPs and CEPs, sections 1819(e)(1) and 1919(e)(1) of the Act provide that failure of the Secretary to establish these requirements does not relieve States of their responsibilities for specification and review of NATCEPs and CEPs. Thus, States and facilities are responsible for implementing those provisions regardless of whether regulations have been promulgated.

Comment: Several commenters asserted that comprehensive nurse aide training should not be a Federal requirement for facilities, and suggested that only in-service training be required or that requirements for nurse aide training be left exclusively to States.

Response: As noted above, sections 1819(f)(2) and 1919(f)(2) of the Act require that the Secretary promulgate requirements for NATCEPs or CEPs, sections 1819(e)(1) and 1919(e)(1) of the Act require that States review and approve only those programs that meet the Secretary's requirements, and sections 1819(b)(5) and 1919(b)(5) require that facilities use only nurse aides who have completed State-approved NATCEPs or CEPs. These provisions do not allow HCFA the flexibility to ignore the nurse aide training requirements or delegate the responsibility for establishing these requirements to States. Furthermore, the Secretary has a general duty and responsibility to assure that nurse aide training.and competency requirements are adequate and effective to protect and promote resident health and safety. (See sections 1819(d)(4), 1819(f)(1), 1919(d)(4), and 1919(f)(1) of the Act.)

Comment: One commenter requested that we provide waivers to the nurse aide training and competence evaluation

requirements for facilities that have difficulty attracting a sufficient number of nurse aides.

Response: Sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act are explicit in the requirement that facilities use only nurse aides who have completed a NATCEP or CEP and are competent to provide nursing and nursing-related services. The intent of the requirements is to enhance the quality of care provided to residents of facilities by ensuring that nurse aides are competent to care for residents. We have not provided a waiver to the statutory requirements for facilities that have difficulty attracting nurse aides for three reasons. First, we believe it is impossible for a facility to provide quality care without competent nurse aides. Second, such a waiver would violate sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act. Finally, Congress provided for waivers of nurse staffing in certain circumstances (see sections 1819(b)(4)(C)(ii) and 1919(b)(4)(C)(ii) of the Act). The absence of such a waiver for nurse aides indicates that Congress did not intend for there to be such waivers.

Comment: One commenter suggested that each State have an advisory panel for nurse aide training and that HCFA monitor the panel.

Response: We believe that such a requirement would impose an unnecessary hardship on States and have therefore not included it in our regulations. We do, however, encourage States who wish to develop such panels to do so.

Comment: One commenter suggested that these regulations be issued on a trial basis.

Response: Sections 1819(f)(2) and 1919(f)(2) of the Act require the Secretary to establish requirements for NATCEPs and CEPs, and we have prepared our regulations based on these statutory provisions, which do not contemplate the issuance of regulations on a trial basis. We do, however, continually monitor the efficacy and equity of regulations, and will revise the nurse aide training and competency regulations as necessary.

Comment: Several commenters addressed interstate reciprocity for NATCEPs and CEPs. Some requested that we require development of interstate reciprocity agreements, while others indicated that interstate reciprocity is unnecessary. One commenter asked if nurse aides will have to attend new programs when they seek employment in different States. A few commenters believed that there should be a national program.

Response: We believe the statute recognizes that, not withstanding minimum Federal requirements, State requirements for nurse aide training can vary from State to State, and that some States may require nurse aides to meet State as well as Federal standards. We believe it is inappropriate for HCFA to reduce such State flexibility and mandate reciprocity agreements or a national program.

Section 431.120 State Requirements With Respect to Nursing Facilities

Summary of NPRM Provisions

Section 431.120 specified that in order for a State plan to be approved, it must provide that the requirements for NATCEPs and CEPs and the nurse aide registry are met, and must specify the procedures and rules that the State follows in carrying out the specified requirements, including review and approval of State-operated programs.

Summary of Changes to Section 431.120

We received no public comments on § 431.120, and are therefore finalizing this section of the regulation as proposed.

Section 433.15 Rates of FFP for Administration

Summary of NPRM Provisions

Section 433.15 specified the FFP rates for administration associated with NATCEPs and CEPs. It specified that for calendar quarters beginning on or after July 1, 1988 and before July 1, 1990, the FFP rate will be the lesser of 90 percent or the Federal medical assistance percentage plus 25 percentage points; and for calendar quarters beginning after July 1, 1990, the FFP rate will be 50 percent.

Comments and Responses

Comment: A couple of commenters requested that the enhanced matching rate for expenses relating to NATCEPs and CEPs be extended beyond the period specified in the NPRM.

Response: Section 4801(a)(8) of OBRA '90 extends the period for which enhanced matching rates for expenses relating to NATCEPs and CEPs is available to October 1, 1990.

Comment: Some commenters indicated that costs for NATCEPs should not be reimbursed as administrative expenses.

Response: Section 6901(b)(5) of OBRA '89, which clarifies the temporary enhanced Federal funding for NATCEPs and CEPs, amended section 1903(a)(2)(B) of the Act, which deals with administrative expenses. We therefore believe Congress did not intend for NATCEPs to be reimbursed except as an administrative expense.

Comment: One commenter asked for clarification regarding which costs are to be reimbursed at the administrative expenses FFP matching rate. One commenter asked how in-service education will be reimbursed. Another commenter asked if the State agency could receive FFP for NATCEPs.

Response: All State and facility costs for NATCEPs and CEPs, such as review and approval of programs, administration of programs and books, are to be reimbursed at the administrative match. In-service education is a facility expense, not a cost associated with NATCEPs or CEPs; therefore, it is reimbursed at the State's Federal medical assistance percentage. The State agency can receive funding for the costs of NATCEPs and CEPs at the enhanced rate for the period of time specified in section 6901(b)(5) of OBRA '89.

Comment: A number of commenters expressed concern that facilities would not receive enough money to meet the nurse aide training and competency requirements. Others asked that limits be placed on the amount of money that can be charged for NATCEPs.

Response: Until October 1, 1990, payment for expenditures for activities relating to NATCEPs and CEPs will not take into account or allocate amounts on the basis of the proportion of residents of facilities that are entitled to Medicare or Medicaid. After October 1, 1990, costs are apportioned between the Medicare and Medicaid programs. The Federal government will match State expenditures at the rates discussed above; however, we cannot determine how much States should spend. Therefore, we cannot accept these comments.

Comment: A few commenters asked questions about funding for the registry. Others wondered if there would be funding for the costs of maintaining home health aides on the registry.

Response: Section 1903(a)(2)(B) of the Act, which specifies the matching rate for NATCEPs, does not apply to expenditures incurred in complying with the nurse aide registry requirements. Those expenditures are reimbursed under section 1903(a)(7) of the Act, which deals with expenditures necessary for the general administration of the State Plan, and will be matched at the 50 percent rate with no enhancement. If a State chooses to include home health aides on the registry, these costs will also be matched at the 50 percent rate.

Comment: One commenter asked about apportioning funds between Medicare and Medicaid.

Response: Section 6901(b)(5)(B) of OBRA '89 specifies that no expenditures for NATCEPs, whether incurred by facilities or the State, will be allocated to Medicare before October 1, 1990. After October 1, 1990, States may claim FFP for the Medicaid portion of the State administrative expenditures for the NATCEPs, allocating a portion to Medicare. Additional guidance on these issues is provided in the May 1990 State Medicaid Manual Issuance Number 66.

Summary of Changes to Section 433.15

After consideration of the public comments, and for the reasons stated in our responses to those comments, we are finalizing § 433.15 as proposed, with the exception of clarifying that FFP is available at the 50 percent matching rate for calendar quarters beginning on or after October 1, 1990.

Section 483.75(g) Level B Requirement: Required Training of Nurse Aides (Now Redesignated as Section 483.75(e) Required Training of Nurse Aides)

Summary of NPRM Provisions

Section 483.75(g) contained nurse aide training and competency requirements for long-term care facilities. This section specified the general rule for the employability of nurse aides in a facility, requirements for nurse aide competency, registry verification, required retraining, and ongoing in-service education programs, and specified the definition of nurse aide.

Comments and Responses

General

Comment: Several commenters were confused by the use of the Level B designation. One commenter agreed that nurse aide training should be a Level B requirement, while others requested that nurse aide training be changed to a Level A requirement to indicate its importance. One commenter requested that this format be changed because Level A and Level B requirements are going to be deleted from the long-term care regulations.

Response: The Level A and Level B designations in the long-term care regulations were never intended to imply a hierarchy of importance, and it was intended that both levels be equally enforced. In an attempt to prevent any further confusion on the issue, we are, in a separate rule, deleting from part 483, Requirements for States and Long Term Care Facilities, all references to Level A and Level B requirements.

Comment: The NPRM contained a requirement that facilities must provide competency evaluation preparation for individuals used as nurse aides before January 1, 1990 in order that such individuals could complete a CEP before October 1, 1990. A number of commenters requested that we define what preparation should be given. Other commenters indicated that if the final regulation does not become effective until after October 1, 1990, the requirement is extraneous and should be deleted.

Response: Although this requirement was based on sections 1819(b)(5)(B) and 1919(b)(5)(B) of the Act and, because it is a statutory requirement, was legally binding upon facilities, we are not including it in this rule because the actions it requires must have been taken before the effective date of this final rule.

Section 483.75(g)(1) General Rule. (Now Redesignated as Section 483.75(e)(2))

Summary of NPRM Provisions

Section 483.75(g)(1) specified that a facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time, temporary, per diem, or other basis, unless that individual is competent to provide nursing and nursing-related services and has completed a NATCEP or a CEP approved by the State; or that individual has been deemed competent under the waiver of requirements provided in § 483.150 (discussed later in this preamble).

Comments and Responses

Comment: Several commenters requested clarification of who is required to complete NATCEPs and who is required to complete CEPs only. A few commenters indicated that all individuals should be required to complete NATCEPs.

Response: Sections 1819(b)(5) and 1919(b)(5) of the Act require that all individuals employed by a facility as nurse aides must have completed either a NATCEP or CEP, or be deemed to have done so or have the requirement waived. This means that successful completion of either program, or the deeming or waiving of the requirement, will make a nurse aide employable by a facility if the nurse aide is competent to provide nursing or nursing-related services.

Comment: Several commenters suggested that the four months in which facilities may use individuals who have not completed a NATCEP or CEP should be extended for facilities with programs that have more hours than the 75 required by the statute, or for other special circumstances (e.g., for individuals who have not successfully completed the competency evaluation and are waiting to take the test again). One commenter indicated that adhering to the four-month time frame would aggravate current staff shortages.

Response: This time frame is required by sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act. The statute does not give the Secretary the authority to extend this time frame. We note that sections 4008(h)(1)(B) and 4801(a)(2) of OBRA '90 amended these sections of the Act to indicate that temporary, per diem, leased, or any other non-full-time individuals must have already completed a NATCEP or CEP to be used as a nurse aide. We have revised our regulations to reflect this change in the statute.

Comment: One commenter questioned whether distinct part facilities (facilities that are separate, physically identifiable portions of larger institutions) could use hospital aides as relief for nurse aides.

Response: The nurse aide training and competency requirements in sections 1819 and 1919 of the Act do not distinguish distinct part facilities from other facilities. Therefore, distinct part facilities may use hospital aides as relief for nurse aides only if the hospital aides meet the nurse aide training and/or competency evaluation requirements.

Comment: Several commenters indicated that nurse aides from pools or temporary agencies should be required to meet training and competency evaluation requirements. One commenter indicated that temporary aides should be prevented from eluding requirements by working no more than 4 months at any given facility. One commenter wanted assurances that facilities would not be allowed to use temporary aides without appropriate documentation from the nurse aide registry. A few commenters wanted to know what requirements pool nurse aides would be required to meet.

Response: While the nurse aide requirements in sections 1819(b)(5) and 1919(b)(5) of the Act do not place specific requirements on temporary agencies who employ nurse aides, the requirements they place on facilities prevent temporary aides from eluding the training and competency evaluation requirements. Facilities are permitted to use only nurse aides who meet the statutory requirements, and sections 4008(h)(1)(B) and 4801(a)(2) of OBRA '90 amended sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act to indicate that temporary aides used by the facility

must have completed a NATCEP or CEP approved by the State and be competent to provide nursing and nursing-related services. Facilities must also meet the registry verification requirements specified in this final rule at new § 483.75(e)(5) for temporary aides.

Comment: In our March 23, 1990 NPRM, we requested public comment on whether private duty aides or sitters (aides who are employed by the resident or the resident's family and are not employed by a facility) should be required to meet the nurse aide requirements proposed in § 483.75(g)(1). Commenters who stated that these individuals should meet the requirements indicated that facilities were responsible for all care that sitters provide and that meeting the requirements was important for resident safety and quality of life. One commenter asked that facilities be allowed not to permit sitters.

Commenters who indicated that sitters should not be required to meet the requirements indicated that sitters are often family members or friends who perform limited services for a small stipend. The residents' right to hire whomever they wish was also discussed. Some commenters pointed out that sitters are generally not used by facilities and indicated that facilities should not be held accountable for sitters' actions. Many commenters indicated that private duty aides were different from sitters, that sitters merely read or provide companionship or perform a few minor services, while private duty aides perform the full range of nurse aide duties. Some commenters requested that we defer to facilities in this area. A couple of commenters indicated that private duty aides employed by a facility (i.e., nurse aides assigned exclusively to one resident) should be required to meet the requirements. Finally, commenters wanted assurances that the use of sitters did not remove a facility's responsibility to provide a sufficient number of nurse aides.

Response: After consideration of these comments, we have decided not to require sitters and other individuals hired by individual residents and their families to meet the nurse aide requirements. These individuals are not used or employed by facilities, and we therefore believe that it would be inappropriate for us to require these individuals to meet the requirements. We do encourage facilities to develop their own policies as to the role of sitters, but stress that facilities are responsible for providing adequate staff, regardless of the presence of sitters, and will be held accountable for the quality of care provided to residents.

Comment: A few commenters requested that the use of volunteers and sitters be discussed in the residents' individual care plans.

Response: OBRA '87 does not require that volunteers and sitters be discussed in care plans, and we believe that such a requirement would impose an unnecessary paperwork burden on facilities.

Comment: Some commenters indicated that volunteers should not be allowed to provide nurse aide services unless they meet the training and competency requirements in § 483.75(g)(1) (now redesignated as § 483.75(e)(2)).

Response: The statutory definition of a nurse aide in sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act clearly indicates that individuals who volunteer are not included in the definition of a nurse aide. While we recognize that this suggestion may have potential benefits, we believe these benefits would be offset by the potential discouraging effect on volunteerism that such a requirement would have.

Comment: A few commenters provided suggestions on requiring informal training (i.e. training that does not meet the requirements of §§ 483.151 through 483.154) for volunteers. One commenter suggested that HCFA develop procedures to ensure that physical therapy assistants and dieticians' aides are trained and competent to perform their services although they should not be required to complete a NATCEP or CEP.

Response: While we believe these are sensible and prudent suggestions and encourage facilities to provide informal training to all individuals who may benefit from the training, we believe facilities should have flexibility to determine which individuals need to be trained. We reiterate that facilities are responsible for all of the care provided to their residents.

Section 483.75(g)(3) Competency (Now Redesignated as Section 483.75(e)(4))

Summary of NPRM Provisions

Section 483.75(g)(3) specified that a facility may permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence only when the individual is in a NATCEP or CEP approved by the State and the facility has asked and not yet evaluated a reply from the State registry for information concerning the individual.

Comments and Responses

Comment: Many commenters requested clarification as to whether individuals who have been employed by a facility for less than four months and have not yet completed a NATCEP may serve as a nurse aide. Some commenters indicated that we should specifically allow individuals who have not yet started a NATCEP to serve as nurse aides. Others requested that no one be allowed to serve as nurse aides until he or she has completed a NATCEP or CEP.

Response: Sections 1819(b)(5)(C) and 1919(b)(5)(C) of the Act specify that a facility must not permit an individual, other than in a NATCEP approved by the State, to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competency. Sections 1819(b)(5)(A) and 1919(b)(5)(A) of the Act (as amended by sections 4008(h)(1)(B) and 4801(a)(2) of OBRA '90) also require that facilities not use an individual as a nurse aide on a full-time basis for more than four months unless the individual has completed a NATCEP approved by the State and prohibit facilities from using individuals on a temporary, per diem, leased, or any other basis other than a full-time employee as nurse aides unless they have already completed a NATCEP or CEP and are competent to provide nursing or nursing-related services. Therefore, a facility may only permit an individual who has worked less than four months in the facility to serve as a nurse aide or provide services for which the individual has not demonstrated competence only when the individual is a full-time employee and is in a NATCEP approved by the State. We have revised the provision in § 483.75(g)(3) (now redesignated as § 483.75(e)(4)) to state this requirement clearly. Thus, during the four-month period discussed in § 483.75(g)(1), General Rule (now redesignated as § 483.75(e)(2)), full-time employees who are in a NATCEP may serve as nurse aides, and individuals who have not yet started a NATCEP may not serve as nurse aides regardless of whether they are full-time employees. The question of when individuals who are in NATCEPs are allowed to perform services will be addressed later in this preamble in the discussion on requirements for approval of NATCEPs.

Comment: One commenter asked whether an individual who has been employed by a facility for less than four months and has completed only a CEP and is awaiting the results of the evaluation may serve as a nurse aide.

Response: Individuals who have taken the competency evaluation as part of a NATCEP may be considered still to be in the program and may continue to serve as a nurse aide, as discussed above. Individuals who have completed only a CEP may not serve as a nurse aide until results indicating successful completion of the evaluation are obtained.

Comment: A few commenters requested clarification on what role nurse aide registry verification has in the employability of nurse aides. Some indicated that individuals who have successfully completed a NATCEP or CEP but have not yet been placed on the registry should be allowed to be employed. One commenter requested that temporary employment of an individual be allowed when the registry is closed. Others requested that facilities not be allowed to hire any individual without receiving all clearances from the registry.

Response: Sections 1819(b)(5)(C) and 1919(b)(5)(C) of the Act indicate that, unless an individual is in a NATCEP, a facility may not use an individual as a nurse aide unless the individual is competent to provide services and the facility inquired with the registry about information contained on that individual. To clarify our regulations for this requirement, we have revised the provisions in proposed § 483.75(g)(3) (now redesignated as § 483.75(e)(4)) by removing from this section the requirement that facilities permit individuals to serve as nurse aides only when the facility has asked and not yet evaluated a reply from the State registry for information concerning the individual, and placing, and further amending, the provision in a new § 483.75(e)(5), Registry verification. This new section specifies that before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has met competency evaluation requirements unless the individual can prove that he or she has recently successfully completed a NATCEP or CEP approved by the State and has not yet been included in the registry, or the individual is in a NATCEP approved by the State. Facilities must determine whether individuals who have recently completed a CEP or NATCEP actually become registered. We believe that a facility must receive a response from the registry before using an individual as a nurse aide. Therefore, we have not permitted temporary employment while the registry is closed. We note that facilities must receive a response from all registries they are required to contact before using an individual as a nurse aide. This applies to individuals who have recently completed a NATCEP or CEP as well as other individuals because of the possibility that adverse findings might exist in other States.

Furthermore, we have added a new § 483.75(e)(6), Multi-State registry verification, which requires that, before allowing an individual to serve as a nurse aide, a facility must seek information from all State nurse aide registries established under sections 1819(e)(2)(A) or 1919(e)(2)(A) of the Act the facility believes will include information on the individual. This new provision is required by sections 4008(h)(1)(C) and 4801(a)(3) of OBRA '90.

Section 483.75(g)(4) Required Retraining (Now Redesignated as Section 483.75(e)(7))

Summary of NPRM Provisions

Section 483.75(g)(4) specified that when an individual has not performed paid nursing or nursing-related services for a continuous period of 24 consecutive months since the most recent completion of a NATCEP, the facility must require the individual to complete a new NATCEP.

Comments and Responses

Comment: Several commenters indicated that the requirement for retraining of nurse aides who have not performed nursing or nursing-related services for monetary compensation for the 24 months prior to their most recent completion of a NATCEP should be clarified to reflect that individuals must actually fail to perform services for 24 consecutive months to require retraining. A number of commenters requested that the required retraining requirement be deleted from the final regulations, that individuals should be required to complete only a CEP rather than a full NATCEP, that individuals should be allowed to take an abbreviated version of the NATCEP, or that other alternatives to a NATCEP should be allowed. A couple of commenters believed that there should be exceptions to this provision, e.g., for maternity leave.

Response: We agree that this provision needs clarification and have revised § 483.75(g)(4) (now redesignated as § 483.75(e)(7)) using the statutory provisions from sections 1819(b)(5)(D) and 1919(b)(5)(D) of the Act. These provisions have been amended by sections 4008(h)(1)(D) and 4801(a)(4) of OBRA '90 to state that if, since an individual's most recent completion of a NATCEP, there has been a continuous period of 24 consecutive months during none of which the indiyidual performed nursing or nursing-related services for monetary compensation, such individual must complete a new NATCEP or CEP. (Previously, sections 1819(b)(5)(D) and 1919(b)(5)(D) of the Act required these individuals to take only a new NATCEP.) Because sections 1819(b)(5)(D) and 1919(b)(5) (D) of the Act state explicitly that nurse aides who fail to perform nursing or nursing-related services for monetary compensation for a period of 24 consecutive months must complete a new NATCEP or CEP, we cannot grant exceptions to this requirement.

Comment: Several commenters requested that we specify where a nurse aide had to work to be considered to have performed nursing or nursing-related services for purposes of the required retraining provision.

Response: Sections 1819(e)(5)(D) and 1919(e)(5)(D) specify only that a nurse aide who does not perform nursing or nursing-related services for monetary compensation must complete a new NATCEP or CEP but does not specify where the services may be provided. We have interpreted the statute as allowing a nurse aide to perform nursing or nursing-related services anywhere for purposes of this provision. Because of this interpretation, we believe it is unnecessary to provide an exhaustive list of appropriate entities.

Comment: A couple of commenters wanted to know if the 24-month period begins after the actual completion of a NATCEP or from the date the individual was placed on the registry. Another commenter wanted to know if this requirement applies to individuals who had completed NATCEPs before October 1, 1990.

Response: The 24–month period begins after the date the individual completed the competency evaluation portion of a NATCEP, regardless of whether the 24 months lapsed before or after October 1, 1990. This provision also applies to individuals whose competence was deemed or for whom the requirement was waived as discussed in § 483.150. We have clarified this in the final regulations.

Comment: A number of commenters raised questions on the length of employment sufficient to qualify an individual as having performed nursing or nursing-related services for monetary compensation for purposes of § 483.75(g)(4) (now redesignated as § 483.75(e)(7).

Response: Sections 1819(b)(5)(D) and 1919(b)(5)(D) do not specify any minimum amount of time a nurse aide must work for purposes of the required

retraining provision. However, we believe that one documented day (e.g., 8 hours) of employment providing nursing or nursing-related services for monetary compensation would be sufficient.

Section 483.75(g)(5) Regular In-Service Education (Now Redesignated as Section 483.75(e)(8))

Summary of NPRM Provisions

Section 483.75(g)(5) specified that the facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides. It also specified that in-service education must include training for individuals providing nursing and nursing-related services to residents with cognitive impairments.

Comments and Responses

Comment: A few commenters indicated that we should not require in-service education because it would make being a nurse aide less appealing.

Response: The in-service education requirement in sections 1819(b)(5)(E) and 1919(b)(5)(E) of the Act was intended to ensure that nurse aides receive sufficient in-service education to maintain competence. We believe that instead of making the position of nurse aide less appealing, regular in-service education will allow for the professional development of nurse aides, building their self-esteem while enhancing their abilities to provide quality nursing care. Also, because the statute requires facilities to provide in-service education for nurse aides, the Secretary does not have the authority to delete this requirement from our regulations.

Comment: A large number of commenters requested that we clarify how much in-service education is required for nurse aides. Many commenters requested that there be no mandated number of hours, that the State be allowed to determine the number of hours, or that patient outcomes be used to determine whether adequate in-service education has been provided. Others requested that a specific number of hours be mandated so that facilities would not be subjected to the judgments of individual surveyors. Suggestions for numbers of hours ranged from 4 hours per year to 24 hours per year, the number specified in previous guidance in Transmittal 223 of the State Operations Manual and Transmittal 62 of the State Medicaid Manual. A number of commenters indicated that six hours per quarter was more than was required of licensed nurses and was therefore excessive. Some commenters indicated that mandating hours on an annual basis, rather than quarterly, would provide more flexibility to facilities and nurse aides.

Response: After consideration of these comments, we have revised § 483.75(g)(5) (now redesignated as § 483.75(e)(8)) to specify that a facility must annually provide a minimum of twelve hours of in-service education. We have required this minimum because we have found it to be sufficient for maintaining the competency of home health aides who perform services similar to those performed by nurse aides. (The requirements for in-service education for home health aides are at 42 CFR 484.36(b)(2).) We do not believe that nurse aides will need fewer hours of in-service training than home health aides. We did not choose a greater number of required hours of in-service training, nor did we impose a quarterly minimum of hours, because we believe a facility should have the flexibility to conduct training in accordance with its needs and staffing requirements.

Comment: Several commenters suggested that we mandate certain topics for in-service education. A wide range of topics were suggested. Some commenters suggested that the guidance in the State Operations Manual and State Medicaid Manual (cited above) be inserted into the final regulations. A couple of commenters suggested that in-service topics should be drawn from the training needs of the nurse aides and the needs of the residents as determined by the professional nursing staff or that facilities should have in-service plans to meet the needs of residents.

Response: We agree that it is necessary to provide some guidance as to the nature of in-service education and have revised § 483.75(g)(5) (now redesignated as § 483.75(e)(8)) to specify that in-service training must address areas of weakness as determined in nurse aides' performance reviews, and may address the special needs of residents as determined by the facility staff. We have adopted the suggestion that in-service topics be drawn from the training needs of the nurse aides and the special needs of residents in the facility because we believe it allows for optimum flexibility for facilities while assuring the continued competence of nurse aides. We have allowed the facility to determine in-service topics rather than specifying that the professional nursing staff make this determination because we believe that many types of facility staff may have valuable input on areas that need to be addressed.

We have not indicated specific topics that must be addressed during in-service education because we believe that such a list would not give facilities the flexibility to include programs in all areas necessary to insure the continuing competence of nurse aides.

Comment: A couple of commenters wanted clarification on in-service education relating to cognitively impaired residents. Some indicated that all in-service education should be designed to provide additional skills in the care of cognitively impaired residents.

Response: We have revised this requirement at § 483.75(g)(5) (now redesignated as § 483.75(e)(8)), which is mandated by sections 1819(b)(5)(E) and 1919(b)(5)(E) of the Act, to indicate that nurse aides who are providing services to cognitively impaired residents must receive in-service education in the care of the cognitively impaired. We have not required that all in-service education address the care of cognitively impaired residents because we believe that there are other important areas that need to be addressed.

Comment: A few commenters requested that we place some responsibility for in-service education on nurse aides by requiring proof of in-service education for recertification or through other methods. One commenter wanted to know what would happen to a nurse aide or a facility if a nurse aide did not meet the in-service education requirement.

Response: Sections 1819(b)(5)(E) and 1919(b)(5)(E) address only the responsibility of facilities to provide in-service training to nurse aides, and we believe that this responsibility should remain with the facilities. Penalties for non-compliance with this requirement will be discussed in the survey and certification requirements, which are being revised.

Comment: One commenter requested that we provide specific guidance on what constitutes in-service education. One commenter requested that HCFA develop independent study modules for in-service education. A few commenters requested that we define what constitutes a performance review, while others suggested that we require annual or semi-annual performance reviews of nurse aides.

Response: We have not provided more comprehensive guidance in what constitutes an in-service education program because we do not want to limit facility flexibility in developing in-service programs. We also do not wish to advise facilities that a performance review should cover all aspects of an

individual's job, especially those areas relating to patient care. We agree that a performance review should be performed on an annual basis, and have revised § 483.75(g)(5) (now redesignated as § 483.75(e)(8)) to specify that the facility must complete a performance review of every nurse aide at least once every twelve months.

Section 483.75(g)(6) Definitions (Now Redesignated as Section 483.75(e)(1))

Summary of NPRM Provisions

Section 483.75(g)(6) specified the definition of nurse aide to mean any individual providing nursing or nursing-related services to residents in a facility who is not someone who volunteers to provide such services without pay.

Comments and Responses

Comment: Several commenters requested clarification of the definition of a nurse aide. A few requested that the term "nursing assistant" be used instead of nurse aide. Many were concerned that the definition as proposed in § 483.75(g)(6) (now redesignated as § 483.75(e)(1)) would encompass licensed nurses, secretaries, physical therapy assistants, or dietary assistants, as well as other individuals, such as medication aides, activity aides, and unit aides, who do not perform the complete range of nurse aide duties. Others believed that the definition of a nurse aide should be broadened to include aides in all health facilities. Several commenters requested that the definition be revised to exclude individuals who do not ordinarily function as nurse aides but provide nurse aide services to relieve nurse aides, or who perform only one or a few nurse aide tasks. One commenter asked how the requirements apply to individuals who perform only a few nurse aide services. Finally, one commenter requested that we include the statutory definition of a licensed health professional in the regulations.

Response: We have retained the use of the term "nurse aide" and the statutory definition of nurse aide contained in sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act in our final regulations. (These sections of the statute were amended by sections 4008(h)(2)(F) and 4801(e)(6) of OBRA '90 to specify that a registered dietitian is not a nurse aide. We have revised our regulations at § 483.75(e)(1) to reflect this change.) The term "nurse aide" is used and defined in these sections of the statute, and we do not believe that changing it will provide additional benefits to our regulations. The statutory definition clearly indicates that nurse aides are individuals who provide nursing or nursing-related services in nursing or skilled nursing facilities. If an individual provides these services, regardless of the frequency with which they are provided or the scope of services provided, the individual must be competent to do so to be used by a facility. We note that physical therapy assistants and licensed nurses are included within the definition of a licensed health professional and are therefore not required to meet nurse aide requirements. It is unclear why secretaries or dieticians' assistants would be providing nursing or nursing-related services, but if they do, they must meet the nurse aide requirements. The omission of the statutory definition of a licensed health professional in the NPRM was inadvertent, and we are revising § 483.75(g)(6) (now redesignated as § 483.75(e)(1)) to include this definition.

Comment: A few commenters suggested that the definition of a nurse aide be revised to indicate that persons certified or registered under State law are not nurse aides.

Response: We believe that facilities are capable of determining which, if any, persons certified or registered under State law are included in the definition specified in the regulations.

Comment: Several commenters requested that we provide a definition of nursing or nursing-related services in our regulations. One commenter asked that we remove "nursing-related services" from the definition of nurse aide.

Response: We have used the statutory definition of nurse aide contained in sections 1819(b)(5)(F) and 1919(b)(5)(F) of the Act in these requirements, and we do not believe that adding a definition of nursing-related services would be helpful. We believe, however, that removing "nursing-related services" from the definition of a nurse aide would greatly decrease the accuracy of the definition because the term helps to clarify that an individual must be directly involved in patient care to meet the definition of nurse aide. For example, an individual who makes unoccupied beds or fills water pitchers would not necessarily be a nurse aide and therefore may not have to meet the nurse aide requirements.

Comment: A few commenters requested that we add a definition of a nurse aide trainee to the regulations.

Response: A nurse aide trainee is an individual enrolled in a NATCEP.

Summary of Changes to Section 483.75(g) (Now Redesignated as Section 483.75(e))

In response to comments, in addition to minor technical or editorial changes, we are making the following changes to § 483.75(e):

- To maintain consistency and clarity in the regulations, we have redesignated paragraphs (1) through (6) under § 483.75(e).
- We are revising § 483.75(e)(1) to indicate that a registered dietitian is not a nurse aide.
- We are adding a requirement at § 483.75(e)(3) that a facility may not use as nurse aides individuals who are not permanent employees unless they have completed a NATCEP or CEP and are competent to provide nursing and nursing-related services.
- We are revising § 483.75(e)(4), Competency, to reflect more accurately the provisions in sections 1819(b)(5) and 1919(b)(5) of the Act that a facility may only permit an individual who has worked less than four months in the facility, and has not completed a CEP or NATCEP or been deemed to have met the requirement or for whom the State has waived the requirements, to serve as a nurse aide or provide services for which the individual has not demonstrated competence through an approved program when the individual is a full-time employee in a training and competency evaluation program approved by the State.
- We have removed from paragraph (e)(4) the requirement for registry verification prior to employment by a facility and have placed the requirement in a new § 483.75(e)(5), Registry verification. We have further amended § 483.75(e)(5) to allow for an exception to registry verification prior to employment by a facility if the individual can prove that he or she has recently successfully completed a NATCEP or a CEP and has not yet been included on the registry, or the individual is in a NATCEP approved by the State.
- We have added a new § 483.75(e)(6), Multi-State registry verification, which specifies that, before allowing an individual to serve as a nurse aide, facilities must seek information from every State nurse aide registry the facility believes will include information on the individual.
- In § 483.75(e)(7), Required retraining, we have permitted individuals who have performed no nursing or nursing-related services for monetary compensation for a period of 24 consecutive months since their most

recent completion of a NATCEP to take either a new NATCEP or a new CEP.

• In § 483.75(e)(8), Required in-service education, we have specified 12 hours as the minimum amount of in-service education to be conducted annually and have further specified that performance reviews must be conducted at least every 12 months.

Section 483.150 Deemed Meeting of Requirements, Waiver of Requirements

Summary of NPRM Provisions

Section 483.150 specified the criteria individuals must meet to be deemed as meeting the nurse aide training and competency evaluation requirements or to have the competency evaluation requirements waived.

Comments and Responses

General

Comment: A few commenters suggested we expand the scope of the deeming and waiver provisions for nurse aides.

Response: We do not believe we have the authority to provide any new deeming or waiver provisions or to modify the current provisions for two reasons. First, the statute does not authorize the Secretary to provide for any such additions or modification. Second, the current deeming and waiver provisions are described very specifically in section 6901(b)(4) of OBRA '89. The absence of additional provisions suggests a lack of congressional intent for such provisions. However, we note that sections 1819(f)(2)(B)(ii) and 1919(f)(2)(B)(ii) of the Act permit States to deem individuals who, before July 1, 1989, completed a NATCEP the State determines would have met the requirements for approval at the time it was offered to have completed an approved program. This was inadvertently omitted from the NPRM, and we have included it in our final regulations at § 483.150(b)(2).

Comment: One commenter recommended that we develop procedures for deeming home health aides as meeting nurse aide requirements.

Response: The separate requirements for home health aide training and competency evaluation located at 42 CFR 484.36 are mandated by different statutory requirements, some of which are not the same as the nurse aide requirements in sections 1818 and 1919 of the Act. As a result, it is not possible to deem home health aides as meeting the nurse aide requirements.

Comment: Some commenters were confused about whether individuals must have been trained or employed in facilities that met the requirements for approval and withdrawal of approval of NATCEPs (which were proposed in §§ 483.151(b)(2) and 483.151(e) of the NPRM) at the time the training was conducted in order to be deemed as meeting nurse aide requirements or to have these requirements waived.

Response: The statutory requirements upon which §§ 483.151(b)(3) and 483.151(e) are based were changed by sections 4008(h)(1)(F) and 4801(e)(6) of OBRA '90, and were given a statutory effective date of January 1, 1989. However, because these changes were not known at the time by which the requirements for § 483.150 must have been met, we believe it would be unreasonable to apply §§ 483.151(b)(3) and 483.151(e) for purposes of § 483.150.

Comment: One commenter indicated that we should require States to have guidelines indicating what evidence they will require for the deeming or waiving of the nurse aide training and competency evaluation requirements.

Response: Because the State decision to waive the competency evaluation requirement is voluntary, we believe to mandate States to develop guidelines as to what evidence they will require for this provision is inappropriate. We believe, however, that States will develop guidelines for both waiving and deeming regardless of whether we require them to do so.

Section 483.150(a)

Summary of NPRM Provisions

Paragraph (a) of § 483.150 specified that a nurse aide is deemed to satisfy the requirement of completing a training and competency evaluation approved by the State if (1) the aide would have satisfied the requirement as of July 1, 1989, if a number of hours (not less than 60 hours) were substituted for "75 hours" in sections 1819(f)(2) and 1919(f)(2) of the Act, respectively, and the aide had received, before July 1, 1989, at least the difference in the number of hours in supervised practical nurse aide training or in regulation in-service nurse aide education; or (2) the aide was found competent (whether or not by the State), before July 1, 1989, after the completion of a course of nurse aide training of at least 100 hours duration.

Comments and Responses

Comment: One commenter indicated that an individual should be working as a nurse aide to be deemed under § 483.150(a) (1) and (2) as meeting the training and competency evaluation requirements.

Response: We do not require other individuals to be working as nurse aides to meet the training and competency evaluation requirements, and we believe that it would be unreasonable and discriminatory to expect deemed individuals to do so. We note, however, that the retraining required in § 483.75(e) does apply to deemed individuals.

Comment: One commenter wanted to know if there would be specific requirements for the 100 hours of training discussed in § 483.150(a)(2).

Response: Section 6901(b)(4)(C) of OBRA '89 does not specify requirements for the 100 hours of training necessary to be deemed as meeting the nurse aide training and competency requirements, and we have not added any to the regulations in order to make this requirement as flexible as possible.

Comment: Several commenters had questions or suggestions on the competency finding following the 100 hours of training specified in § 483.150(a)(2). One commenter recommended that the competency finding be a CEP approved by the State or a State-determined equivalent. Another commenter wondered if graduating from a 100-hour nurse aide course would constitute a finding of competency. One commenter wanted to know who could make determinations of competency for purposes of this provision.

Response: Section 6901(b)(4)(C) of OBRA '89 does not place strictures on which entities may determine competency after the 100 hours of training. In fact, the statute is very vague. We have therefore made this requirement as flexible as possible. Because the statute specifies that the finding of competency does not have to be done by the State, we do not believe that it is appropriate to restrict competency findings to those approved by the State.

Section 483.150(b)

Summary of NPRM Provisions

Paragraph (b) of § 483.150 specified that a State may waive the requirement for an individual to complete a CEP approved by the State for any individual who can demonstrate to the satisfaction of the State that he or she has served as a nurse aide at one or more facilities of the same employer in the State for at least 24 consecutive months before December 19, 1989.

Comments and Responses

Comment: One commenter requested that we remove the requirement allowing for a waiver of individuals

described in § 483.150(b)(1). A few commenters requested various expansions of this provision, such as more flexibility in employment locations or a more recent time frame within which to meet the requirement.

Response: This provision is required by section 6901(b)(4)(D) of OBRA '89, and we are therefore committed to implementing the statute as written.

Comment: One commenter wanted to know when the 24 months of employment begin for purposes of § 483.150(b)(1).

Response: Section 6901(b)(4)(D) explicitly indicates that an individual must be employed for 24 consecutive months before December 19, 1989 (the date of the enactment of OBRA '89) to have the nurse aide competency requirements waived. Therefore, any nurse aide who worked consecutively from December 19, 1987 to December 19, 1989 for one or more facilities of the same employer in the State will be eligible for waiver by the State.

Comment: Several commenters requested clarification of whether individuals who met the requirements for waiver by the State would be required to be trained or to complete a competency evaluation to be employed by a facility.

Response: If an individual meets all of the requirements listed in § 483.150(b)(1), the State may waive the competency evaluation requirement for him or her. Because facilities can employ individuals who have completed either a NATCEP or CEP approved by the State, individuals who have the competency evaluation requirement waived are employable by facilities. If, however, a facility wishes to train aides for whom the State has waived the competency evaluation requirement, the facility is free to do so.

Comment: A number of commenters requested clarification of how much an individual would be required to work for purposes of § 483.150(b)(1).

Response: Section 6901(b)(4)(D) of OBRA '89 does not specify how much an individual must work for purposes of this provision. We have not provided any requirements in our regulations because we wish to give States as much freedom as possible in their waiver determinations.

Comment: A few commenters suggested that HCFA mandate a method for determining which aides are eligible for waiver by States or suggested that HCFA define what should satisfy State requirements.

Response: State waiver of the competency evaluation requirement is voluntary, and, as such, we wish to give States as much freedom as possible in implementing this provision if they choose to do so. Also, we believe that States may already have developed mechanisms for determining which, if any, nurse aides may have the competency evaluation requirements waived, and we do not wish to disturb systems that are functioning well.

Comment: One commenter indicated that nurse aides for whom the State waives the competency evaluation requirement should be required to be currently working as nurse aides to be placed on the registry.

Response: We do not require individuals who complete a CEP to be currently working as nurse aides to be placed on the registry. We believe it would be unfair to have a different requirement for those individuals for whom the State has waived the competency evaluation requirement.

Summary of Changes to § 483.150

After consideration of the public comments, and for the reasons stated in our responses to those comments, we are revising proposed § 483.150 to add a requirement permitting States to deem to have completed a State-approved NATCEP those individuals who, before July 1, 1989, completed a NATCEP the State determines would have met the requirements for approval at the time the program was offered.

Section 483.151 State Review and Approval of Nurse Aide Training and Competency Evaluation Programs

Summary of NPRM Provisions

Section 483.151 specified requirements for State review and administration of NATCEPs, requirements for approval of programs, time frames for acting on a request for approval, and requirements for withdrawal of approval.

Comments and Responses

General

Comment: A few commenters had concerns about which agency of the State government should be allowed to have control over the review and approval of NATCEPs and CEPs. Some commenters suggested various State entities that could review and approve programs, while others requested that we allow any State entity to perform this function. One commenter indicated that the State survey agency is not the appropriate entity to approve NATCEPs.

Response: Sections 1819(e)((1) and 1919(e)(1) of the Act do not require that any particular State entity be responsible for the review and approval of NATCEPs and CEPs. Therefore, we have not specified in our regulations which agency of the State government may review and approve programs but have, instead, allowed States the flexibility to use the entity best suited to this task. We believe that some commenters may have been confused by the requirement in paragraph (a)(4) of § 483.151, which indicates that the State survey agency must determine whether the requirements of § 483.75(g) (now redesignated as § 483.75(e)) are met. Section 483.75(g) deals with facility compliance with nurse aide training requirements, not program review and approval.

Comment: Several commenters expressed concerns about permitting facility-based or non-facility-based training and competency evaluation programs. Some of these commenters requested specific requirements for non-facility-based programs, citing the need for regulatory requirements to contain costs as justification for the requirements. Taking full-time RNs away from resident care was the primary concern of those opposed to facility-based programs. A few commenters believed that the requirements should apply to both facility-based and non-facility-based programs, or that we should develop specific requirements for both settings.

Response: Sections 1819 and 1919 of the Act permit both types of programs and so we will continue to allow both facility-based and non-facility-based NATCEPs. Both types of programs enjoy prevalence in different States, and we believe that the use of both types of programs is necessary to permit facilities and States to meet the nurse aide requirements effectively. These requirements apply to both facility-based and non-facility-based programs.

Section 483.151(a) State Review and Administration

Summary of NPRM Provisions

Paragraph (a)(1) of § 483.151 specified that a State must offer a NATCEP that meets the requirements of § 483.152 and/or a CEP that meets the requirements of § 483.154; and/or specify any NATCEPs not offered by the State that the State approves as meeting the requirements of § 483.152 and/or CEPs not offered by the State that the State approves as meeting the requirements of § 483.154.

Paragraph (a)(2) specified that the State may not delegate or subcontract the approval of these programs to an entity outside of the State government.

Paragraph (a)(3) specified that if the State does not choose to offer one or both of the programs specified in paragraph (a)(1) of § 483.151, the State

must review and approve or disapprove NATCEPs when requested to do so by any facility.

Paragraph (a)(4) specified that the State survey agency must, in the course of all surveys, determine if the requirements of § 483.75(g) (now redesignated as § 483.75(e)) are met.

Comments and Responses

Comment: A few commenters suggested that we revise paragraph (a)(3) of § 483.151 to require States that do not offer a NATCEP and/or a CEP to review both facility-based and non-facility-based programs that request approval of a program.

Response: We agree with this comment and have revised this requirement in § 483.151(a)(3) to indicate that States who do not offer a NATCEP and/or a CEP must review all programs upon request.

Comment: One commenter believed that States should be required to review all programs.

Response: Sections 1819(e) and 1919(e) of the Act indicate that States must approve programs that meet the requirements for approval of NATCEPs and CEPs. We believe the intent of these statutory provisions is to ensure that each State has approved programs. A State may meet these statutory requirements by offering its own program; however, if it does not choose to offer its own program, then it must review all programs upon request.

Comment: One commenter wanted to know if there would be procedures for surveyors to use to determine facility compliance with the requirements of § 483.75(g) (now redesignated as § 483.75(e)) by October 1, 1990. A number of other commenters suggested various methods for surveyors to determine facility compliance with the nurse aide training requirements or wanted to know how facility compliance would be determined.

Response: The appropriate vehicle for delineating surveyor methodologies is the survey and certification regulations at 42 CFR 488. HCFA is revising these regulations, and until the revised regulations are final, the current survey and certification procedures remain in effect and will be used to determine whether facilities meet the requirements of § 483.75(g) (now redesignated as § 483.75(e)).

Comment: A few commenters had concerns about who should survey facilities to determine compliance with NATCEP requirements. One commenter indicated that facility compliance with NATCEP requirements should be determined by the State survey agency but that other agencies should be allowed to review and approve programs. A few commenters indicated that facilities should not be surveyed to determine compliance with the nurse aide training and competency evaluation requirements.

Response: We have retained our requirement that the State survey agency must survey facilities to ensure that they meet the requirements in § 483.75(g) (now redesignated as § 483.75(e)). Compliance with these requirements is a facility responsibility, and we believe that the surveys required by section 1819(g) and 1919(g) of the Act are necessary to ensure that compliance is being met. We agree that agencies other than the State survey agency may review and approve NATCEPs and have not specified which State agency should evaluate programs.

Section 483.151(b) Requirements for Approval of Programs, and Section 483.151(e) Withdrawal of Approval

Summary of NPRM Provisions

Paragraph (b)(1) of § 483.151 specified that before a State approves a NATCEP or CEP, the State must (1) determine whether the NATCEP meets the course requirements of § 483.152; and (2) determine whether the CEP meets the requirements of § 483.154.

Paragraph (b)(2) specified that a State may not approve a NATCEP or CEP offered by a SNF or NF that has been found out of compliance with any of the requirements for participation in Part 483, Subpart B, within any of the 24 consecutive months prior to the State's review of the program.

Paragraph (e)(1) of § 483.151 specified that a State must withdraw approval of a facility-based NATCEP when it makes a determination that the facility is out of compliance with a requirement for participation, as specified in Part 483, Subpart B.

Paragraph (e)(2) specified that a State may withdraw approval of a NATCEP or CEP if the State determines that any of the applicable requirements of §§ 483.152 and 483.154 are not met by the program.

Paragraph (e)(3) specified that a State must withdraw approval of a NATCEP or a CEP if the entity providing the program refuses to permit unannounced visits by the State.

Comments and Responses

Comment: Many commenters discussed the appropriateness of pre-approval site visits. A majority of these commenters believed that a pre-approval site visit was unnecessary for a program's first approval because the program may not be operational prior to approval. A few commenters suggested that a review of the last survey report could replace an on-site visit or that the annual certification survey could constitute the site visit. Several commenters requested post-approval site visits. Other commenters suggested that site visits were inappropriate, indicating that the NATCEP curriculum should be the basis of approval. A few commenters agreed with the proposed pre-approval site visit.

Response: We agree that it may be inappropriate to require an on-site visit prior to the first review of a program because the program may not be operational, and that a review of written course materials and procedures may be an effective alternative to a site visit. Therefore, we have revised the requirement in § 483.151(b)(1) to indicate that the State must visit the entity providing the program in all reviews except for the initial review. We have retained the requirement that on-site visits are required for subsequent reviews of the program because we believe that such visits are useful tools in gaging the quality of the program.

Comment: We received a large number of comments on the NPRM requirement at § 483.151(b)(2), which prohibits States from approving NATCEPs and CEPs conducted by a facility that is out of compliance with any of the requirements for participation in part 483, subpart B, within any of the 24 consecutive months prior to the request for approval of the program, and the requirement at § 483.151(e)(1), which requires States to withdraw approval of such a program when a deficiency is found. A majority of the commenters objected to the requirements while other commenters had suggestions or questions about the provisions.

Response: These requirements were established under sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act which, prior to the enactment of OBRA '90, stated that the Secretary's requirements for approval of NATCEPs and CEPs must prohibit State approval of programs offered by or in any facility which has been determined out of compliance with the requirements of section 1819 (b), (c), or (d) or section 1919 (b), (c), or (d) of the Act within the previous two years. However, sections 4008(h)(1)(F)(i) and 4801(a)(6)(A) of OBRA '90 amended sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act to remove this requirement and replace it with other requirements. Accordingly, we have revised §§ 483.151(b)(2) and 483.151(e)(1) to indicate that States may not approve (and must withdraw approval from)

NATCEPs and CEPs offered by or in a facility that, within the previous two years—

- In the case of a skilled nursing facility, has operated under a waiver under section 1819(b)(4)(C)(ii)(II) of the Act;
- In the case of a nursing facility, has operated under a waiver under section 1919(b)(4)(C)(ii) of the Act that was granted on the basis of a demonstration that the facility is unable to provide nursing care required under section 1919(b)(4)(C)(i) of the Act for a period in excess of 48 hours per week;
- Has been subject to an extended (or partial extended) survey under sections 1819(g)(2)(B)(i) or 1919(g)(2)(B)(i) of the Act;
- Has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) or 1919(h)(2)(B)(ii) of the Act of not less than $5,000; or
- Has been subject to a remedy described in sections 1819(h)(2)(B)(i) or (iii), 1819(h)(4), 1919(h)(1)(B)(i), or 1919(h)(2)(A)(i), (iii), or (iv) of the Act.

We have also added a new § 483.151(b)(3) which indicates that States may not, until two years since the assessment of the penalty (or penalties) has elapsed, approve a NATCEP or CEP offered by or in a facility that, within the two-year period beginning October 1, 1988,—

- Had its participation terminated under title XVIII of the Act or under the State plan under title XIX of the Act;
- Was subject to a denial of payment under title XVIII or title XIX;
- Was assessed a civil money penalty of not less than $5,000 for deficiencies in facility standards;
- Operated under temporary management appointed to oversee the operation of the facility and to ensure the health and safety of its residents; or
- Pursuant to State action, was closed or had its residents transferred.

This addition is necessary to comply with sections 4008(h)(1)(F)(ii) and 4801(a)(6)(B) of OBRA '90, which indicate that States may not approve NATCEPs or CEPs offered by or in facilities that, within the two-year period beginning October 1, 1988, had certain sanctions applied to them. (See H.R. Rep. No. 964, 101st Cong., 2nd Sess. 852).

Comment: A few commenters asked when these provisions will be effective.

Response: These provisions have a statutory effective date of January 1, 1989. Therefore, States must remove approval from programs that do not meet the statutory requirements. However, as we have noted earlier in this preamble, individuals who, prior to the issuance of these regulations, completed NATCEPs or CEPs that were approved using pre-OBRA '90 criteria are not required to complete a new program.

Comment: A few commenters indicated that 24 months was too long a period to deny a facility a training program and suggested alternative time periods. One commenter believed that there should be intermediate sanctions before program approval is withdrawn. A few commenters suggested that we include a method for reinstatement of programs whose approval has been withdrawn.

Response: The time frame about which commenters were concerned is based on sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, which clearly indicate that States may not approve programs offered by or in certain facilities, described in sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, within the previous two years. Because of the clarity with which this requirement is stated, and because the statute does not provide for the use of intermediate sanctions before withdrawal of program approval, the Secretary does not have the authority to provide for such intermediate sanctions. We have not developed a procedure for reinstatement because we believe that programs seeking reinstatement should follow the same procedure as programs seeking initial approval.

Comment: A few commenters wanted to allow non-facility-based NATCEPs or interactive video programs to be offered in a facility against which penalties or waivers, described in sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, have been imposed within the previous two years. Other commenters requested that we revise our regulation to reflect more closely the wording of the statutory provision, which states that programs offered by or in certain facilities cannot obtain State approval, instead of specifying that the State must withdraw approval of a facility-based NATCEP.

Response: Because sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act clearly prohibit approval of programs offered by or in a facility described in those sections, we cannot allow States to approve any program that operates in such a facility. We have accepted the suggestion to use the wording of the statutory provision because we believe it improves the clarity of these regulations, and have revised § 483.151(e)(1) to indicate that the State must withdraw approval of a NATCEP or CEP if it is offered by or in a facility against which penalties or waivers, described in sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, have been imposed.

Comment: One commenter asked if these provisions would apply to a facility that had changed ownership.

Response: When a facility changes ownership, all sanctions levied against the facility prior to the change continue to apply. Therefore, these provisions apply to facilities that undergo a change in ownership.

Comment: Several commenters asked us to include various specific program approval and program performance provisions contained in the State Operations Manual and State Medicaid Manual instructions (see Transmittals 223 and 62, respectively) in the final regulations.

Response: We have implemented requirements for CEPs and NATCEPs in sections 1819(f)(2) and 1919(f)(2) of the Act in §§ 483.152 and 483.154. Many of the areas required to be reviewed by the State Operations Manual and the State Medicaid Manual instructions are included in the requirements in these sections of our regulations. We believe that the additional detail in the instructions, which were intended as guidance for States to consider in designing programs, is inappropriate for inclusion in regulations. Additionally, we believe that States will develop their own additional criteria for program performance, and we wish to allow them as much flexibility as possible in this regard.

Comment: One commenter wanted student comments to be considered when program approval is withdrawn.

Response: We believe that States should have maximum flexibility in determining which programs they will allow to operate, and have therefore mandated only general requirements. We will allow States to develop their own specific review criteria.

Comment: A few commenters requested clarification of § 483.151(e)(2), which specifies that States may withdraw approval of a NATCEP or CEP that is out of compliance with any of the requirements for those programs. One commenter believed that we should require States to withdraw approval of any program that failed to meet any of the requirements for these programs instead of allowing States the option to do so.

Response: We have continued to allow States the option to withdraw approval of NATCEPs and CEPs that do not meet the requirements of §§ 483.152 and 483.154, respectively because we believe that States should have flexibility to develop standards for

withdrawing approval of programs that do not meet the requirements.

Comment: A few commenters had concerns about the requirement in the NPRM that specified that States must withdraw approval of a program in an entity that refuses to allow unannounced visits. A few commenters suggested that the unannounced visits should be incorporated into the annual certification survey. One commenter believed that unannounced visits should be required for both facility-based and non-facility-based programs. One commenter believed that unannounced visits are an inappropriate way of determining the quality of training and competency evaluation programs.

Response: We believe that unannounced visits are an appropriate and useful tool for determining the ongoing quality of a program and have therefore retained the requirement as written in the NPRM. We believe that the unannounced visits could be incorporated into the annual certification survey, but because entities other than the survey and certification agency may be responsible for review and approval of NATCEPs, the State may want the entity responsible for review and approval to perform the unannounced visits. We have not distinguished between facility-based and non-facility-based programs for purposes of this requirement; both types of programs must accept unannounced visits.

Comment: Several commenters requested that we provide a mechanism for ensuring that approval is withdrawn from programs of poor quality. A few commenters suggested that failure rates on the competency evaluation should be used as a measure of program quality. One commenter suggested that we require States to develop performance standards for NATCEPs.

Response: States are permitted great flexibility in approving programs, and we believe that they should have similar flexibility in withdrawing approval. We believe that States will withdraw approval from poor programs regardless of whether we specify a specific mechanism to be used. We are not specifically requiring that States develop performance standards for programs (and we have not specified particular measures of program quality) because we believe that States will develop standards even in the absence of a Federal requirement and wish to allow them as much flexibility as possible in this regard.

Comment: Several commenters asked that we provide requirements for withdrawal of program approval. Many of these commenters suggested that States provide written notice indicating the reason(s) for withdrawal of program approval, and that students who had already started a program should be allowed to complete it.

Response: We agree with these comments and have added a provision in § 483.151(e) specifying that the notice of withdrawal of program approval must be in writing and must specify the reason(s) for withdrawal of approval and that students who are in a program at the time approval is withdrawn will be allowed to complete it.

Section 483.151(c) Time for Acting on a Request for Approval

Summary of NPRM Provisions

Paragraph (c) of 483.151 specified that a State must, within 90 days of the date of a request under paragraph (a)(3) of § 483.151 or receipt of additional information from the requester, advise the requester of the action taken by the State on the request, or request additional information from the requesting entity.

Comments and Responses

Comment: Many commenters suggested that States be allowed less time to review a program because facilities need more timely responses. The alternative number of days suggested ranged from 10 days to 60 days. A few commenters were pleased with the time limit specified in the NPRM.

Response: Although we understand facilities' desire to receive an immediate response to a request for approval, we have retained the time limit specified in the NPRM because we believe it may reasonably take 90 days to approve a program, especially since a visit to the training site may be necessary.

Comment: One commenter believed that we should clarify that a State must actually have made a decision on whether to approve a program within 90 days unless additional information is required.

Response: We agree and have clarified this requirement in § 483.151(c) to specify this.

Section 483.151(d) Duration of Approval

Summary of NPRM Provisions

Paragraph (d) of § 483.151 specified that a State may not grant approval of a NATCEP for a period longer than two years.

Comments and Responses

Comment: Many commenters had suggestions on the duration of approval for NATCEPs and CEPs. A few commenters stated that approval should be on an annual basis and should coincide with annual surveys. Several others requested that approval be effective for a longer period of time than the two years specified in the NPRM and cited various reasons. A few commenters stated that programs meeting certain additional requirements should be allowed to have longer approval periods. Some indicated that re-approval should only be required when there are changes to a program. Several commenters agreed that a two-year approval period was appropriate. Finally, one commenter agreed that review of programs should occur every two years but stated that approval should not necessarily expire.

Response: We continue to believe that two years is the maximum approval period a program should have in order to preserve the intent of the nurse aide requirements of maintaining the quality and integrity of NATCEPs. We have therefore retained this provision in our final regulations but have clarified it to indicate that a program must also be reviewed when there are substantive changes to the program. We believe that a review when there are substantive changes to the program is necessary to ensure that the program continues to meet the requirements of §§ 483.152 and 483.154.

Comment: One commenter suggested that re-approval be required when ownership of a program changes.

Response: We do not believe that a change in ownership will necessarily result in a substantive change in a program and have therefore not accepted this suggestion. However, if substantial changes do occur, then a review would be required under § 483.151(d)(2).

Summary of Changes to Section 483.151

In response to comments, in addition to minor technical or editorial changes, we are making the following changes:

- To more accurately reflect the scope of this section of the regulation, we are revising the section title to read "State review and approval of nurse aide training and competency evaluation programs and competency evaluation programs."
- We have clarified § 483.151(a)(1) to indicate more clearly that it is a State option to offer NATCEPs and CEPs.
- After further analysis of sections 1819(e)(1) and 1919(e)(1) of the Act, we are not making final proposed § 483.151(a)(2).
- In § 483.151(b)(1)(iii), we are not making final the proposed requirement

for an initial pre-approval site visit for NATCEPs.

- We are revising § 483.151(b)(2) to indicate that States may not approve a NATCEP or CEP offered by or in a facility against which a penalty or waiver, described in sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act, has been imposed.
- In § 483.151(b)(3), we are adding a requirement prohibiting States from approving NATCEPs and CEPs offered by or in a facility against which an action(s) described in section 4008(h)(1)(F)(ii) or section 4801(a)(6)(B) of OBRA '90 has been levied until two years from the date the action(s) was imposed has elapsed.
- In § 483.151(c)(1), we have clarified that States must inform a requestor whether or not a program has been approved.
- In § 483.151(d), we are adding a provision that a facility must notify the State and the State must review that facility's program when there are substantive changes made to the facility's NATCEP within a 2-year approval period.
- We are revising § 483.151(e)(1) to indicate that States may not approve a CEP or NATCEP offered by or in a facility described in § 483.151(b) (2) or (3).
- In § 483.151(e)(4), we are adding a provision that the State may withdraw approval of a NATCEP with an unusually high student failure rate on the evaluation.
- In § 483.151(e)(5), we are adding a provision that if a State withdraws approval of a NATCEP or CEP, the State must notify the facility in writing and must allow students who have started a NATCEP from which approval has been withdrawn to complete the course.

Section 483.152 Requirements for Approval of a Nurse Aide Training and Competency Evaluation Program

Summary of NPRM Provisions

Section 483.152 specified the minimum requirements for State approval of a NATCEP, and lists the curriculum requirements for NATCEPs. It also specified the prohibition of charges for individuals enrolled in a NATCEP.

Comments and Responses

General

Comment: One commenter believed that only individuals who are actually employed in a facility should be allowed to take a NATCEP.

Response: We believe that such a requirement is discriminatory and would lead to shortages of nurse aides. We also believe it is inappropriate to restrict access to NATCEPs. We note that one commenter agreed with this position.

Comment: One commenter requested that all high school students who complete a health occupations course be certified as meeting the nurse aide requirements.

Response: A program must meet the requirements in § 483.152 to be approved by the State, and we are not confident that all health occupations courses meet these requirements.

Comment: Several commenters requested that we protect nurse aides against programs that are not approved by the State or that we provide a mechanism for informing prospective nurse aides of the types and costs of programs. One commenter believed that we should require all trade and proprietary schools to provide written notice to students advising them of Federal and State laws for nurse aide training, especially those laws relating to prohibition of charges for programs and requirements to be listed on the nurse aide registry.

Response: We believe it is inappropriate for us to require that such information be provided to nurse aides because such protection is within the purview of the State. We do agree, however, with the intent of the comments and encourage all States to inform individuals that they must complete a State-approved NATCEP or CEP to be employable by a facility and to protect students from non-approved programs when possible. We note that § 483.154(A) does require States to notify individuals that successful completion of a CEP will result in placement on the nurse aide registry.

Comment: One commenter suggested that we require NATCEPs to have an appeals process for disputes regarding training and testing.

Response: While we agree that it may be useful for individual NATCEPs to have processes for resolving disputes, we believe that dispute resolution could also be accomplished through non-NATCEP entities. We have not established a process for resolving disputes regarding training because we wish to allow States maximum flexibility in determining what methods of dispute resolution they will use or require.

Comment: A number of commenters requested that we require students in a NATCEP to be distinguishable from other nurse aides for easy identification when on duty in a facility.

Response: Sections 1819(b)(5) and 1919(b)(5) of the Act restrict the activities of student nurse aides but do not require that they wear distinctive identification tags. We believe that such a requirement goes beyond the statutory requirements for nurse aides and would be inappropriate in our regulations.

Comment: Some commenters asked that we require nurse aide orientation in addition to the training program.

Response: We believe that providing orientation to students is standard practice for educational programs and that it is not necessary to place such a requirement in our regulations.

Section 483.152(a)

Summary of NPRM Provisions

Paragraph (a) of § 483.152 specified that for a NATCEP to be approved by the State, it must, at a minimum—

- Consist of no less than 75 hours of training;
- Include at least the subjects specified in § 483.152(b);
- Include at least 16 hours of supervised practical training;
- Meet the requirements specified in § 483.152(a)(4) for instructors who train nurse aides; and
- Contain competency evaluation procedures as specified in § 483.154.

Comments and Responses

Comment: A few commenters suggested that the number of required hours for training programs be changed. Some commenters suggested 30 hours instead of the 75 hours specified in the NPRM. Others believed that 75 hours was insufficient to adequately train a nurse aide. A few commenters asked that we clarify whether the 75 hours of required training were 60 minute clock hours or 50 minute classroom hours.

Response: Sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Act clearly indicate that our requirements for NATCEPs must specify that such programs are at least 75 hours duration. These provisions do not allow HCFA the flexibility to change the number of required hours for training programs to less than 75 hours. We have clarified in § 483.152(a)(1) that a nurse aide training program must consist of no less than 75 clock hours of training.

Comment: A number of commenters believed that NATCEPs should not be required to contain competency evaluation procedures because States cannot delegate competency evaluation to facilities. A few commenters suggested that we specify in the regulations that a facility has a responsibility to the students in its training program until the competency evaluation is completed.

Response: The NATCEP requirements in sections 1819 and 1919 of the Act address only training and competency

evaluation programs for nurse aides, not training programs alone. Therefore, we will continue to require that NATCEPs contain competency evaluations which meet the requirements in § 483.154. Although facilities are not permitted to perform competency evaluations for the nurse aides they train, they clearly need to be aware of the competency evaluation procedures as part of their planning and implementation of training programs. Also, because a NATCEP is not completed until the competency evaluation program is completed, it is reasonable to state that the NATCEP has a responsibility to be available to answer questions from its students until the competency evaluation has been completed.

Comment: A number of individuals commented on the required hours of supervised practical training. A few commenters agreed with the 16 hours proposed in the NPRM. Several others recommended additional hours of supervised practical training ranging from 30 to 75 hours. Some commenters asked that we specify in our regulations that students may not perform services for which they have not been trained and found competent. One commenter asked that we state specifically that students be allowed to perform only those services for which they have been trained. Several commenters indicated that all services provided by students should be supervised. One commenter indicated that experienced nurse aides should be allowed to supervise students after the initial 16 hours of training.

Response: We believe that many of the curriculum requirements in § 483.152(b) can be met through several different methods, including supervised practical training. We have not required additional hours of supervised practical training because we believe that programs should have flexibility in determining what teaching methods to use. We have added a provision to § 483.152(a) requiring that a NATCEP ensure that students do not perform any services for which they have not been trained and found proficient by the instructor and that all students in a NATCEP be under the general supervision of a licensed or registered nurse when they are performing services for residents. We do not believe that an experienced nurse aide is qualified to supervise students.

Comment: Some commenters had suggestions on the proper setting for supervised practical training. A few commenters believed that supervised practical training should be performed only in a facility, while others requested that we allow it in a laboratory setting.

Response: We believe it is overly restrictive to require that supervised practical training be performed only in a facility. We have retained the provision in the NPRM, which specifies that supervised practical training may be performed in a laboratory or other setting, because we believe that this provision allows for maximum flexibility in practical training methods.

Comment: A few commenters requested that we clarify the meaning of "direct supervision" for purposes of § 483.152(a)(3).

Response: "Direct supervision" means that a licensed nurse or registered nurse is actually observing students performing tasks.

Comment: One commenter requested that we allow training to occur on the floor of the facility rather than in the classroom. Several other commenters requested that we specify the ratio of clinical training hours to classroom training hours and suggested appropriate ratios. One commenter expressed displeasure in the cutback of clinical training hours.

Response: We believe that training can be successfully performed in many different locations. To allow maximum flexibility in the development and approval of programs, we have not specified that training must be performed in a classroom rather than on the floor of a facility or that there be a particular ratio of hours of clinical training to hours of classroom training.

Comment: In the NPRM, we requested public comment on the credentials that instructors in NATCEPs should be required to have, and received many comments on this issue. Most commenters believed that licensed nurses were capable of instructing nurse aides. A large number of commenters believed that licensed nurses, generally supervised by the director of nursing, a registered nurse, or other individuals in a facility, could properly instruct nurse aides. Several commenters suggested that a licensed nurse should be allowed to be an instructor in facility-based programs only, while others believed that we should require the same instructor credentials for facility-based and non-facility-based programs. A few commenters requested that we require instructors to meet the guidelines contained in the State Operations Manual Transmittal 223 and the State Medicaid Manual Transmittal 63 guidance. Some commenters suggested that licensed nurses be instructors only if they had sufficient experience in nursing or instructing nurse aides. A few commenters believed that licensed nurses should provide instruction only in certain areas or that registered nurses must provide certain training. A few commenters believed that only a registered nurse was qualified to provide training, or stated that State law did not allow licensed nurses to teach. One commenter suggested that registered nurses could provide training under the general supervision of the director of nursing or assistant director of nursing. Several commenters suggested that licensed nurses could be supplemental instructors. A few commenters suggested grandfathering in licensed nurses currently providing instruction. Several commenters asked that the requirements for instructors of nurse aides and instructors of home health aides be identical to facilitate the development of uniform programs.

Response: After considering the comments, we have retained the NPRM's provision which requires nurse aide training to be performed by or under the general supervision of a registered nurse. This provision allows licensed nurses to act as instructors in NATCEPs as long as a registered nurse maintains responsibility for the program and is available to provide instruction in areas in which a licensed nurse may lack technical expertise. We have not differentiated between credentials for instructors in facility-based and non-facility-based programs because we believe that the same level of expertise is required in both settings. We believe that it is unnecessary for instructors who are registered nurses to be supervised. Also, we have not permitted licensed nurses with additional experience in nursing or instructing nurse aides to supervise programs because we believe that the knowledge base of a registered nurse is necessary to supervise a program. We note that these credentials are the same as those for home health aide instructors. Although the statutory requirements in section 1891(a)(3) of the Act for home health aide training are sufficiently different from the nurse aide training requirements to prevent a single set of Federal requirements for training both nurse aides and home health aides, we would like the requirements to be as similar as possible to allow for the possibility of unified programs.

Comment: A few commenters asked that we clarify the difference between general supervision and performing training.

Response: Performing training is the actual teaching of course material. General supervision is providing necessary guidance for the program and maintaining ultimate responsibility for the course.

Comment: Several commenters provided suggestions about the amount and type of experience instructors should be required to have. Commenters' suggestions on the amount of experience an instructor should have ranged from no experience to four years. Some commenters believed that only general experience should be required, or that experience in geriatrics, rehabilitation nursing, adult care, care of the chronically ill, or care of the cognitively impaired should be required in addition to or instead of general experience in long-term care facility services. A few commenters suggested various alternatives that we could require instead of actual experience. A couple of commenters agreed with the experience requirement proposed in the NPRM.

In addition, a number of commenters believed that all instructors of nurse aides should be required to have some kind of expertise in teaching. Commenters' suggestions ranged from requiring instructors to have completed a course in teaching adults to requiring experience in adult education. One commenter suggested that we phase in this requirement by 1993. One commenter believed that HCFA should require evaluation of instructors.

Response: We have retained the requirement in § 483.152(a)(4) (now redesignated as § 483.152(a)(5)) that the registered nurse required to perform or supervise the training should have a minimum of two years of experience, at least one year of which is in the provision of long-term care facility services. We believe that this type and amount of experience is necessary to assure proper instruction of nurse aide students. We have not provided any substitutions for experience because we believe that any such substitutions would be inferior to experience. We note, however, that licensed nurses providing training under the general supervision of a registered nurse with training and experience need not meet this requirement.

We agree that all instructors of nurse aides should be required to have some kind of expertise in teaching or otherwise instructing nurse aides and have added a requirement in § 483.152(a)(4) (now redesignated as § 483.152(a)(5)) that nurse aide instructors must have completed a course in teaching adults or must have experience in teaching adults or supervising nurse aides. We have not provided any delay in implementation of this requirement because we do not believe it will cause a hardship on instructors or facilities providing nurse aide training programs. We have not required that States evaluate instructors because we believe that there are many other ways of ensuring quality programs, and we wish to allow States flexibility in this area.

Comment: A few commenters suggested that all instructors be required to be on a State roster.

Response: We believe that establishing and maintaining a roster of all nurse aide instructors would be expensive and burdensome for States and have therefore not accepted this comment.

Comment: A number of commenters were concerned about permitting directors of nursing (DONs) to perform or supervise nurse aide training. Many commenters supported allowing the DON to supervise training, but others were concerned that allowing the DON to perform training would take him or her away from other important duties. Some commenters suggested that, if DONs are allowed to train, we should require that there be sufficient staff available to ensure that all of the DON functions are being met. One commenter believed that allowing a DON to conduct or supervise training would violate the requirement that the DON be a full-time position. A few commenters said that DONs should not conduct or supervise nurse aide training because there should be a separate registered nurse for staff development.

Response: We have retained the provision to allow DONs to supervise nurse aide training. However, we have added an additional provision to § 483.152(a)(4) (now redesignated as § 483.152(a)(5)) to prohibit DONs from performing the actual training because we believe that allowing a DON to train would take too much time away from patient care and other duties. Permitting a DON to supervise training does not relieve a facility of its responsibility to have sufficient staff to perform all duties. Because the long-term care requirements at 42 CFR part 483, subpart B, specify only that a facility must have a full-time DON, not the duties that individual must perform, permitting a DON to supervise nurse aide training does not violate the long-term care requirement. We have not required that facilities who have training programs have a separate registered nurse for staff development because we believe that many facilities may have difficulty recruiting such an individual and because we believe that such a requirement could be costly for facilities.

Comment: A few commenters requested that we require all NATCEPs to supplement the instructor with other health professionals. One commenter asked that we allow supplementation at the discretion of the instructor. A few commenters requested that we require various levels of experience for supplemental personnel.

Response: We have not required the use of supplemental personnel because we do not believe that the participation of such individuals is required to produce competent nurse aides. However, we have continued to give NATCEPs the option of allowing supplemental personnel to assist in their programs because we believe that the use of such individuals can enhance the training of nurse aides. We agree that supplemental personnel should be required to have a certain level of experience and have revised § 483.152(a)(4) (now redesignated as § 483.152(a)(5)) to require all supplemental personnel to have at least one year of experience in their respective fields. We believe that one year of experience is required to ensure a certain level of expertise but believe that a more stringent requirement might unnecessarily curtail the use of supplemental personnel.

Comment: Several commenters suggested that we add individuals from various health professions to the list of personnel who may supplement the instructor.

Response: While we agree that instruction from individuals from the professions suggested could be useful, the list in our regulations is not intended to be exhaustive and does not preclude professionals who are not on the list from participating in the training of nurse aides. As long as the individual meets the requirements for nurse aide instructors, he or she would be eligible to supplement the primary instructor.

Comment: One commenter asked what types of professionals would qualify as resident rights experts.

Response: Individuals from many different professions, including ombudsmen, medical records practitioners, and nursing home administrators, could serve as residents rights experts. Other individuals, especially residents and family members, could also be expert in residents' rights. The regulation places no restrictions upon the individuals who may provide this instruction.

Section 483.152(b)

Summary of NPRM Provisions

Paragraph (b) of § 483.152 specified the curriculum requirements of nurse

aide training programs. The requirements include—

- At least a total of 16 hours in areas specified in § 483.152(b)(1) (i) through (v);
- Basic nursing skills as specified in § 483.152(b)(2) (i) through (v);
- Personal care skills as specified in § 483.152(b)(3) (i) through (viii);
- Mental health and social service needs as specified in § 483.152(b)(4) (i) through (v);
- Care of cognitively impaired residents as specified in § 483.152(b)(5) (i) through (v);
- Basic restorative services as specified in § 483.152(b)(6) (i) through (vi); and
- Resident's rights as specified in § 483.152(b)(7) (i) through (vi).

Comments and Responses

Comment: One commenter believed that HCFA should require a national curriculum.

Response: Sections 1819(e) and 1919(e) of the Act require States to approve programs that meet the requirements for CEPs and NATCEPs. Our requirements for CEPs and NATCEPs are general in nature because we believe that States should have the flexibility to add to the requirements in accordance with their individual needs and preferences.

Comment: A few commenters believed that the level of knowledge required for the curriculum in § 483.152(b) was too difficult for nurse aides.

Response: We believe that this level of knowledge is essential for an individual to be a competent nurse aide as did many commenters who expressed general agreement with the curriculum requirements contained in § 483.152(b).

Comment: Several commenters suggested that we require training in certain specific subjects, such as measurement of fluid intake and recognition of fecal impactions, or that we require a greater emphasis on certain areas, e.g., infection control or specialized communication skills. One commenter requested that the care of the cognitively impaired should be integrated into each segment of the curriculum, not just § 483.152(b)(5).

Response: Many topic areas must be covered in a short time frame during a nurse aide training and competency evaluation program. We believe that our requirements should be general in nature to allow for maximum flexibility. While we agree that the care of cognitively impaired residents needs to be covered during the course of a training program, we do not believe it is appropriate to integrate care of cognitively impaired residents into all curriculum segments.

Comment: One commenter believed that HCFA overstepped its statutory mandate to develop requirements for nurse aide training and competency evaluation programs by requiring that the topics in the subject areas at § 483.152 (b)(2), (b)(3), (b)(4), (b)(5), (b)(6), and (b)(7) be covered.

Response: Sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Act require the Secretary to develop requirements for approval of NATCEPs and specify the minimum topic areas to be included in those requirements. However, by specifying only the minimum topic areas to be included, the statute allows the Secretary to include other topics that we believe are necessary to ensure that nurse aides have the education, practical knowledge, and skills needed to care for residents of facilities properly. The Secretary may also specify other topics under the authority granted in sections 1819(d)(4), 1819(f)(1), 1919(d)(4), and 1919(f)(1) of the Act.

Comment: One commenter requested that we require education on AIDS/HIV or other blood-borne diseases.

Response: We believe that this area is subsumed in the infection control category and have therefore not accepted this comment. If a facility has a resident who has the AIDS virus or is HIV positive or has other blood-borne diseases, that facility may need to provide additional information to all of its employees.

Comment: One commenter requested that we include a section in our regulations on the limitations of nurse aide practice.

Response: We believe that limits on nurse aide practice are, at least in part, determined by individual facilities as well as by individual State nurse practice acts. We believe that it is a facility's responsibility to inform all new nurse aides of their roles within the facility.

Comment: A large number of commenters remarked on cardiopulmonary resuscitation (CPR). Most commenters indicated that CPR certification should not be required as part of the NATCEP. A few commenters suggested that we require knowledge of CPR but not CPR certification. One commenter suggested that we recommend but not require CPR. One commenter believed that HCFA should require CPR if the 75 hours were expanded or should require it to be taught in the first six months of in-service. One commenter believed that a certain percentage of nurse aides should be required to be trained in CPR. Some suggested that NATCEPs be required to instruct students on varying resident opinions about heroic measures. A few commenters believed that CPR should be required. One commenter requested that we require facilities to inform residents about their policies regarding CPR at the time of admission. One commenter suggested that HCFA delay a decision on whether to require CPR until after consideration of additional issues.

Response: We have not required that NATCEPs include training in CPR because we do not believe that nurse aides perform CPR frequently enough to justify the time it would take from other areas of the training and competency evaluation program. However, we have not prohibited that it be taught and note that it may well be included among the emergency procedures listed at § 483.152(b)(1)(iii). We also note that if a facility allows its nurse aides to perform CPR, the facility must ensure that they are competent to perform CPR. We have not included a specific requirement for facilities to inform residents of their policies on CPR at the time of admission because we already require facilities to inform residents of facility policies (see 42 CFR 483.12).

Comment: Many commenters had concerns about § 483.152(b)(1), which specifies the amount and types of training a student in a NATCEP must have before direct contact with a resident. Some commenters said that we should require no training prior to resident contact or that we should require less than the 16 hours proposed in the NPRM. Others agreed with the requirement as proposed. A few commenters believed that students should receive more training before direct contact or that students should not be allowed to have direct contact with residents until the course is complete. One commenter asked us to define "direct contact" for purposes of § 483.152(b)(1). Finally, one commenter requested that we state the broad goals behind requiring training before contact with a resident.

Response: We have retained the requirement for 16 hours of training before direct contact with a resident. We believe that basic training before contact with residents is necessary to safeguard residents. We have not increased the amount of training required before contact with residents because we believe that resident contact during the training process can be a useful learning tool for students and can be beneficial to residents as well. We note that we have required that students be competent to perform any services they are providing for residents, and

that a registered nurse or licensed nurse must provide general supervision for all students (see § 483.152(a)(4)). We define "direct contact" as any activity that requires physically touching a resident.

Comment: A few commenters suggested different topics for the initial training specified in § 483.152(b)(1) or suggested that more topics be covered. Other commenters indicated that the Heimlich maneuver should be required.

Response: We believe that overall coverage of the topics listed in § 483.152(b)(1) is sufficient to prepare students for direct contact with residents. However, we agree that the Heimlich maneuver should be required and have added it to § 483.152(b)(1)(iii) under Safety/emergency procedures. Aides frequently feed residents or assist residents in eating. The Heimlich maneuver takes little time to learn, and we believe that requiring it could save lives.

Comment: A few commenters asked that we clarify in our regulations that the training specified in § 483.152(b)(1) does not include orientation.

Response: We believe it is clear from the provision in § 483.152(b)(1) that the 16 hours of initial training must be in the areas specified. We did not explicitly include or exclude orientation from the overall training curriculum because, while sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Act require that the program be at least 75 hours and authorize establishment of a minimum curriculum, they do not limit the content of the training nor the length of time allowed to provide it.

Comment: One commenter believed that the range of services that a student can perform should be limited.

Response: We have not accepted this comment because students are already appropriately limited by their own demonstrated proficiency. We believe that students should be allowed to perform any services for which they have been trained and judged proficient by the instructor as long as they are supervised as required in § 483.152(a)(4) of the final rule.

Comment: A few commenters indicated that recognition of signs and symptoms of common diseases and conditions is beyond the scope of nurse aides. One commenter requested that we delete this provision. One commenter suggested that we not qualify recognition of signs and symptoms.

Response: For clarification, we have revised this provision in § 483.152(b)(2) to indicate that nurse aide training and competency evaluation programs must teach recognition of abnormal changes in body functioning and the importance of reporting such changes to a supervisor.

Comment: One commenter believed that proposed § 483.152(b)(4), Mental health and social service needs, required too much psychology for a nurse aide.

Response: Sections 1819(f)(2)(A)(i) and 1919(f)(2)(A)(i) of the Act require that mental health and social service needs of residents be addressed in NATCEPs. After considering the comments, we have modified some of the requirements in § 483.152(b)(4), and we believe that the final requirements reflect an appropriate knowledge level for nurse aides.

Comment: A few commenters stated that identifying age-associated developmental tasks is beyond the scope of nurse aides. One commenter suggested that we require NATCEPs to teach nurse aides that age-associated developmental tasks exist and to teach them to be aware of their impact on residents.

Response: We have accepted this suggestion and have revised § 483.152(b)(4) to require that NATCEPs must teach awareness of age-associated developmental tasks.

Comment: Many commenters indicated that modifying, identifying, managing, and changing behavior are beyond the scope of a nurse aide. One commenter suggested removing the requirement to modify aides' behavior in response to residents' behavior. Commenters suggested a variety of alternatives, most of which emphasized teaching communication skills and appropriate nurse aide responses to resident behavior. A few commenters suggested that this provision in § 483.152(b)(4) be narrowed to behavior of individuals with dementia. A few commenters suggested that we permit behavior modification in accordance with the resident's care plan.

Response: We agree that identifying the need for and planning a program of behavior modification is beyond the scope of a nurse aide. We have changed this requirement in § 483.152(b)(4) to indicate that nurse aides must be taught how to respond to resident behavior, i.e., how to carry out behavior modification planned by a skilled professional. We have not added a specific requirement for communication skills to this provision because we already require under § 483.152(b)(1)(i) that NATCEPs cover communication skills. We have not narrowed this provision to responding to residents with dementia because we believe that nurse aides should know how to respond to the behavior of all residents, and there is already a specific portion of the training devoted to individuals with cognitive impairments. Finally, we have not accepted the suggestion to teach behavior modification in accordance with the resident's care plan. We believe it is sufficient that nurse aides are taught how to response to resident behavior.

Comment: One commenter suggested that we change the requirement that nurse aide training and competency evaluation programs teach understanding the behavior of cognitively impaired residents to understanding the underlying causes of cognitive impairments. A small number of commenters suggested that we delete the requirement to teach reducing the effects of cognitive impairments from the curriculum.

Response: We believe that an understanding of the behavior of cognitively impaired residents would include an understanding of the underlying causes of cognitive impairments, but that the reverse would not necessarily be true. We believe that an understanding of the behavior of cognitively impaired residents is important knowledge for nurse aides to properly care for residents of facilities. Likewise, we believe that methods of reducing the effects of cognitive impairments are also important knowledge for nurse aides.

Comment: A few commenters suggested that we require nurse aides be trained in promoting resident self care rather than training residents in self care.

Response: We have not accepted this comment because we believe that many residents may need retraining in how to care for themselves. Nurse aides should know how to provide this retraining.

Comment: A number of commenters believed that providing assistance in resolving disputes and grievances is not a nurse aide function. Several commenters suggested that we require training in reporting or seeking assistance in resolving disputes and grievances or that we restrict the training in dispute resolution to that required of a nurse aide.

Response: We agree that dispute resolution is not a skill that all nurse aides will need. However, we do not believe it is necessary to require training in how to report a dispute. We have therefore deleted this requirement from the final regulations.

Comment: A few commenters suggested that we require training in understanding care and security of residents' personal possessions rather than in maintaining care and security of residents' personal possessions.

Response: We do not see any advantages in requiring training in understanding care and security of residents' personal possessions rather than in maintaining care and security of residents' personal possessions.

Comment: A few commenters suggested that we change the NPRM provision indicating that NATCEPs should provide instruction in providing care that maintains the resident free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff. One commenter was unclear on how to implement this requirement. Some commenters suggested that we require only training in the need to report abuse, mistreatment, and neglect to appropriate facility staff. Others requested that students be trained in promoting the resident's right to be free from abuse, mistreatment, and neglect.

Response: We have revised this requirement in § 483.152(b)(7) to indicate that NATCEPs must teach promotion of the resident's right to be free from abuse, mistreatment, and neglect. We believe that this language more clearly expresses our intent, which is to ensure that nurse aides do not abuse, mistreat, or neglect residents.

Comment: A number of commenters suggested that we alter our provision regarding use of restraints. Many commenters suggested that we not mention restraints in our curriculum requirements. Others suggested that we stress the need to instruct nurse aides on restraint-proper environments. A few commenters suggested that we require instruction on how to reduce or avoid restraints as indicated in the resident's care plan. A few commenters suggested instruction on the resident's right to be free from restraints except when imposed to ensure the safety of the resident or others. One commenter was unclear on how to implement this requirement. Finally, one commenter suggested that students should be instructed in reasons not to use restraints and alternatives to restraints.

Response: After consideration of these comments, we have revised § 483.152(b)(7) to specify that NATCEPs must provide instruction on the need to avoid restraints in accordance with current professional standards. The use of restraints is the subject of another proposed rule, and we would like our requirements to be flexible enough to allow for the curriculum to be updated.

Section 483.152(c) Prohibition of Charges, and Section 483.154(c)(2)

Summary of NPRM Provisions

Paragraph (c) of § 483.152 specified that no nurse aide may be charged for any portion of a NATCEP, including any fees for textbooks or other required course materials.

Paragraph (c) of § 483.154, Nurse aide competency evaluation, specified that no charges for the competency evaluation may be imposed on any nurse aide.

Comments and Responses

Comment: A number of commenters requested clarification of the requirement that States may not approve NATCEPs or CEPs that charge nurse aides for any costs for the program. Several commenters requested that this provision be deleted and indicated a variety of difficulties that would arise if it were required. Commenters also proposed a variety of alternatives to this provision. A large number of commenters requested that this provision be clarified to indicate that the prohibition against charges should only apply to individuals who meet the definition of a nurse aide. Several commenters asked us to allow aides to be reimbursed for the costs of NATCEPs rather than prohibiting State approval of programs that charge nurse aides. These commenters believed that providing for nurse aides to be reimbursed after a specified period of time was tantamount to prohibiting charges. A few commenters agreed with the requirements as written.

Response: The provisions at §§ 483.152(c) and 483.154(c)(2) are required by sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act. Sections 4008(h)(1)(E) and 4801(a)(5) of OBRA '90 have clarified these sections of the Act to indicate that the individuals who cannot be charged for any costs related to a NATCEP or CEP are those nurse aides who are employed by, or who have an offer of employment from, a facility. We have incorporated this change in our regulations. We are not permitting nurse aides who are employed by, or who have an offer of employment from, a facility to be reimbursed for the costs of NATCEPs and CEPs because we believe the law clearly prohibits the approval of programs that charge these individuals, regardless of whether they are later reimbursed. However, we stress that FFP can be available for any State-approved program, not only programs operated by the facilities that employ the nurse aides. Additionally, we note that sections 4008(h)(1)(E) and 4801(a)(5) of OBRA '90 require that those nurse aides who do not have an employment relationship with a facility at the time they enter a CEP or NATCEP but who become employed by, or who obtain an offer of employment from, a facility not more than 12 months after completion of the program must be reimbursed for the costs of the program by the State on a pro rata basis for the period during which they are employed as nurse aides. This means that States must provide for reimbursement of costs over a reasonable period of time while the individual is employed as a nurse aide. Payments stop when the individual ceases to be employed as a nurse aide. We have also added this requirement to our regulations.

Comment: One commenter asked that facilities and other entities that conduct NATCEPs be allowed to charge nurse aides for makeup time if the aides miss class.

Response: Sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act do not allow States to approve programs that charge nurse aides for any part of the program, including makeup classes. We believe it would be inappropriate for us to allow for such charges in our regulations.

Comment: One commenter asked that we allow facilities to have contracts that indicate that nurse aides will have to repay the facility for their training if they do not remain with the facility for a specified period of time.

Response: The cost of nurse aide training and competency evaluation is borne by the Medicare and Medicaid programs. It is inappropriate for a facility to ask a nurse aide to repay the facility for an expense for which it has already been paid.

Comment: A number of commenters had questions or comments on the application of these provisions to facility-based and non-facility-based NATCEPs. Several commenters either requested clarification of whether these provisions should apply only to facility-based programs or indicated that we should not require these provisions to apply to non-facility-based programs. A few commenters believed that facility-based programs should be allowed to charge non-employees.

Response: The nurse aide requirements in sections 1819 and 1919 of the Act do not distinguish between facility-based and non-facility-based NATCEPs; therefore, the provisions in §§ 483.152(c) and 483.154(c)(2) apply to both types of programs. No programs that charge fees to any nurse aides who are employed by, or who have an offer of employment from, a facility may be approved by the State.

Comment: A few commenters asked about the effective date for these provisions or wondered if there is a time limit on how long the provisions will apply.

Response: Section 6901(b)(6)(B) of OBRA '89 specifies that these provisions are effective 90 days after OBRA '89 was enacted, or March 19, 1990. Because this provision was inserted into sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act, which contain requirements with which States must comply even in the absence of final Federal regulations, States have been prohibited from approving NATCEPs that charge nurse aides since March 19, 1990. There are no limits on the length of time that these provisions will remain effective.

Comment: One commenter asked that we address the disposition of nurse aides who have been charged for NATCEPs and CEPs.

Response: As long as a nurse aide has successfully completed a NATCEP approved by the State, regardless of whether he or she was charged for that program, he or she must be placed on the nurse aide registry and is employable by a facility.

Comment: One commenter asked whether a facility must pay for a facility-based NATCEP for a nurse aide who does not want to take the program available in the facility in which he or she is employed.

Response: We believe that it is a facility's right to determine where it will train its employees.

Comment: One commenter requested that nurse aides be allowed to pay for CPR certification.

Response: Because we are not requiring that CPR be included in NATCEPs, we have no authority to prevent nurse aides from enrolling in CPR programs at their own expense. However, if CPR is included in a State-approved program, nurse aides may not be charged for it. Also, if CPR is included in a State-approved program, Federal funds may be used to pay for it, just as in the case of other nurse aide training curriculum items.

Comment: One commenter asked how nurse aides will be informed that programs may not charge them.

Response: We believe this comes under the States' purview and have therefore not developed a mechanism for providing nurse aides with this information. However, we do encourage States to make this information known to nurse aides.

Comment: Many commenters requested that programs be allowed to charge nurse aides for repeat competency evaluations.

Response: Sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act specifically require that States may approve no NATCEP or CEP that charges nurse aides. This requirement does not permit us to allow States to approve programs that charge for repeat competency evaluations.

Summary of Changes to Section 483.152

In response to comments, in addition to minor technical or editorial changes, we are making the following changes:

- In § 483.152(a)(4), we have added a provision that requires a NATCEP to ensure that students do not perform any services for which they have not been trained and been found proficient by the instructor, and that students who are providing services to residents are under the general supervision of a licensed or registered nurse.
- In § 483.152(a)(5), we have added a provision that instructors of nurse aides must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides, that directors of nursing not perform the actual nurse aide training, and that supplemental personnel have at least one year of experience in their fields.
- In § 483.152(b), we have deleted several topic areas for the nurse aide curriculum and have added several other topic areas based on comments about the appropriateness or inappropriateness of the topics, as discussed in the comments and responses.
- We have revised § 483.152(c) to indicate that certain individuals may not be charged for NATCEPs and certain individuals must be reimbursed for NATCEPs.
- We have revised § 483.154(c) to indicate that certain individuals may not be charged for CEPs and certain individuals must be reimbursed for CEPs.

Section 483.154 Nurse Aide Competency Evaluation

Summary of NPRM Provisions

Section 483.154 specified requirements for the notification, content, and administration of the nurse aide CEP. It also specified requirements for facility proctoring of the CEP, establishment of standards for successful completion of the CEP, and actions to be taken upon unsuccessful completion of the CEP.

Comments and Responses

General

Comment: One commenter asked when an individual is considered to be in a CEP.

Response: An individual is considered to be in a CEP when he or she is actually in the process of performing the competency evaluation.

Comment: A couple of commenters suggested that HCFA should evaluate national competency evaluations.

Response: The Secretary is required by sections 1819(f)(2) and 1919(f)(2) of the Act to develop requirements for approval of CEPs. States are required by sections 1819(e)(1) and 1919(e)(1) of the Act to review and approve CEPs as meeting the Secretary's requirements. Thus, we believe States should have the freedom to approve any CEPs that meet these requirements. Any Federal approval or recommendation of a CEP could adversely affect this freedom, and we therefore believe it would be inappropriate for us to approve or recommend any national CEPs.

Section 483.154(a) Notification to Individual

Summary of NPRM Provisions

Paragraph (a) of § 483.154 specified that a State must advise in advance any individual who takes the CEP that a record of the successful completion of the CEP will be included in the State's nurse aide registry.

Comments and Responses

Comment: One commenter believed that advance notification indicating that successful completion of the CEP will result in being placed on the nurse aide registry is unnecessary because the registry does not disclose confidential information.

Response: Without this notification nurse aides might not know that they will be placed on the registry. It would be unfair to place individuals on a registry without their knowledge. Also, since prospective nurse aides will be asked whether they are included on the registry, it is important to know that this is so.

Comment: One commenter asked if notification at the time of application to take the competency evaluation would serve as advance notice.

Response: We have not specified at what point the notification must be given, only that it be provided in advance of the competency evaluation. Therefore, notification at the time of application would meet this requirement.

Section 483.154(b) Content of the Competency Evaluation Program

Summary of NPRM Provisions

Paragraph (b) of § 483.154 specified that a written or oral competency evaluation must—

- Allow an aide, at his or her option, to establish competency through methods other than passing a written examination;
- Address each course requirement specified in § 483.152(b);
- Be developed from a pool of test questions, only a portion of which is used in any one examination; and
- Use a system that prevents disclosure of both the pool of questions and the individual examinations.

It also specified that the CEP must include an acceptable demonstration of the tasks the individual will be expected to perform as part of his or her function as a nurse aide.

Comments and Responses

Comment: One commenter believed that the competency evaluation should take place during the training process. Another commenter believed that a CEP is unnecessary if an individual successfully completes a training program.

Response: Sections 1819 and 1919 of the Act refer to a training and competency evaluation program. We therefore believe that a formal evaluation of competency is required separate from the training process.

Comment: A number of commenters requested additional information on or requirements for competency evaluations in foreign languages. A few commenters suggested that States should be allowed to limit the foreign languages in which competency evaluations may be given. Other commenters asked that we use the guidance contained in the State Operations Manual Transmittal 223 and the State Medicaid Manual Transmittal 62. One commenter asked that we clarify the provisions contained in these transmittals.

Response: We have not imposed any requirements regarding competency evaluations in foreign languages because we believe that this is an area in which States should be given discretion. The guidance given in the State Operations Manual and the State Medicaid Manual indicated that competency evaluations should be administered in English unless a nurse aide will be working in a facility where the predominant language is not English. This means that nurse aides who work (or will work) in a facility in which most of the residents speak a particular foreign language could take the competency evaluation in that language. We continue to believe that this is good advice. However, we also believe that States should have the flexibility to decide if and under what circumstances they will allow competency evaluations to be administered in languages other than English.

Comment: A number of commenters asked that we specify the alternatives to a written examination. One commenter asked that States be allowed to decide what alternatives they will accept. A few commenters believed that the alternative to a written examination should be an oral examination. Several commenters believed that we should not allow oral examinations or that we should only allow them under certain circumstances. A few commenters believed that it would be unwise to allow illiterate individuals to become nurse aides. Others expressed concern that it would be difficult to prevent prompting during an oral exam and suggested that either an audio tape or standard pronunciation be used, or that an individual who is unfamiliar with the content of the test read the questions to the individual taking the oral examination. One commenter believed that it would be difficult to develop an oral examination in a multiple choice format. Another commenter believed that oral examinations should not be multiple choice.

Response: Sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act specify that nurse aides must be given the option of establishing competency through methods other than a written examination. We have revised § 483.154(b)(1)(i) to clarify that the alternative to a written CEP is an oral examination. While we can understand concerns about illiterate nurse aides, we believe that an oral examination is a reasonable alternative to a written examination. We have required that oral examinations be read from a prepared text to assure that the questions are read in a neutral manner. We have not required that the examination be pre-recorded on an audio tape because we do not wish to require extra equipment for the administration of the examination. We also have not specified whether an oral examination should be in a multiple choice format because we want to allow facilities flexibility in determining the format for the examination. We have not allowed States to accept additional alternatives to a written examination because we believe that the majority of information required of nurse aides in CEPs can best be tested by an examination.

Comment: Some commenters remarked on the administration of the alternative to the written examination. A few commenters believed that we should allow an alternative to the written examination only when there is a special reason to do so and special requirements are met. Others asked if nurse aides would be allowed to decide which type of examination to take at the time the competency evaluation is administered. One commenter asked if the training entity would be responsible for modifying the examination.

Response: As discussed above, sections 1819(f)(2)(A) and 1919(f)(2)(A) of the Act require that nurse aides be given an alternative to a written CEP. We do not believe that the statute allows for restricting the circumstances under which a nurse aide may choose an oral examination. We have not specified at what point a nurse aide must decide whether he or she will take the oral examination, but we believe that it would be reasonable for States to establish procedures for individuals to make such a decision in advance of the competency evaluation. The entity responsible for administering the competency evaluation is the entity responsible for providing the oral examination.

Comment: A few commenters believed that a CEP should consist of a skills demonstration only, and that a written or oral examination should be an alternative to the CEP. One commenter suggested that either a skills demonstration or an examination should be allowed to constitute a CEP.

Response: We believe that both a skills demonstration and an oral or written examination are necessary to determine if an individual is competent to be a nurse aide. We believe that a nurse aide's ability to perform tasks can best be tested by a skills demonstration, and a nurse aide's knowledge of certain abstract concepts can best be tested by an examination.

Comment: One commenter believed that HCFA is overstepping its authority by requiring that the CEP include all of the curriculum items listed in § 483.152(b). This commenter believed that we should require evaluation only on the statutorily mandated categories.

Response: Sections 1819(f)(2)(A)(ii) and 1919(f)(2)(A)(ii) of the Act require the Secretary to promulgate requirements for CEPs and specify the minimum topics to be included in those requirements. However, by specifying only the minimum subject areas to be evaluated, the statute allows the Secretary to include other topics that we believe are necessary to ensure that

nurse aides are competent to provide nursing and nursing-related services to residents of facilities. The Secretary may also specify other topics under the authority granted in sections 1819(d)(4), 1819(f)(1), 1919(d)(4), and 1919(f)(1) of the Act. Thus, we believe we are not overstepping our authority by requiring that the CEP include all of the curriculum items listed in § 483.152(b).

Comment: Several commenters believed that the CEP should consist of a random sample of the pool of test questions.

Response: We agree and have revised this requirement at § 483.154(b)(iii) to allow for the use of this method.

Comment: One commenter requested we require that examination questions be rotated quarterly. Another commenter observed that interactive video systems, when used as a method of training nurse aides, might not protect against disclosure of test questions.

Response: It is a State's responsibility to protect examinations and approve only those programs that prevent disclosure of both the pool of test questions and the individual examinations. We believe that States should have the flexibility to develop their own methods for protecting examinations and have therefore not placed specific requirements in our regulations.

Comment: Many commenters were concerned that the skills demonstration required inclusion of all of the tasks an individual would be expected to perform in a facility. Most commenters advocated a pool of skills of which a random sample would be demonstrated. Various minimum numbers of tasks were suggested. Commenters believed that requiring all tasks to be demonstrated would be intimidating, or that implementing this requirement would make evaluations too time consuming and costly. A few commenters requested that we delete the skills demonstration portion of the CEP. One commenter believed that we should require a demonstration of all the tasks an individual would be expected to perform. Several commenters believed that demonstrating all of the skills an individual will perform in a facility might be insufficient. A few commenters suggested standards for skills demonstrations. One commenter requested clarification of what is expected in the skills demonstration.

Response: We agree that testing a random sample of skills is an effective method for testing competency. Therefore, we have revised § 483.154(b)(2) to specify that the skills demonstration must consist of a demonstration of randomly selected items drawn from a pool consisting of the tasks generally performed by nurse aides. This pool of skills must include all of the personal care skills listed in § 483.152(b)(3). We note that facilities must ensure that their nurse aides are competent to perform all of the services they are expected to provide, even if these skills are not tested in the CEP. We have not deleted the skills demonstration of the CEP because we believe that demonstrating a skill is the most effective method of determining an individual's competency in that skill. We have not required that an individual demonstrate all of the tasks he or she will be expected to perform in the facility because we believe that performance of a random sampling of the skills is adequate to permit a general inference about an individual's abilities, especially since nurse aides are subject to continuing supervision by registered nurses in the course of their daily duties. We note that we came to a different conclusion with respect to the evaluation of home health aides because they typically perform their duties unaccompanied and unsupervised and thus have fewer opportunities for imperfect skills to be observed and corrected.

Comment: Several commenters had concerns about the use of mannequins in skills demonstrations. Some commenters believed that the use of mannequins should be prohibited in skills demonstrations or that they should be used only when no live subjects are available. A few commenters believed that either mannequins or live subjects would be acceptable. One commenter believed that only mannequins should be allowed. One commenter requested that informed consent forms be signed when residents are used in the skills demonstration.

Response: We do not believe that a mannequin can substitute for a live subject for the skills demonstration. However, we are not requiring that residents be used during the skills demonstration—any human subject is permissible. We note that residents may not be used for skills demonstrations without their consent.

Comment: One commenter suggested that skills demonstrations might not be necessary in the future because programs will be stringent and monitored.

Response: We believe that skills demonstrations will continue to be an important component of the CEP. As we have indicated above, we believe that a skills demonstration is the most effective method of testing competency in the actual tasks nurse aides perform.

Comment: Several commenters suggested that we adopt the suggestion made in the State Operations Manual Transmittal 223 and the State Medicaid Manual Transmittal 62 to have performance records for all competency evaluations.

Response: As we have noted previously in this preamble, the instructions in the State Operations Manual and the State Medicaid Manual were intended as guidance to help States in developing and approving NATCEPs and CEPs in the absence of Federal regulations. We believe that the degree of detail in these instructions is inappropriate for inclusion in regulations.

Comment: Several commenters believed that we should require facilities and other entities that conduct training programs to keep a list of skills that are performed successfully during the training program instead of requiring a skills demonstration. One commenter suggested allowing skills to be demonstrated during the normal provision of services.

Response: We believe that a formal skills demonstration is required to determine if an individual is competent to be a nurse aide and have therefore not accepted these comments.

Section 483.154(c) Administration of the Competency Evaluation

Summary of NPRM Provisions

Paragraph (c)(1) of § 483.154 specified that the competency examination must be administered and evaluated only by the State directly or a State-approved entity which is neither a skilled nursing facility that participates in Medicare nor a nursing facility that participates in Medicaid.

Paragraph (c)(2) of § 483.154 specified that no charges for the competency evaluation may be imposed on any nurse aide.

Paragraph (c)(3) of § 483.154 specified that the skills demonstration part of the evaluation must be performed in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide and administered and evaluated by a registered nurse with at least one year's experience in providing care for the elderly or the chronically ill of any age.

Comments and Responses

Comment: One commenter believed that we should require a standardized competency evaluation in lieu of the requirements in 483.154(c). Several commenters believed that facilities should be certified to perform their own

competency evaluations or that it is inappropriate to prohibit States from delegating competency determinations to facilities. A few commenters asked that personnel from other facilities be allowed to determine competency.

Response: Sections 1819(f)(2)(B)(iii)(II) and 1919(f)(2)(B)(iii)(II) of the Act require the Secretary's regulations to prohibit State approval of NATCEPs and CEPs unless the State makes the determination of competency. These sections of the Act, as amended by sections 4008(h)(1)(G) and 4801(a)(7) of OBRA '90, further prohibit a State from delegating its responsibility to determine competency, through subcontract or otherwise, to SNFs that participate in the Medicare program and NFs that participate in the Medicaid program. (Statutory provisions prior to OBRA '90 did not contain the phrase "through subcontract or otherwise".) We believe that these statutory requirements clearly indicate that States or State-approved entities which are not SNFs or NFs must make determinations of competency, and we have developed regulations that reflect the statutory requirements.

Comment: One commenter believed that the individual administering the written or oral examination should have sufficient knowledge to answer questions during the examination.

Response: We believe that many States will not want individuals who are administering the test to answer questions on the content of the test, and we believe States should have the flexibility to prohibit this if they wish to do so.

Comment: One commenter believed that all skills demonstrations should be performed in facilities.

Response: We have required in § 483.154(d)(1) that all nurse aides have the option to take the CEP in the facility at which they are or will be employed unless that facility does not meet certain requirements. In cases where the nurse aide does not have an employment relationship with a facility, the facility does not meet certain requirements, or the nurse aide does not want to take the CEP at the facility, we believe that a laboratory setting may be the only available location for the skills demonstration. We also believe that it is possible to determine competence when skills are demonstrated in a laboratory setting.

Comment: A number of commenters expressed the opinion that licensed nurses should be allowed to administer and evaluate the competency evaluation. A few commenters believed that licensed nurses should be allowed to evaluate nurse aides under the general supervision of a registered nurse or if they are qualified to teach. One commenter believed that licensed nurses should be allowed to observe standardized skills demonstrations when an outside entity makes the determination of competency but that evaluators who make determinations of competency should be registered nurses. A few commenters agreed that an evaluator must be a registered nurse who has the experience specified in the NPRM.

Response: We have retained the requirement that the skills demonstration portion of the CEP be administered and evaluated by a registered nurse. We believe that the knowledge and education of a registered nurse are necessary to make a sound judgment of a nurse aide's competency. Because even standardized skills demonstrations require an evaluator to make judgments about the competency of nurse aides, we believe it is important for all evaluators to meet the required qualifications.

Comment: One commenter suggested that we require evaluators to take a course in training nurse aides or some other similar specialized course, or have teaching or skills experience.

Response: We have not developed such requirements because we believe that the requirements we have established are an appropriate floor and that additional requirements would restrict the number of individuals who could serve as evaluators.

Comment: A few commenters suggested that evaluators and instructors should have the same qualifications.

Response: We have required that instructors have experience in long-term care because we believe that instructors should have experience in the type of care that nurse aides provide. We believe that the tasks performed by nurse aides are largely similar to those performed by aides in hospitals, home health agencies, and other health care entities. We believe that a registered nurse who has experience in providing care for the elderly or the chronically ill of any age will be better able to judge if a nurse aide is competent to provide services than someone who has not had that experience.

Section 483.154(d) Facility Proctoring of the Competency Evaluation

Summary of NPRM Provisions

Paragraph (d)(1) of § 483.154 specified that the competency evaluation may be conducted at the facility at which the aide is (or will be) employed unless the facility is out of compliance with any of the requirements for participation within any of the 24 consecutive months prior to the competency evaluation.

Paragraph (d)(2) of § 483.154 specified that a State may permit the examination to be proctored by facility personnel if the State finds that the procedure adopted by the facility assures that the CEP is secure from tampering; is standardized and scored by a testing, educational, or other organization approved by the State; and requires no scoring by facility personnel.

Paragraph (d)(3) of § 483.154 specified that a State may not permit facility personnel to proctor the skills demonstration portion of the evaluation.

Paragraph (d)(4) of § 483.154 specified that a State must retract the right to proctor nurse aide competency evaluations from facilities in which the State finds any evidence of impropriety, including evidence of tampering by facility staff.

Comments and Responses

Comment: Several commenters were concerned about locations for competency evaluations. A few commenters were concerned because they believed we were going to force nurse aides to take competency evaluations in the State capital or other locations many miles from their communities. Some commenters believed that we should prohibit competency evaluations from being held in facilities, while others believed that evaluations should be permitted in a facility. A few commenters requested that we allow schools to be evaluation sites.

Response: Sections 1819(f)(2)(A)(iv) and 1919(f)(2)(A)(iv) of the Act require NATCEPs and CEPs to give nurse aides the option to take the CEP at the facility in which they are or will be employed unless the facility is described in section 1819(f)(2)(B)(iii)(I) or 1919(f)(2)(B)(iii)(I) of the Act. If a nurse aide does not choose to take the evaluation in the facility in which he or she is employed or will be employed, if he or she does not have an offer of employment, or if the facility in which he or she is or will be employed is described in section 1819(f)(2)(B)(iii)(I) or 1919(f)(2)(B)(iii)(I) of the Act, the evaluation may be held at a school or other location acceptable to the State. We did not propose that competency evaluations should be administered in State capitals or remote locations and are therefore unclear as to why this concern arose.

Comment: Many commenters believed that facility compliance should not be a factor in whether a nurse aide is allowed to take the CEP in the facility in which he or she is or will be employed.

Response: As discussed above, nurse aides must be given the option to take the competency evaluation at the facility in which they are or will be employed unless the facility is described in section 1819(f)(2)(B)(iii)(I) or 1919(f)(2)(B)(iii)(I) of the Act. Prior to the enactment of OBRA '90, these sections of the Act dealt with facility compliance with certain long-term care requirements. Sections 4008(h)(1)(E) and 4801(a)(6) of OBPA '90 modified sections 1819(f)(2)(B)(iii)(I) and 1919(f)(2)(B)(iii)(I) of the Act so that facility compliance with long-term care requirements, while relevant to program approval, is no longer specifically discussed. (See preamble discussion on §§ 483.151(b)(2), 483.151(b)(3), and 483.151(e)(1) for a complete discussion of this change.) We have modified § 483.154(d)(1) to conform our regulations with the change in the statute.

Comment: A few commenters asked that we define proctoring.

Response: We define proctoring as supervising an examination and believe the regulation makes the meaning of that term clear.

Comment: A number of commenters believed that we should not allow facility proctoring of the examination component of the competency evaluation. A few commenters believed that no individual who has an interest in the outcome of the CEP should be allowed to proctor the skills demonstration.

Response: Sections 1819(f)(2)(B)(iii)(II) and 1919(f)(2)(B)(iii)(II) of the Act prohibit States from delegating their responsibilities for approval and administration of the CEP to SNFs that participate in Medicare and NFs that participate in Medicaid. We believe, however, that States can be in compliance with these sections of the Act if they allow facilities to supervise examinations that are evaluated by the State and meet the requirements in § 483.154(b)(1). We note that many commenters believed that proctoring is desirable. We have not prohibited individuals who have an interest in the competency evaluation from proctoring because we believe that there is no statutory basis for such a prohibition.

Comment: A few commenters believed that it could be difficult to determine if a facility used proctoring methods that compromised the examination.

Response: We believe that States are capable of determining if a facility has used improper proctoring methods, for example, by noting unusual variations in pass/fail rates. We also believe that the vast majority of facilities will proctor the competency evaluation correctly. Therefore, we have not altered our requirement.

Comment: One commenter believed that facility staff should be at evaluations to provide moral support for nurse aides.

Response: As long as no prompting occurs, we do not believe that our regulations prohibit the presence of facility personnel.

Comment: One commenter asked what could be done about facilities who form new companies to evaluate nurse aides.

Response: The statutory prohibition against facility-conducted competency evaluation programs and the limitations on facility-based training programs cannot be overcome simply by a name change when it is clear that the facility is the entity performing the function. We would expect States to avoid approval of programs where they determine that a facility is attempting to evaluate its own nurse aides. On the other hand, we do not believe it inappropriate for facilities to pool resources and form an organization for the purpose of conducting training and competency evaluation for their employees and prospective employees. In fact, such a practice may well be necessary to assure that such programs will be available in certain localities and will have access to experienced instructors and evaluators. The law does not prevent individuals employed from serving in such programs as well, and we have not prohibited it in these regulations.

Comment: In the NPRM, we asked for public comment on whether facility staff should be allowed to read a multiple choice or objective examination to nurse aides. There were equal numbers of proponents for and against allowing facility staff to read oral examinations. Both sides suggested individuals who would be acceptable readers.

Response: After consideration of these comments, we have revised § 483.154(b)(v) to allow oral examinations only when they are read from a prepared text. Facility members may read a prepared examination to nurse aides.

Comment: A large number of commenters requested that facilities be allowed to proctor the skills demonstration portion of the CEP and cited a variety of reasons. A number of different facility staff members were suggested as appropriate proctors. Some commenters believed that facility staff should be able to proctor the skills demonstration if the State or other contracting agency determines who passes. Several commenters believed that facilities should not be allowed to proctor the skills demonstration.

Response: We have deleted the proposed requirement in § 483.154(d)(3) that facility personnel not be permitted to proctor the skills demonstration portion of the competency evaluation because we believe that standardized skills checklists enable outside organizations to make determinations of competency. We also believe that facility proctoring is an efficient and economical method of performing competency evaluations.

Comment: One commenter requested that we require States to develop requirements for proctoring.

Response: We have not required States to develop requirements for proctoring because we believe that it is reasonable for facilities to develop procedures and submit them for State approval.

Section 483.154(e) Successful Completion of the Competency Evaluation Program

Summary of NPRM Provisions

Paragraph (e)(1) of § 483.154 specified that a State must establish a standard for satisfactory completion of the competency evaluation which demonstrates that an individual, at a minimum, successfully demonstrate all of the personal care skills specified in § 483.152(b)(3) and any others that he or she would be permitted to perform in the facility.

Paragraph (e)(2) of § 483.154 specified that a record of successful completion of the CEP must be included in the nurse aide registry provided in § 483.156 within 30 days of the date the individual is found to be competent.

Comments and Responses

Comment: A number of commenters were displeased by the requirement in the NPPM which indicated that an individual could not be considered to have successfully completed a CEP unless he or she successfully completed all of the personal care skills listed in § 483.152(b)(3) and any others he or she would be expected to perform in the facility. Commenters listed a variety of reasons why this requirement should not be finalized. Most of the commenters believed that we should require testing using the random sampling method discussed in the responses to comments in § 483.154(b)(2).

Response: As we indicated in the response to the comments on § 483.154(b)(2), we believe that a random sampling method of testing is an effective and appropriate method to

employ in the competency evaluation of nurse aides, and have revised § 483.154(b)(2) to reflect this. In addition, we have moved the reference to completion of skills proposed in § 483.154(e) to § 483.154(b)(2), which we believe is a more logical location.

Comment: One commenter requested that we indicate clearly that an individual must complete an examination and a skills demonstration to successfully complete a CEP. Another commenter questioned whether an individual who fails either the examination or the skills demonstration can be considered to have successfully completed the CEP. One commenter requested that we allow States to determine what constitutes competency.

Response: We have revised § 483.154(e)(1) to indicate that successful completion of the CEP can only be achieved through successful completion of both the skills demonstration and the examination. We have given States significant flexibility to determine what constitutes competency. However, we believe that we must specify at least that an individual must complete both an examination and a skills demonstration.

Comment: A number of commenters suggested that we change the number of days in which a record of successful completion of a CEP must be placed on the nurse aide registry. Some commenters suggested that the number of days be shortened from the 30 proposed in the NPRM. One commenter asked that information be included in five days. A few commenters wanted information to be included within 10 days. Other commenters wanted more time and suggested that 45 to 60 days be allowed. Some commenters believed the amount of time allotted in the NPRM was appropriate.

Response: We recognize that inclusion on the registry is very important for the employment prospects of nurse aides because facilities must check with the registry before hiring an individual as a nurse aide, and we believe that records of successful completion of CEPs should be placed on the registry as soon as possible. However, we believe that States may require 30 days to place individuals on the registry. The provision at § 483.75(e)(5), which allows facilities to employ nurse aides who can provide evidence indicating that they have recently successfully completed a NATCEP and have not yet been placed on the registry, should eliminate any hardship that may be associated with the 30 day registry placement time.

Comment: A few commenters believed that we should develop a special provision that would allow persons with physical or mental challenges incapable of performing all of the duties generally performed by nurse aides to work as nurse aides.

Response: We have not established alternate standards for competency evaluations for individuals with physical or mental challenges because States must already follow the requirements of section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112). In light of section 504 of the Rehabilitation Act of 1973, challenged individuals have a right to demonstrate that they are otherwise qualified to work as nurse aides.

Section 483.154(f) Unsuccessful Completion of the Competency Evaluation

Summary of NPRM Provisions

Paragraph (f)(1) of § 483.154 specified that if an individual fails to complete the competency evaluation satisfactorily, the individual must be advised of the areas in which he or she was inadequate; and that he or she has at least three opportunities to take the evaluation.

Paragraph (f)(2) of § 483.154 specified that a State may impose a maximum upon the number of times an individual may attempt to complete the competency evaluation successfully, but the maximum may be no less than three.

Comments and Responses

Comment: Several commenters had suggestions on the number of times an individual should be allowed to take the competency evaluation. Many commenters believed that an individual should be allowed to take the competency evaluation no more than three times. Other commenters believed that individuals who have not passed the competency evaluation after three times should be allowed to retake it only under certain circumstances, such as completing additional requirements or obtaining permission from the facility. A couple of commenters indicated that the second and third competency evaluations should have an oral examination. A few commenters wondered if we were going to prescribe a minimum amount of time that must elapse before an individual is allowed to retake the competency evaluation or suggested specific amounts of time that they believed should be allowed to elapse before an individual is allowed to retake the competency evaluation. Some commeters believed that we should not limit the number of times an individual should be allowed to take the competency evaluation program. A few commenters asked if we were going to establish a maximum number of times an individual could attempt the competency evaluation. One commenter wanted to know the consequences if an individual fails to complete the test successfully after three attempts.

Response: We have continued to require that an individual must be allowed at least three attempts to pass the competency evaluation, but there is no limit on the number of times or the frequency with which the State may allow additional evaluations. Nurse aides often do not have extensive experience with tests, and we believe that it is imperative that they are allowed sufficient attempts to complete the competency evaluation. We have not developed special standards for repeat competency evaluations because we do not wish to place additional barriers to successful completion of a competency evaluation. We note that nurse aides always have the option to take an oral examination. We have not set a maximum number of times an individual can take the competency evaluation because we believe that this decision should be made by the State. If an individual does not complete the competency evaluation successfully after three attempts, it is up to the State to determine when and if he or she will be permitted to attempt the CEP again. We would like to clarify that the minimum number of attempts is per program, not per individual. Thus, each time an individual takes a CEP, he or she must have at least three attempts to complete that CEP satisfactorily.

Comment: One commenter believed that individuals who did not pass the competency evaluation should not be told what items they missed because this would compromise the integrity of the test.

Response: We have not required that individuals who do not successfully complete a CEP be informed of the specific items they missed. However, we do believe that individuals should be generally informed of the areas they did not pass so that they are able to improve those areas before attempting the evaluation again. Therefore, we have retained the provision in § 483.154(f)(1) that an individual who does not successfully complete the CEP must be advised of the areas which he or she did not pass.

Comment: A few commenters asked whether individuals who did not successfully complete the CEP must continue to be employed by the facility or whether facilities must pay such individuals unemployment.

Response: We believe such issues are not within HCFA's purview. We note

that facilities may not use full-time employees as nurse aides for more than four months unless the individuals have completed a CEP or NATCEP or have met this requirement through the deeming or waiver requirements in § 483.150. Non-permanent nurse aides must have already completed a CEP or NATCEP or have met requirements in § 483.150 to work as a nurse aide in a facility.

Comment: One commenter indicated that HCFA should require that training be taken early in the first four months of employment so that there is time to take repeat CEPs if necessary.

Response: Sections 1819(b)(5) and 1919(b)(5) of the Act indicate generally that a full-time nurse aide must have completed a CEP or NATCEP by the time he or she has worked for a facility for four months. We believe that it is unnecessary for us to make additional requirements in this regard.

Summary of Changes to Section 483.154

In response to comments, in addition to minor technical or editorial changes, we are making the following changes:

- In § 483.154(b)(1)(i), we are designating an oral competency examination as the alternative to a written competency examination.
- In § 483.154(b)(2), we are revising the requirements for the skills demonstration part of the competency evaluation by allowing that the skills demonstration consist of a demonstration of randomly selected items instead of demonstration of all tasks performed by a nurse aide.
- In § 483.154(d), we are revising the paragraph title to read "Facility proctoring of competency evaluation" to more accurately reflect the scope of this section of the regulations. In § 483.154(d)(1), we are revising our regulations to indicate that the competency evaluation may be conducted in the facility in which a nurse aide is or will be employed unless the facility is described in § 483.151(b)(2). In § 483.154(d)(2), we are not prohibiting facility personnel from proctoring the skills demonstration part of the competency evaluation, as proposed in our NPRM.
- In § 483.154(e)(1), we have clarified that an individual must pass both the written or oral examination and the skills demonstration to successfully complete the competency evaluation.
- In § 483.154(f)(2), we have clarified that individuals have a minimum of three attempts to pass the competency evaluation per program.

Section 483.156 Registry of Nurse Aides

Summary of NPRM Provisions

Section 483.156 specified the requirements for States for the establishment, operation, and content of a registry of nurse aides. It also specified the requirements for the disclosure of information on the registry.

Comments and Responses

General

Comment: One commenter suggested that all nurse aides be registered in a national registry.

Response: Sections 1819(e)(2) and 1919(e)(2) of the Act require each State to establish and maintain a nurse aide registry but do not require reciprocity of data among States. We believe that such a registry would place an unnecessary administrative burden on States.

Comment: One commenter believed that the registry requirements will make the occupation of nurse aide less appealing.

Response: We do not believe that the registry requirements are onerous for nurse aides who have been found competent. On the contrary, we believe that requiring nurse aides to be registered will enhance their professional prestige.

Section 483.156(a) Establishment of Registry

Summary of NPRM Provisions

Paragraph (a) of § 483.156 specified that a State must establish and maintain a registry of nurse aides that meets the requirements of § 483.156. It also specified that the registry—

- Must include as a minimum the information proposed in § 483.156(c);
- Must be accessible to the public and health providers on a fixed schedule set by the State at least six hours per day between the hours of 7 a.m. and 6 p.m. local time, Monday through Friday, except for State and Federal holidays, and notify facilities in advance of changes in the hours of operation;
- May include home health aides who have successfully completed a home health aide competency evaluation program approved by the State;
- Must include a process for timely responses to written and telephone inquiries that request information from the registry; and
- Must provide that any response to an inquiry that includes a finding of abuse, neglect, or misappropriation of property also include any statement disputing the finding made by the nurse aide.

Comments and Responses

Comment: A number of commenters suggested changes in the required hours of operation of nurse aide registries for a variety of reasons. While some commenters believed that the hours proposed in the NPRM were sufficient, others requested various increases, which ranged from 8 hours per day, Monday through Friday to 24 hours per day, 7 days per week.

Response: We understand commenters' concern that the registry be available to meet their needs. However, we believe that registry needs will vary from State to State. Requiring certain hours of operation could lead to insufficient service in some States and waste in others. Therefore, we have required that the registry must be sufficiently accessible to meet the needs of the public and health care providers.

Comment: Two commenters asked that we remove provisions allowing the registry to be closed on Federal as well as State holidays, remarking that many States do not observe Federal holidays.

Response: We agree and have deleted this provision to allow each State the flexibility to decide which, if any, holidays its registry will observe.

Comment: Several commenters requested that we require registries to provide facilities with 30 days written notice prior to the implementation of changes in the hours of operation of the registry. A few commenters asked that we delete the requirement for a fixed registry schedule and advance notification of changes in operation. One commenter believed that we should require registries to operate according to State law instead of requiring a fixed schedule.

Response: We do not agree that we should require a specific number of days notice prior to changes in registry operating hours because we believe that prior notification of changes in registry operation is included in the requirement that the registry be sufficiently accessible to meet the needs of the public and health care providers.

Comment: Many commenters had advice on whether to allow States to include home health aides on the nurse aide registry. A number of commenters believed that nurse aides and home health aides should be required to take the same course. Commenters provided a variety of suggestions for unified examinations for health aides and nurse aides. Many commenters were pleased that we proposed to allow home health aides to be included on the registry. One commenter suggested that home health aides who were found to have abused or

neglected patients or to have misappropriated patient property should be included on the registry. A few commenters believed that home health aides should not be included on the registry because they do not qualify or because it would violate their rights. One commenter asked for clarification of why home health aides could be on the registry and wondered if home health aides who were on the registry would be allowed to work as nurse aides in facilities.

Response: We have retained our provision to allow States to place home health aides who have completed a home health aide competency evaluation on the nurse aide registry. Although no registry is required for home health aides, we believe that some States will wish to use the registry as a mechanism for identifying home health aides who are competent as well as those who have adverse findings against them. Requirements for home health aide training and competency evaluation located at section 1891(a)(3) of the Act are sufficiently different from those for nurse aides to prevent us from establishing one set of minimum requirements. We do not believe that placing home health aides on the nurse aide registry violates their rights or misrepresents their qualifications because, in permitting home health aides to be listed on the registry, we also require the State to differentiate between home health aides and nurse aides. Placing home health aides on the nurse aide registry does not allow them to work in skilled nursing facilities or nursing facilities.

Comment: Several commenters believed that hospital aides should be required to have the same training as nurse aides and be placed on the nurse aide registry. Some commenters provided suggestions on course content.

Response: The statute does not require hospital aides to complete training and competency evaluations. Because there are no statutory standards for assuring that hospital aides are competent, we believe that it would be inappropriate to allow them to be included on the registry of aides for whom such standards exist.

Comment: A few commenters remarked that it is discriminatory to require a registry only for nurse aides or asked why registries were not required for other health care settings. Several other commenters requested clarification on whether certain individuals should be placed on the nurse aide registry. A few commenters believed that an individual should be working as a nurse aide in a facility to be placed on the registry. Some commenters indicated that individuals who were deemed as meeting the requirement of completing a NATCEP or for whom the competency evaluation was waived should be included on the registry.

Response: Sections 1819(e)(2)(A) and 1919(e)(2)(A) of the Act, as modified by OBRA '90, require the nurse aide registry to include the individuals who have completed a NATCEP or a CEP or who have been deemed to have completed a NATCEP or CEP or have had the NATCEP or CEP waived by the State. (Sections 4008(h)(2)(K) and 4801(e)(2) of OBRA '90 amended sections 1819(e)(2)(A) and 1919(e)(2) (A) of the Act to add individuals who have been deemed to have completed a NATCEP or CEP or who have had the requirement to complete a NATCEP or CEP waived by the State to the list of those who must be placed on the nurse aide registry.) These provisions do not make this requirement for any other individuals nor do they require that an individual be working in a facility as a nurse aide to be placed on the registry.

Comment: A few commenters asked that the registry be expanded to include any facility employees who are found by the State to have abused or neglected a resident or misappropriated resident property.

Response: We do not believe that the intent of sections 1819(e)(2) and 1919(e)(2) of the Act is to permit such an expansion of the registry. We note that the National Practitioners Data Bank, operated by the U.S. Public Health Service, contains information on abuse by health professionals. We also note that States are required by sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act to notify the licensing agency when they make an adverse finding against a licensed individual.

Comment: One commenter requested that we require that the nurse aide registry maintain sufficient telephone service and personnel to serve the needs of facilities.

Response: We have not specifically required registries to maintain certain staff levels and telephone services because we have already required the registry to meet the needs of users in § 483.156(a)(2).

Comment: Many commenters indicated concern about the requirement in § 483.156(d) concerning the timeliness of the registry's disclosure of information. Most commenters believed that 10 days to respond to a request for information on a specified individual was too long. Some commenters indicated that certain State laws required faster disclosure of information. A large number of different response times were recommended, but the vast majority of commenters requested that the registry be required to respond immediately to telephone inquiries and to send written confirmation within 10 days. Some commenters suggested that different response times could be required for different types of requesters. One commenter asked that we clarify whether we require different response times for different requestors. One commenter requested that registries be allowed more than ten days to respond to inquiries.

Response: We recognize that facilities need prompt access to information on the registry and that ten days (or any arbitrary time frame) may not be sufficient to meet the needs of facilities. We are also concerned that we do not preempt State laws regarding disclosure of public information. Therefore, we have revised § 483.156(b) to indicate that information on the registry must be provided promptly. We believe it is possible for most inquiries to be answered within 24 hours with written confirmation within ten days.

Comment: One commenter believed that the process for obtaining information from the registry is cumbersome.

Response: We have not mandated any process for obtaining registry information and therefore are unable to respond to this comment.

Comment: A few commenters believed that the use of the registry should be free to facilities. One commenter suggested that the public and non-facility users of the registry could be charged a fee.

Response: Sections 1819(e)(2) and 1919(e)(2) require that the registry information be available to the public, but neither requires nor prohibits the practice of charging fees. While we believe that fees could limit public accessibility, we also believe it would be inappropriate to include a provision dealing with user fees in these regulations.

Comment: A few commenters suggested that we require registries to provide a toll free number or a hotline for facilities.

Response: We believe that such choices should be left to the States and do not believe that this degree of detail is appropriate for inclusion in this regulation.

Comment: One commenter asked that we require written responses to note the time and date of the original request.

Response: The regulation already requires information on the registry to be provided promptly, and we do not

believe that this degree of detail is appropriate for inclusion in our regulations.

Comment: A few commenters requested that registry information be made available through modems or fax transmissions.

Response: Although States are free to make registry information available through innovative methods, we wish to allow States the flexibility to make individual determinations on which methods best fit their budgets and the needs of their users. We suggest that States who are considering allowing computer access to the registry may want to consider security measures to protect the information contained in the registry.

Comment: One commenter believed that HCFA should develop a method for facilities to obtain registry information from other States.

Response: We do not believe the development of a method for facilities to obtain information from registries in other States is necessary because facilities may call or write to such registries.

Comment: A few commenters believed that the only information that should be disclosed over the telephone is whether an individual is on the registry.

Response: The only reason for restricting the information available over the telephone would be to prevent information from being given to unauthorized requesters. Because there are no unauthorized requesters, we do not believe we need to provide additional restrictions.

Comment: One commenter believed that HCFA should sanction registries if they do not provide information on a timely basis.

Response: Sections 1819(e)(2) and 1919(e)(2) of the Act do not provide for specific sanctions for failure to comply with the nurse aide registry requirements. However, proper operation of the registry is a State Medicaid requirement, and if the State does not comply with the registry requirements, HCFA can pursue a compliance action under section 1904 of the Act, which permits discontinuance of payments to States for Medicaid if the Secretary finds that a State has failed to comply substantially with any provision in the State Plan.

Section 483.156(b) Registry Operation

Summary of Provisions

Paragraph (b) of § 483.156 specified the nurse aide registry operation requirements. These requirements specified that—

- A State may contract the daily operation and maintenance of the registry to a non-State entity but that the State must maintain accountability for overall operation of the registry and compliance with these regulations;
- Only the State survey and certification agency may place on the registry findings of abuse, neglect, or misappropriation of property;
- A State must require renewal and updating of a nurse aides' registration at least once every two years on a schedule set by the State; and
- A State may charge registration fees from individuals listed in the registry.

Comments and Responses

Comment: A few commenters requested that we not allow the State to contract the daily operation of the nurse aide registry to a non-State entity because they believed that the responsibility of the registry was too great to delegate and because they were afraid that a facility group would get the contract.

Response: We have required the State to maintain accountability for the overall operation of the registry and we believe that this is sufficient protection against possible mishandling of the registry. Also, we note that some commenters agreed that allowing the State to contract out the registry was a good idea.

Comment: One commenter asked that we encourage State boards of nursing to operate the registry.

Response: A State may allow any agency to operate the registry, and we believe it would be inappropriate for us to recommend a particular agency.

Comment: Many commenters recommended agencies that should be allowed to place adverse findings on the registry. Several commenters believed that any State-designated agency should be allowed to place findings on the registry, while others suggested various specific agencies. One commenter suggested that there should be a coordinated effort among all of the investigatory agencies in the State and requested that we define this effort. One commenter suggested requiring the State survey agency to consider findings from other agencies. Another commenter believed that only the State licensing agency should be allowed to place findings on the registry. One commenter asked whether the State survey and certification agency could place findings from other agencies on the registry.

Response: Sections 1819(g)(1)(C) and 1919(g)(l)(C) of the Act require the State survey agency to place adverse findings on the nurse aide registry. We can understand that many different agencies may want to place findings on the registry, but the statute permits only the State survey agency to perform this function. We do not believe that this requirement will place an undue burden on States because any agency of the State is permitted to conduct investigations and make findings. These findings may, in turn, be communicated to the State survey agency, who may place them on the registry.

Comment: In the NPRM, we proposed that nurse aide registries re-register nurse aides every two years to eliminate individuals who had not performed any nursing or nursing-related services for monetary compensation for a period of 24 consecutive months and who therefore could not serve as nurse aides in facilities without completing a new NATCEP. Many commenters cited a variety of reasons why we should not require nurse aides to re-register every two years. A large number of commenters suggested that the registry could accomplish the purpose of re-registration by requiring facilities to submit an annual list of nurse aides they had employed during the year. A few commenters suggested other methods or recommended that registration occur at longer intervals. Some commenters believed that it should be a facility's responsibility to determine if an individual had not provided nursing or nursing-related services for monetary compensation for 24 months. A number of commenters asked that States be allowed to devise their own methods for determining whether individuals had performed nursing or nursing-related services for monetary compensation. A few commenters agreed that nurse aides should be required to re-register. One commenter believed that re-registration should be required for all individuals who are on the registry, not just nurse aides.

Response: Sections 1819(e)(2) and 1919(e)(2) of the Act require States to establish and maintain a registry of all individuals who have satisfactorily completed a NATCEP or a CEP approved by the State. Because it is the States' responsibility to list on the registry all individuals who have completed a NATCEP or a CEP or who are described in § 483.150 (and are thus employable by a facility), we believe it is also the States' responsibility to identify and remove from the registry those individuals who have not provided nursing or nursing-related services for monetary compensation for 24 consecutive months (and must therefore complete a new NATCEP to be employable as a nurse aide). We received many comments objecting to

the method we had proposed for accomplishing this purpose and many varied suggestions for alternatives. We, therefore, have revised § 483.156(b)(3) to allow each State to determine how it will keep track of individuals who have not completed nursing or nursing-related services for monetary compensation for 24 consecutive months. We note that deriving this information exclusively from facilities will not achieve the purpose of the statutory requirement because individuals may provide nursing or nursing-related services in any location, not just a facility, and remain employable as nurse aides. The State must also assure that the registry contains current information as to whether individuals who are listed in the registry are considered competent to provide services.

Comment: One commenter indicated that the names of individuals should be deleted from the registry when they do not complete continuing education requirements.

Response: Sections 1819(b)(5)(E) and 1919(b)(5)(E) of the Act address only the responsibility of facilities to provide in-service training to nurse aides. Completion of in-service education is not a prerequisite for being found competent or for remaining on the registry.

Comment: A large number of commenters believed that we should not allow nurse aide registries to charge registration fees. A few commenters believed that we should allow registration fees or that we should allow charging a fee if the amount of the fee were minimal. Some commenters suggested appropriate caps on registration fees. A couple of commenters asked that we allow one-time-only registration fees or asked that we clarify whether re-registration requires a fee. One commenter wanted registration fees to be reimbursable if facilities pay them.

Response: Prior to the enactment of OBRA '90, sections 1819(e)(2) and 1919(e)(2) neither required nor prohibited the imposition of fees for the registry However, sections 4008(h)(2) (K) and 4801(e)(13) of OBRA '90 amended sections 1819(e)(2) and 1919(e)(2) of the Act to prohibit States from imposing any charges relating to the registry on nurse aides. We have modified § 483.156(b)(4) to comport with this change in the statute.

Section 483.156(c) Registry Content

Summary of NPRM Provisions

Paragraph (c) of § 483.156 specified the requirements for States for the contents of the nurse aide registry. Paragraph (c)(1) specified that—

- The registry must contain at least the following information on each individual who has successfully completed a NATCEP which meets the requirements of § 483.152 or a CEP which meets the requirements of § 483.154 and has been found by the State to be competent to function as a nurse aide or who may function as a nurse aide because of meeting criteria in § 483.150:
- The individual's full name, including a maiden name and any other surnames used;
- The individual's last known home address;
- The registration number assigned by the State to the individual when he or she successfully completes the competency evaluation program. The registration number must include a modifier which indicates the type of registration;
- The individual's date of birth;
- The individual's last known employer and the date of hiring and termination by that employer;
- For an individual who qualifies under § 483.150, an explanation of how the individual met the criteria of that section;
- The date that the individual passed the competency evaluation and the date of the expiration of the individual's current registration;
- The name and address of the State-approved entity which administered the competency evaluation and any control or identification number if the State chooses to assign such a number, and
- The following information on any finding by the State survey agency of abuse, neglect or misappropriation of property by the individual:

—Documentation of the State's investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid;
—The date of the hearing, if the individual chose to have one, and its outcome; and
—A statement by the individual disputing the allegation, if he or she chooses to make one.

We proposed that this information must be included in the registry within 30 days of the finding and must remain in the registry for at least five years.

Paragraph (c)(2) of § 483.156 specified that the registry may exclude entries for individuals whose registrations have been expired for 24 consecutive months or for individuals who have ceased to function as a nurse aides for compensation for a period of 24 consecutive months when the individual ceases to be qualified to function as a nurse aide unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of patient property.

Comments and Responses

Comment: Some commenters expressed concern about the collection of the information required to be on the registry. A few commenters asked that the information collection requirements not be applied retroactively. One commenter requested a one-year grace period for States to collect the information. One commenter asked that States be allowed to collect the required information at a schedule set by the State.

Response: We agree that applying the information collection requirements retroactively would be unfair and burdensome to States. We are requiring that States collect this information for the registry as of the effective date of these regulations.

Comment: A number of commenters suggested various minimum requirements for registry content. A few commenters suggested that we should allow States to determine minimum requirements for registry content. One commenter suggested that we should only mandate collection of the bare minimum of information required by law and allow States to collect additional information if they wish.

Response: We believe it is important and helpful for us to specify minimum requirements for registry content. However, after consideration of the comments concerning registry content, we have made significant modifications to the requirements in the NPRM (see Provisions of the Final Rule), and we believe that the final regulations represent the minimum requirements necessary to operate the registry in an efficient manner. States are free to collect additional information if they wish.

Comment: A few commenters believed that we should not require the registry to collect maiden names or other previously used surnames. Some commenters suggested that a person's social security number could be used as an identifier. A couple of commenters asked that we not require the registry to record an individual's last known home address or asked that this information only be collected at re-registration or other times. One commenter asked that we remove the requirement for the registry to give each individual on the registry a registration number.

Response: We believe it is necessary for States to maintain sufficient information to identify individuals on the registry. However, the comments indicated numerous possible methods of identification. Therefore, we have deleted requirements to collect such information as previously used surnames and dates of birth and have required only that information sufficient to identify each individual on the registry be collected and maintained. We note that it is illegal to require an individual to disclose his or her social security number. We also note that the State may wish to maintain information on home addresses in order to provide nurse aides with information required to be sent at the time of registration and when there are changes or additions to the registry information.

Comment: A few commenters asked us to clarify the type of registration or the purpose of a modifier attached to a registration number. One commenter requested that HCFA require standard modifiers for all States. Another commenter believed that a modifier should not be required and that the registry should indicate the type of registration when responding to inquiries.

Response: As we indicated above, we have required neither registration numbers nor modifiers. However, we believe that a modifier could be used to differentiate between nurse aides and home health aides.

Comment: Several commenters suggested that we not require the registry to collect information on an individual's last known employer and hiring and termination dates with that employer or requested that this information only be collected at re-registration.

Response: We have deleted this requirement from proposed § 483.156(c)(1)(v) because we wish to allow States flexibility in how they will determine if an individual has not performed any nursing or nursing-related services for monetary compensation for a period of 24 consecutive months.

Comment: Several commenters believed that we should not require a description of how individuals who were deemed to have met nurse aide training and competency evaluation requirements or for whom competency evaluation requirements were waived came to meet the requirements for deeming or waiver. Other commenters asked that we require that individuals who were deemed or waived be included on the registry in a non-discriminatory manner. A few commenters asked what distinctions should be made on the basis of deeming or type of registration.

Response: We agree that it is not necessary for the registry to indicate how any individual came to meet the nurse aide requirements, and we have deleted this requirement from proposed § 483.156(c)(1)(vi). No distinctions should be made on the basis of deeming or type of registration. We reiterate that all nurse aides, including those who were deemed to have met the requirements of completing a NATCEP or for whom the State waived the requirement to complete a CEP, who have not performed any nursing or nursing-related services for monetary compensation for a period of 24 consecutive months, must be removed from the nurse aide registry.

Comment: Many commenters requested that we not include the date individuals passed a competency evaluation and the date of expiration. A few commenters believed that we should not require inclusion of the name of the entity that administered the competency evaluation.

Response: We agree that it is not necessary for the registry to include the name of the entity that administered the competency evaluation, and we have deleted this requirement from proposed § 483.156(c)(1)(viii). We have also deleted from proposed § 48.156(c)(1)(vii) the requirement that States include the date of expiration of registration because we have not required that registrations expire. We continue to believe that it is important for a record of the date an individual passed a competency evaluation to be maintained on the registry. We have clarified this requirement to indicate that a record of the date an individual became eligible to be placed on the registry must be maintained. This clarification is necessary to ensure that a date is maintained for individuals who are on the registry through meeting the requirements of § 483.150.

Comment: One commenter asked that we consider adding information on whether a nurse aide has received a Hepatitis B vaccine.

Response: We have not added this information to the information that must be collected in the registry because the registry is intended to contain information pertinent to an individual's competence to be employed as a nurse aide.

Comment: A few commenters asked that we define abuse, neglect, and misappropriation of property. One commenter suggested a definition of misappropriation of property. One commenter asked if job abandonment constitutes neglect.

Response: Abuse, neglect, and misappropriation of property will be defined in the survey and certification regulations, which are currently being revised. We believe that whether or not job abandonment could be considered neglect would depend upon the impact of the action on the residents under the nurse aide's care at the time the action is taken. We note that sections 4008(h)(2)(L) and 4801(e)(13) of OBRA '90 amended sections 1819(e)(2) and 1919(e)(2) of the Act to specify that a State may not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond his or her control.

Comment: Some commenters asked that we define findings.

Response: Findings are determinations made after considering the evidence and after a hearing as discussed in sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act.

Comment: Many commenters asked that we add due process requirements to these regulations before findings can be placed on the registry. Several commenters suggested possible due process requirements that could be included, including the due process requirements that will be contained in the survey and certification regulations. One commenter requested that only validated findings should be placed on the registry. A few commenters suggested that the section requiring findings of abuse to be placed on the registry should not be finalized until due process requirements are in place.

Response: The due process requirements for making adverse findings on nurse aides will be defined in the survey and certification regulations currently being developed. We have not included any of the suggestions for due process requirements in our final regulations because we believe that these suggestions should be directed toward the survey and certification regulations when they are proposed. We have not delayed finalizing requirements for recording abuse, neglect, and misappropriation of property because this information is required to be collected by the State under sections 1819(e)(2) and 1919(e)(2) of the Act. We note that sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act, which became effective January 1, 1989, require that nurse aides under investigation must be given a fair hearing and that individuals found to have abused or neglected residents or to have misappropriated resident property must be allowed to rebut findings in the registry.

Comment: A few commenters requested that we require a course in how to make determinations of resident abuse or neglect or misappropriation of resident property for the individuals who will be making such determinations.

Response: We believe that the agency or agencies who make these investigations should have the latitude to establish and impose requirements for their investigators.

Comment: Several commenters believed that we should shorten the amount of time in which adverse findings on nurse aides must be placed on nurse aide registries. Several commenters believed that adverse findings should be included in the registry immediately. Other times, ranging from three to five days, were also suggested.

Response: We agree that it is vital that adverse findings on nurse aides be placed on the registry as quickly as possible. However, we also believe that it may not be possible for States to place findings on the registry in less than ten working days. We have therefore required that adverse findings be placed on the registry within this time.

Comment: A number of commenters requested clarification on whether convictions in a court of law must be placed on the registry. Some commenters believed that only individuals who have been convicted should have a notation of abuse, neglect, or misappropriation of property entered on the registry. A few commenters believed that criminal convictions should be required to be included on the registry in addition to adverse findings by the State. A few commenters suggested requiring a nurse aide to sign a statement disclosing all crimes or adverse findings against him or her before being placed on the registry. One commenter believed that findings should be reported to criminal authorities.

Response: Because some States indicated that they would have difficulty in obtaining criminal records, we have not required States to place notations of criminal convictions on the registry. However, we recognize that some States may wish to place criminal findings on the registry, and we have not prohibited them from doing so. Because we have not required States to place criminal findings on the registry, we have not required nurse aides to sign a statement disclosing all crimes. Furthermore, we have not required that findings be reported to the criminal authorities because we believe alleged criminal activity should be reported to the criminal authorities when it occurs, rather than some time after hearings and findings are made.

Comment: A number of commenters reacted to the suggestion in the preamble of the NPRM that States check on adverse findings made by other States before placing individuals in the registry. There were equal numbers of commenters on both sides of this issue. One commenter believed that checking should be required if it can be done in a time-effective manner. A few commenters believed that States should only have to check with bordering States or a central checkpoint. Some commenters requested that checking be required only if an individual is known to have worked in a particular State or if there is reason to suspect findings in neighboring States. One commenter suggested that we develop a mechanism for transferring findings among States.

Response: We have not required States to check with all other States before placing an individual on the registry because sections 4008(h) (1) (C) and 4801 (a) (3) of OBRA '90 amended sections 1819(b)(5)(C) and 1919(b) (5) (C) to require facilities to check with all State nurse aide registries they have reason to believe will include information on an individual before using that individual as a nurse aide. To require States also to check with other States would be duplicative.

Comment: A number of commenters responded to our request for comments on the length of time adverse findings should remain on the registry. Several commenters believed that findings should remain on the registry indefinitely or be removed only when they were found to have been made in error or when the life of the offender is over. One commenter believed that findings should be removed when an individual is found innocent in a court of law. Various numbers of years for findings to remain on the registry were volunteered, ranging from 1 year to 10 years; some commenters indicated dissatisfaction with the 5 years proposed in the NPRM without recommending a set number of years. Some commenters suggested that the length of time findings should remain on the registry should depend on the severity of the finding. One commenter suggested that adverse findings should remain on record as long as the penalty is in effect. Some commenters believed that individuals who were found to have abused or neglected a resident or misappropriated resident property should be removed from the registry, either permanently or for various lengths of time. One commenter believed that individuals with findings against them should not be reinstated.

Response: We have required that adverse findings may not ordinarily be removed from the registry because nurse aides who are found to have abused or neglected a resident or misappropriated resident property may not be employed by a facility. We believe that facilities must be able to know which individuals they may not employ. We have indicated that findings must be removed when the findings were found to have been made in error or if an individual has been found not guilty in a court of law because it would be unfair and unjust to maintain incorrect information in the registry. Findings may also be removed when the State is informed of an individual's death. We have not required that individuals who were found to have abused or neglected a resident or misappropriated resident property be removed from the registry because sections 1819(e) (2) and 1919(e) (2) of the Act require that notations of findings must be placed on the nurse aide registry.

Comment: One commenter asked that notations of misappropriation of employer property be placed on the registry. One commenter requested that we require notations of rehabilitation to be placed on the registry along with documentation of adverse findings.

Response: We have not accepted these comments because we believe that only instances of actions against residents are intended to be placed on the registry. We also believe that it would be too difficult for States to define what constitutes rehabilitation.

Comment: One commenter believed that facilities should not be held responsible if an adverse finding is made against a nurse aide.

Response: While facilities are responsible for all of the care provided to their residents, we understand that some circumstances are beyond facility control. Whether or not a facility is at fault is an issue that is not related to the operation of the registry.

Comment: One commenter believed that findings on a nurse aide should trigger a full investigation of the facility where the nurse aide was employed.

Response: We do not believe that the isolated actions of one employee necessarily warrants a facility-wide investigation. However, if there are reasons for a State to believe that a facility has a problem with resident abuse, neglect, or misappropriation of property, then the State should initiate an investigation.

Comment: One commenter believed that registries should keep a record of allegations of abuse, neglect, or misappropriation of property because a

pattern of abuse could be the only evidence against a nurse aide.

Response: We believe that it would be unfair to leave a blemish on the record of a nurse aide against whom no allegations have been substantiated.

Comment: A few commenters asked that States be protected from liability from defamation suits.

Response: Such protections are beyond the scope of these regulations and it would therefore be inappropriate to include them in the nurse aide requirements.

Comment: One commenter asked that we define penalties for those who do not report resident abuse or neglect or misappropriation of resident property. Another commenter asked that we establish a method for facilities to report abuse and track nurse aides suspected of abuse.

Response: We have not defined penalties for those who do not report abuse because we believe that many States have their own laws which define such penalties. We believe the reporting of abuse is a fairly straightforward procedure and therefore have not established any reporting methods in our regulations. Facilities can ask the agency or agencies responsible for investigating adverse allegations against nurse aides whether investigations are pending against an individual.

Comment: One commenter questioned whether an inquiry to the registry would alert the employer of a nurse aide accused of abuse, neglect, or misappropriation of property.

Response: If the State has made a finding that a nurse aide has abused or neglected a resident or misappropriated resident property, this information must be disclosed by the registry as indicated in § 483.156(d). We have not required the registry to keep information on whether an individual is under investigation, so an employer would not necessarily be informed by the registry if an individual is accused of resident abuse or neglect or misappropriation of resident property.

Comment: One commenter asked that we not require all documentation of investigations preceding adverse findings to be included on the registry. This commenter believed that limited documentation should be available with a written transcript available on request.

Response: We agree that a complete transcript does not need to be on the registry, and we did not propose that all documentation must be included. We believe that a summary containing all of the information required in § 483.156(c)(1)(iv) would be sufficient to meet this requirement.

Comment: One commenter believed that facilities should be required to keep copies of any findings reported to them on file. Another commenter believed that findings should be reported to the State board of registration.

Response: These regulations require findings to be placed on the nurse aide registry. We believe it would be unnecessary and burdensome to facilities to require them to keep information on individuals that they cannot employ. We do not see any benefit in reporting findings to the State board of registration.

Comment: A number of commenters wanted to know if nurse aides found to have abused or neglected residents or misappropriated resident property can be employed by a facility. One commenter believed that employment should not necessarily be terminated in non life-threatening cases. A few commenters believed that individuals against whom States made adverse findings should be allowed to seek new employment after a set period of time or after certain conditions had been met. One commenter requested that States be allowed to deviate from the established time limit on employment in special circumstances. Some commenters wanted to know if facilities could employ nurse aides who had been found by the State to have abused or neglected residents or misappropriated resident property but had not been convicted in a court of law. Other commenters wanted assurances that a prohibition of employment for individuals found to have abused or neglected a resident or misappropriated resident property did not conflict with State laws regarding discrimination based on criminal records. A few commenters wanted to know how long a prohibition on employment would last. One individual questioned whether a nurse aide could work during the time allowed to correct inaccuracies.

Response: According to 42 CFR 483.13(c), which delineates resident behavior and facility practices for long-term care facilities, facilities may not employ any individual who has been found by the State to have abused or neglected a resident or misappropriated resident property or who has been convicted of such an offense in a court of law. To maintain consistency in our regulations, we have not made an exception to this provision in the nurse aide requirements. We believe it would be irresponsible for us to allow nurse aides who have abused or neglected residents or misappropriated resident property to have the opportunity to jeopardize resident safety again. There is no provision to allow an individual who has been found by the State to have abused or neglected a resident or to have misappropriated resident property but who has not been convicted in a court of law to be employed by a facility. We believe that it is a facility's choice whether or not to use an individual who is appealing the accuracy of a finding.

Section 483.156(d) Disclosure of Information

Summary of NPRM Provisions

Paragraph (d) of § 483.156 specified that—

- The State must disclose to any requester within ten working days a minimum of whether an individual specified by the requester is included on the registry and, if so, the date of the individual's competency evaluation and the name of the entity that performed the competency evaluation. The State may disclose other information it deems appropriate.
- The State must disclose all information contained in the registry within ten working days to any Medicare or Medicaid participating skilled nursing facility, nursing facility, home health agency, hospital, ombudsman, or any other representative of an official agency with a need to know, upon receipt of a written request for such information, which must include the reason for the request.
- The State must provide the nurse aide with a copy of all information contained in the registry on him or her within 30 days of the date the individual is placed on the registry. The State must also provide the nurse aide with a copy of all information contained in the registry on him or her within 30 days of any changes or additional to this information. The nurse aide must be permitted at least 30 days within which to correct any misstatements or inaccuracies contained in the information maintained by the registry on that individual.

Comments and Responses

Comment: A number of commenters were concerned about release of registry information to the public. Several commenters believed that we should not allow any registry information to be released to the public. A few commenters wanted us to prohibit States from divulging information to individuals seeking credit references and mailing lists or were concerned that release of information to the public could jeopardize the safety of individuals on the registry. Some commenters believed that we should

only permit States to tell the public whether an individual is on the registry or that only information relating to training and competency evaluation should be released. A few commenters believed that all requesters should be told whether there are adverse findings on an individual. A few commenters believed that we should require States to give all information to the public. One commenter agreed that information should be released as proposed in the NPRM.

Response: Sections 1819(e)(2) and 1919(e)(2) of the Act require that information in the registry be available to the public. However, we agree with commenters that it is not necessary to disclose personal information on individuals on the registry. Therefore, the only information we have required to be disclosed by the registry is the date an individual became eligible to be placed on the registry and information relating to adverse findings as discussed in § 483.156(c)(iv). States have the option of disclosing other information they deem necessary. Because we do not believe that it is necessary to disclose personal information to any requester, we have deleted the list of entities proposed in § 483.156(d)(2).

Comment: A few commenters believed that release of registry information to the public should be done in accordance with State laws.

Response: We believe that we have defined the minimum information that States must collect to be in compliance with sections 1619(e)(2) and 1919(e)(2) of the Act. We do not believe that we have preempted any State laws in requiring this information to be disclosed.

Comment: Several commenters had various questions on or suggestions for additions to entities in proposed § 483.156(d)(2). One commenter was concerned that registries could not refuse to provide information to entities in proposed § 483.156(d)(2) because we did not list unacceptable reasons for requesting information. One commenter believed that ombudsmen should not be required to give reasons for their requests to the registry.

Response: As we indicated earlier, we have required information on the registry to be disclosed to all requesters and have therefore deleted § 483.156(d)(2). Section 483.156(d)(2) also contained a requirement to request information in writing and to provide a reason for the request. These requirements were deleted because we do not wish to limit access to registry information.

Comment: One commenter believed that facilities should have access to information on nurse aides categorized by facility.

Response: We have deleted from the final rule any requirements that the registry maintain information on individuals' employers. We therefore believe that it would be extremely burdensome, if not impossible, for a State to provide registry information on nurse aides categorized by facility.

Comment: A few commenters believed that nurse aides should only receive the information the registry contains on them when they request such information or that nurse aides should only receive some information. One commenter believed it was unclear whether providing a copy of the registry information to nurse aides was a necessary expense. Another commenter believed that information on the registry should be given to nurse aides once per year or on the request of the nurse aide. One commenter believed that nurse aides should not receive this information because it is their responsibility to provide accurate information to the registry.

Response: Because of the importance of the registry to the employment prospects of nurse aides, we believe that nurse aides must be given a reasonable opportunity to review and correct the information the registry maintains on them. However, we do not believe that all nurse aides will wish to inspect the information the registry contains on them. Therefore, we have required that the State provide to individuals the information the registry contains on them when adverse findings are placed on the registry and otherwise, upon the individual's request. It is necessary for individuals to receive a copy of adverse findings because sections 1819(e)(2) and 1919(e)(2) of the Act require that nurse aides be permitted to rebut adverse findings.

Comment: One commenter believed that not all changes or additions to the registry require notification to the nurse aide and cited examples.

Response: We have reduced the amount of information required to be on the registry, and we believe that all of the information now required to be on the registry is sufficiently important to warrant notification of registrants.

Comment: One commenter believed that we should require States to provide individuals who are on the registry with a picture identification card. This commenter believed that registries would not have to give registry information to nurse aides if such a card were used.

Response: We have not accepted this comment because we do not believe that such identification cards are necessary for the efficient operation of a nurse aide registry.

Comment: Many commenters suggested adding a provision to protect facilities from liability when they receive incorrect information from the registry or wondered if facilities were protected.

Response: Facilities are responsible for using only nurse aides who are competent to provide services. In paper violations (i.e., the registry incorrectly indicated that an individual met training and competency evaluation requirements, but no incompetent care was provided), we believe that evidence of registry error will be considered in determining whether the facility should receive a deficiency.

Comment: A few commenters believed that an individual should be provided a copy of all of the information on him or her in the registry in less than the 30 days proposed in § 483.156(d)(3) of the NPRM. Some commenters believed that individuals on the registry should have the same response time as requesters. Other commenters suggested three days or ten days as appropriate time limits for registries to provide individuals with copies of their files. One commenter believed that individuals should receive copies of their files immediately when they make the request in person.

Response: We believe that nurse aides are entitled to the same services as inquirers and have therefore required that the State promptly provide individuals on the registry with the information contained on them when they request it. In addition, as noted earlier, the State must provide individuals with the information the registry contains on them when adverse findings are placed on the registry. We believe it is reasonable to expect that information will usually be provided within ten days.

Comment: A few commenters believed that individuals who are on the registry should only have 15 days to correct any inaccuracies on the registry instead of the 30 days proposed in the NPRM. One commenter agreed with the proposed time frame.

Response: While we believe it is beneficial for all concerned to have inaccuracies on the registry corrected as soon as possible, we do not believe that 15 days would always be adequate time to allow for corrections. To ensure that nurse aides have enough time to correct inaccuracies, we have required that individuals on the registry must have sufficient time to correct any misstatements or inaccuracies contained in the registry.

Comment: One commenter believed that nurse aides should be allowed access to all information on individuals in the registry.

Response: Nurse aides have the same access to registry information on other individuals as other members of the public.

Summary of Changes to Section 483.156

In response to comments, in addition to minor technical or editorial changes, we are making the following changes:

- We have deleted several proposed requirements and have added several other requirements for the establishment, operation, and content of a nurse aide registry, as discussed in the comments and responses.
- In § 483.156(b)(4), we have prohibited States from charging registration fees to individuals listed in the registry.
- In § 483.156(d)(1), we have required that the information specified in § 483.156(c)(1) (iii) and (iv) be disclosed to all requesters.
- In § 483.156(d)(2), we have clarified that the registry must (1) promptly provide all individuals on the registry with a copy of the information contained in the registry on them when adverse findings are placed on the registry and upon request; and (2) allow individuals on the registry sufficient time to correct any misstatements or inaccuracies.

Section 483.158 FFP for Nurse Aide Training and Competency Evaluation

Summary of NPRM Provisions

Section 483.158 specified that State expenditures for NATCEPs and CEPs are administrative costs and are matched as indicated in § 433.15(b) (8) of chapter IV of 42 CFR. It also specified that FFP is only available for State expenditures associated with training and evaluation of persons employed by a facility or who have a commitment to be employed by a facility.

Comments and Responses

Comment: One commenter asked who is required to pay for NATCEPs.

Response: The provisions in § 483.158 address only the availability of FFP. They do not address the specific issue of who is required to pay for NATCEPs. While no individuals are prohibited from paying for NATCEPs and CEPs, we note that States are prohibited from approving programs that charge fees to nurse aides who are employed by, or who have an offer of employment from, a facility. We also note that States must provide for the reimbursement of costs associated with NATCEPs and CEPs for nurse aides who become employed by (or who receive an offer of employment from) a facility not later than 12 months after completion of a NATCEP or CEP.

Comment: One commenter believed that Medicaid should only pay for the training and competency evaluation of nurse aides who work in Medicaid nursing facilities.

Response: Section 6901(b) (5) (B) of OBRA '89 requires that, until October 1, 1990, Medicaid must pay for NATCEPs and CEPs for nurse aides who are employed in SNFs certified by Medicare and NFs certified by Medicaid. After October 1, 1990, these costs will be apportioned between Medicare and Medicaid.

Comment: Several commenters addressed the issue of payment for the training and competency evaluation of aides employed by temporary agencies. Some of these commenters believe that no money should be available for the training and competency of these individuals, but others believe that not paying for these individuals would be discriminatory.

Response: We cannot permit FFP to be used to match payments for the training and competency evaluation of nurse aides who work for temporary agencies because we do not believe we have the authority to match expenditures for training and competency evaluation of individuals who do not have an employment relationship with a facility.

Comment: Some commenters requested that certain salary and employer/employee relations issues such as salary rate, payment for in-service training, and workers compensation be addressed in the regulations.

Response: We do not consider salary and employer/employee relations issues as being within our realm of authority and have therefore not addressed them in our regulations.

Comment: Several commenters believed that neither nurse aides nor facilities should have to pay for NATCEPs or that facilities should be reimbursed for programs. A few commenters asked whether facility reimbursement for programs that included various content, e.g., CPR, could be sought.

Response: Sections 1819(f) (2) (A) and 1919(f) (2) (A) prohibit States from approving NATCEPs and CEPs that charge fees to nurse aides who are employed by, or who have an offer of employment from, a facility. Facilities may be reimbursed by the State for the costs associated with all State-approved NATCEPs and CEPs.

Comment: One commenter wanted to know who must pay for the training and competency evaluation of individuals who do not work in facilities or who are unemployed. Another commenter asked if individuals who are not employed as nurse aides may pay for their own training. One commenter believed that FFP should only be available for the training and competency evaluation of nurse aides who are actually employed in a facility.

Response: Any number of persons or entities, including individuals not employed as nurse aides in a facility, could pay for such training. However, FFP is only available for costs associated with NATCEPs and CEPs for nurse aides who are employed by, or who have an offer of employment from, a facility, or who obtain employment with (or an offer of employment from) a facility not later than 12 months after completing a NATCEP or CEP.

Summary of Changes to Section 483.158

After consideration of the public comments and changes contained in OBRA '90, we have revised § 483.158(b) of our regulation to permit FFP for NATCEPs and CEPs for nurse aides who obtain employment with, or an offer of employment from a facility not later than 12 months after completing a NATCEP or CEP.

IV. Summary of Effective Dates

These regulations are effective on April 1, 1992. However, requirements at sections 1819(b) (5), 1819(e) (1), 1819(e) (2), 1819(f) (2), 1919(b) (5), 1919(e) (1), 1919(e) (2), and 1919(f) (2) of the Act have specific statutory effective dates and are effective on those dates regardless of the effective date of these regulations. These statutory provisions are summarized below.

- January 1, 1989—Sections 1819(e) (1) and (2) and 1919(e) (1) and (2) of the Act require that States must have specified those NATCEPs and CEPs that they have approved as meeting the requirements in sections 1819(f) (2) and 1919(f) (2) of the Act, and must have established a nurse aide registry, which may not charge nurse aides for the registry.
- January 1, 1990—Sections 1819(e)(1) and 1919(e)(1) of the Act require that States must have provided for review and approval of NATCEPs and CEPs.
- October 1, 1990—Sections 1819(b)(5) and 1919(b)(5) of the Act make certain requirements on facilities, including—

—A facility must not use any individual as a nurse aide in the facility on a full-time basis for more than four months unless the individual has completed a State-approved NATCEP or CEP, and

is competent to provide nursing or nursing-related services;
—A facility must have provided, for individuals used as nurse aides by the facility as of January 1, 1990, for a CEP and such preparation as may be necessary for them to have completed the CEP by October 1, 1990;
—A facility must not permit an individual to serve as a nurse aide or provide services of a type for which the individual has not demonstrated competence except when the individual is in a NATCEP approved by the State and the facility has inquired of any State registry that the facility believes will include information on the individual;
—A facility must require an individual to complete a new NATCEP or a new CEP when an individual has not performed nursing or nursing-related services for monetary compensation for a continuous period of 24 consecutive months since the most recent completion of a NATCEP;
—A facility must provide regular performance review and regular in-service education to ensure that individuals used as nurse aides are competent to perform services as nurse aides.

• January 1, 1991—Sections 1819(b)(5)(A)(ii) and 1919(b)(5)(A)(ii) of the Act require that a facility must not use an individual on a temporary, per diem, leased, or any basis other than permanent employee as a nurse aide unless the individual has completed a NATCEP or CEP and is competent to provide nursing and nursing-related services.

V. Regulatory Impact Statement

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

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or

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

In addition, we generally prepare a final regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all Medicaid and Medicare certified SNFs and NFs as small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that will have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

These changes primarily conform the regulations to the legislative provisions of section 4201(a) (for Medicare) and 4211(a) (for Medicaid) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), section 6901(b) of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89), and sections 4008 and 4801 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90).

The provisions of this final rule set forth the State requirements to ensure that nurse aides have the education, practical knowledge, and skills needed to care for residents of facilities participating in the Medicare and Medicaid programs. These provisions also set forth State requirements for establishing and maintaining a nurse aide registry.

The majority of the comments that we received concerning the impact statement published in the proposed rule (March 23, 1990 at 55 FR 10946) suggested that these provisions will result in costs which exceed $100 million, and thus commenters believed this to be a major rule. Many of the major cost items cited by commenters have been addressed in the comment response section and by changes in the provisions of this final rule. Although we expect costs to be incurred, they will accrue as a direct result of implementing the statutory provisions named above. To help offset the increased costs, Congress provided for temporary enhanced Federal funding for States taking action by October 1, 1990 to implement these provisions.

As set forth by the statutes, the effective dates of these provisions have already passed or soon will be effective. We believe that entities already exist in most States that provide some degree of training and competency evaluation of nurse aides. This should enable States to meet and continue to comply with these provisions.

We believe that benefits to individuals far outweigh the costs of implementing these provisions. For example, we expect improvement in the quality of life and care for individuals as a direct result of the education curriculum for nurse aides as presented in this final rule. We also expect to minimize the incidents of neglect, abuse, and misappropriation of property of individuals in facilities through monitoring of the State nurse aide registry.

For the reasons stated above, together with responses provided elsewhere in the preamble to this final rule, we have determined that the threshold criteria of E.O. 12291 would not be met, and a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that these final regulations do not have a significant economic impact on a substantial number of small entities and do not have a significant impact on the operations of a substantial number of small rural hospitals.

VI. Information Collection Requirements

Ordinarily, we would be required to estimate the public reporting burden for information collection requirements for these regulations in accordance with chapter 35 of title 44, United States Code. However, sections 4202(b) and 4214(d) of OBRA '87 provide for a waiver of Paperwork Reduction Act requirements for these regulations.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

Chapter IV of title 42 is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

A. Part 431 is amended as follows:

1. The authority citation for part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new § 431.120 is added to subpart C to read as follows:

§ 431.120 State requirements with respect to nursing facilities.

(a) *State plan requirements.* A State plan must—

(1) Provide that the requirements of subpart D of part 483 of this chapter are met; and

(2) Specify the procedures and rules that the State follows in carrying out the specified requirements, including review and approval of State-operated programs.

(b) *Basis and scope of requirements.* The requirements set forth in part 483 of this chapter pertain to the following aspects of nursing facility services and are required by the indicated sections of the Act.

(1) Nurse aide training and competency programs, and evaluation of nurse aide competency (1919(e)(1) of the Act).

(2) Nurse aide registry (1919(e)(2) of the Act).

PART 433—STATE FISCAL ADMINISTRATION

B. Part 433 is amended as follows:

1. The authority citation for part 433 is revised to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)(5), 1903(o), 1903(p), 1903(r), 1912 and 1919(e) of the Social Security Act; 42 U.S.C. 1302, 1320b–7, 1396a(a)(4), 1396a(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r) and 1396k, unless otherwise noted.

2. Section 433.15 is amended by adding a new paragraph (b)(8) to read as follows:

§ 433.15 Rates of FFP for administration.

* * * * *

(b) * * *

(8) Nurse aide training and competency evaluation programs and competency evaluation programs described in 1919(e)(1) of the Act: for calendar quarters beginning on or after July 1, 1988 and before July 1, 1990: The lesser of 90% or the Federal medical assistance percentage plus 25 percentage points; for calendar quarters beginning on or after October 1, 1990: 50%. (Section 1903(a)(2)(B) of the Act.)

PART 483—REQUIREMENTS FOR STATES AND LONG TERM CARE FACILITIES

C. Part 483 is amended as follows:

1. The heading of part 483 is revised to read as set forth above.

1a. The authority citation for part 483 is revised to read as follows:

Authority: Secs. 1102, 1819(a)–(f), 1905(c) and (d), and 1919(a)–(f) of the Social Security Act (42 U.S.C. 1302, 1395i(3)(a)–(f), 1396d (c) and (d), and 1396r(a)–(f)).

2. The table of contents for part 483 is amended by redesignating existing subpart D (consisting of §§ 483.400–483.480), Conditions of Participation for Intermediate Care Facilities for the Mentally Retarded, as subpart I, and adding a new subpart D containing §§ 483.150 through 483.158 to read as follows:

* * * * *

Subpart D—Requirements That Must Be Met by States and State Agencies: Nurse Aide Training and Competency Evaluation

Sec.

483.150 Deemed meeting of requirements, waiver of requirements.
483.151 State review and approval of nurse aide training and competency evaluation programs and competency evaluation programs.
483.152 Requirements for approval of a nurse aide training and competency evaluation program.
483.154 Nurse aide competency evaluation.
483.156 Registry of nurse aides.
483.158 FFP for nurse aide training and competency evaluation.

Subpart B—Requirements for Long Term Care Facilities

3. In subpart B, the heading of § 483.75 is revised, the introductory text is republished and paragraph (e) is revised to read as follows:

§ 483.75 Administration.

A facility must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, psychosocial well-being of each resident.

* * * * *

(e) *Required training of nursing aides*—(1) *Definitions.*

Licensed health professional means a physician; physician assistant; nurse practitioner; physical, speech, or occupational therapist; physical or occupational therapy assistant; registered professional nurse; licensed practical nurse; or licensed or certified social worker.

Nurse aide means any individual providing nursing or nursing-related services to residents in a facility who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide such services without pay.

(2) *General rule.* A facility must not use any individual working in the facility as a nurse aide for more than 4 months, on a full-time basis, unless:

(i) That individual is competent to provide nursing and nursing related services; and

(ii)(A) That individual has completed a training and competency evaluation program, or a competency evaluation program approved by the State as meeting the requirements of §§ 483.151–483.154 of this part; or

(B) That individual has been deemed or determined competent as provided in § 483.150 (a) and (b).

(3) *Non-permanent employees.* A facility must not use on a temporary, per diem, leased, or any basis other than a permanent employee any individual who does not meet the requirements in paragraphs (e)(2) (i) and (ii) of this section.

(4) *Competency.* A facility must not use any individual who has worked less than 4 months as a nurse aide in that facility unless the individual—

(i) Is a full-time employee in a State-approved training and competency evaluation program;

(ii) Has demonstrated competence through satisfactory participation in a State-approved nurse aide training and competency evaluation program or competency evaluation program; or

(iii) Has been deemed or determined competent as provided in § 483.150 (a) and (b).

(5) *Registry verification.* Before allowing an individual to serve as a nurse aide, a facility must receive registry verification that the individual has met competency evaluation requirements unless—

(i) The individual is a full-time employee in a training and competency evaluation program approved by the State; or

(ii) The individual can prove that he or she has recently successfully completed a training and competency evaluation program or competency evaluation program approved by the State and has not yet been included in the registry. Facilities must follow up to ensure that such an individual actually becomes registered.

(6) *Multi-State registry verification.* Before allowing an individual to serve as a nurse aide, a facility must seek information from every State registry established under sections 1819(e)(2)(A) or 1919(e)(2)(A) of the Act the facility believes will include information on the individual.

(7) *Required retraining.* If, since an individual's most recent completion of a training and competency evaluation program, there has been a continuous period of 24 consecutive months during none of which the individual provided nursing or nursing-related services for

monetary compensation, the individual must complete a new training and competency evaluation program or a new competency evaluation program.

(8) *Regular in-service education.* The facility must complete a performance review of every nurse aide at least once every 12 months, and must provide regular in-service education based on the outcome of these reviews. The in-service training must—

(i) Be sufficient to ensure the continuing competence of nurse aides, but must be no less than 12 hours per year;

(ii) Address areas of weakness as determined in nurse aides' performance reviews and may address the special needs of residents as determined by the facility staff; and

(iii) For nurse aides providing services to individuals with cognitive impairments, also address the care of the cognitively impaired.

4. Subpart D of part 483 is redesignated as subpart I and a new subpart D (§§ 483.150 through 483.156) is added to read as follows:

Subpart D—Requirements That Must Be Met by States and State Agencies; Nurse Aide Training and Competency Evaluation

§ 483.150 Deemed meeting of requirements, waiver of requirements.

(a) A nurse aids is deemed to satisfy the requirement of completing a training and competency evaluation approved by the State if he or she successfully completed a training and competency evaluation program before July 1, 1989 if—

(1) The aide would have satisfied this requirement if—

(i) At least 60 hours were substituted for 75 hours in sections 1819(f)(2) and 1919(f)(2) of the Act, and

(ii) The individual has made up at least the difference in the number of hours in the program he or she completed and 75 hours in supervised practical nurse aide training or in regular in-service nurse aide education; or

(2) The individual was found to be competent (whether or not by the State) after the completion of nurse aide training of at least 100 hours duration.

(b) A State may—

(1) Waive the requirement for an individual to complete a competency evaluation program approved by the State for any individual who can demonstrate to the satisfaction of the State that he or she has served as a nurse aide at one or more facilities of the same employer in the state for at least 24 consecutive months before December 19, 1989; or

(2) Deem an individual to have completed a nurse aide training and competency evaluation program approved by the State if the individual completed, before July 1, 1989, such a program that the State determines would have met the requirements for approval at the time it was offered.

§ 483.151 State review and approval of nurse aide training and competency evaluation programs and competency evaluation programs.

(a) *State review and administration.* (1) The State—

(i) Must specify any nurse aide training and competency evaluation programs that the State approves as meeting the requirements of § 483.152 and/or competency evaluations programs that the State approves as meeting the requirements of § 483.154; and

(ii) May choose to offer a nurse aide training and competency evaluation program that meets the requirements of § 483.152 and/or a competency evaluation program that meets the requirements of § 483.154.

(2) If the State does not choose to offer a nurse aide training and competency evaluation program or competency evaluation program, the State must review and approve or disapprove nurse aide training and competency evaluation programs and nurse aide competency evaluation programs upon request.

(3) The State survey agency must in the course of all surveys, determine whether the nurse aide training and competency evaluation requirements of § 483.75(e) are met.

(b) *Requirements for approval of programs.* (1) Before the State approves a nurse aide training and competency evaluation program or competency evaluation program, the State must—

(i) Determine whether the nurse aide training and competency evaluation program meets the course requirements of §§ 483.152:

(ii) Determine whether the nurse aide competency evaluation program meets the requirements of § 483.154; and

(iii) In all reviews other than the initial review, visit the entity providing the program.

(2) The State may not approve a nurse aide training and competency evaluation program or competency evaluation program offered by or in a facility which, in the previous two years—

(i) In the case of a skilled nursing facility, has operated under a waiver under section 1819(b)(4)(C)(ii)(II) of the Act;

(ii) In the case of a nursing facility, has operated under a waiver under section 1919(b)(4)(C)(ii) of the Act that was granted on the basis of a demonstration that the facility is unable to provide nursing care required under section 1919(b)(4)(C)(i) of the Act for a period in excess of 48 hours per week;

(iii) Has been subject to an extended (or partial extended) survey under sections 1819(g)(2)(B)(i) or 1919(g)(2)(B)(i) of the Act;

(iv) Has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) of 1919(h)(2)(A)(ii) of the Act of not less than $5,000; or

(v) Has been subject to a remedy described in sections 1819(h)(2)(B) (i) or (iii), 1819(h)(4), 1919(h)(1)(B)(i), or 1919(h)(2)(A) (i), (iii) or (iv) of the Act.

(3) A State may not, until two years since the assessment of the penalty (or penalties) has elapsed, approve a nurse aide training and competency evaluation program or competency evaluation program offered by or in a facility that, within the two-year period beginning October 1, 1988—

(i) Had its participation terminated under title XVIII of the Act or under the State plan under title XIX of the Act;

(ii) Was subject to a denial of payment under title XVIII or title XIX;

(iii) Was assessed a civil money penalty of not less than $5,000 for deficiencies in nursing facility standards;

(iv) Operated under temporary management appointed to oversee the operation of the facility and to ensure the health and safety of its residents; or

(v) Pursuant to State action, was closed or had its residents transferred.

(c) *Time frame for acting on a request for approval.* The State must, within 90 days of the date of a request under paragraph (a)(3) of this section or receipt of additional information from the requester—

(1) Advise the requester whether or not the program has been approved; or

(2) Request additional information form the requesting entity.

(d) *Duration of approval.* The State may not grant approval of a nurse aide training and competency evaluation program for a period longer than 2 years. A program must notify the State and the State must review that program when there are substantive changes made to that program within the 2-year period.

(e) *Withdrawal of approval.* (1) The State must withdraw approval of a nurse aide training and competency evaluation program or nurse aide competency evaluation program offered

by or in a facility described in paragraph (b)(2) of this section.

(2) The State may withdraw approval of a nurse aide training and competency evaluation program or nurse aide competency evaluation program if the State determines that any of the applicable requirements of §§ 483.152 or 483.154 are not met by the program.

(3) The State must withdraw approval of a nurse aide training and competency evaluation program or a nurse aide competency evaluation program if the entity providing the program refuses to permit unannounced visits by the State.

(4) If a State withdraws approval of a nurse aide training and competency evaluation program or competency evaluation program—

(i) The State must notify the program in writing, indicating the reason(s) for withdrawal of approval of the program.

(ii) Students who have started a training and competency evaluation program from which approval has been withdrawn must be allowed to complete the course.

§ 483.152 Requirements for approval of a nurse aide training and competency evaluation program.

(a) For a nurse aide training and competency evaluation program to be approved by the State, it must, at a minimum—

(1) Consist of no less than 75 clock hours of training;

(2) Include at least the subjects specified in paragraph (b) of this section;

(3) Include at least 16 hours of supervised practical training. *Supervised practical training* means training in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual under the direct supervision of a registered nurse or a licensed practical nurse;

(4) Ensure that—

(i) Students do not perform any services for which they have not trained and been found proficient by the instructor; and

(ii) Students who are providing services to residents are under the general supervision of a licensed nurse or a registered nurse;

(5) Meet the following requirements for instructors who train nurse aides;

(i) The training of nurse aides must be performed by or under the general supervision of a registered nurse who possesses a minimum of 2 years of nursing experience, at least 1 year of which must be in the provision of long term care facility services;

(ii) Instructors must have completed a course in teaching adults or have experience in teaching adults or supervising nurse aides;

(iii) In a facility-based program, the training of nurse aides may be performed under the general supervision of the director of nursing for the facility who is prohibited from performing the actual training; and

(iv) Other personnel from the health professions may supplement the instructor, including, but not limited to, registered nurses, licensed practical/vocational nurses, pharmacists, dietitians, social workers, sanitarians, fire safety experts, nursing home administrators, gerontologists, psychologists, physical and occupational therapists, activities specialists, speech/language/hearing therapists, and resident rights experts. Supplemental personnel must have at least 1 year of experience in their fields;

(6) Contain competency evaluation procedures specified in § 483.154.

(b) The curriculum of the nurse aide training program must include—

(1) At least a total of 16 hours of training in the following areas prior to any direct contact with a resident:

(i) Communication and interpersonal skills;

(ii) Infection control;

(iii) Safety/emergency procedures, including the Heimlich maneuver;

(iv) Promoting residents' independence; and

(v) Respecting residents' rights.

(2) Basic nursing skills;

(i) Taking and recording vital signs;

(ii) Measuring and recording height and weight;

(iii) Caring for the residents' environment;

(iv) Recognizing abnormal changes in body functioning and the importance of reporting such changes to a supervisor; and

(v) Caring for residents when death is imminent.

(3) Personal care skills, including, but not limited to—

(i) Bathing;

(ii) Grooming, including mouth care;

(iii) Dressing;

(iv) Toileting;

(v) Assisting with eating and hydration;

(vi) Proper feeding techniques;

(vii) Skin care; and

(viii) Transfers, positioning, and turning.

(4) Mental health and social service needs:

(i) Modifying aide's behavior in response to residents' behavior;

(ii) Awareness of developmental tasks associated with the aging process;

(iii) How to respond to resident behavior;

(iv) Allowing the resident to make personal choices, providing and reinforcing other behavior consistent with the resident's dignity; and

(v) Using the resident's family as a source of emotional support.

(5) Care of cognitively impaired residents:

(i) Techniques for addressing the unique needs and behaviors of individual with dementia (Alzheimer's and others);

(ii) Communicating with cognitively impaired residents;

(iii) Understanding the behavior of cognitively impaired residents;

(iv) Appropriate responses to the behavior of cognitively impaired residents; and

(v) Methods of reducing the effects of cognitive impairments.

(6) Basic restorative services:

(i) Training the resident in self care according to the resident's abilities;

(ii) Use of assistive devices in transferring, ambulation, eating, and dressing;

(iii) Maintenance of range of motion;

(iv) Proper turning and positioning in bed and chair;

(v) Bowel and bladder training; and

(vi) Care and use of prosthetic and orthotic devices.

(7) Residents' Rights.

(i) Providing privacy and maintenance of confidentiality;

(ii) Promoting the residents' right to make personal choices to accommodate their needs;

(iii) Giving assistance in resolving grievances and disputes;

(iv) Providing needed assistance in getting to and participating in resident and family groups and other activities;

(v) Maintaining care and security of residents' personal possessions;

(vi) Promoting the resident's right to be free from abuse, mistreatment, and neglect and the need to report any instances of such treatment to appropriate facility staff;

(vii) Avoiding the need for restraints in accordance with current professional standards.

(c) Prohibition of charges. (1) No nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide training and competency evaluation program may be charged for any portion of the program (including any fees for textbooks or other required course materials).

(2) If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by, or receives an offer of employment from, a facility not later

than 12 months after completing a nurse aide training and competency evaluation program, the State must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

§ 483.154 Nurse aide competency evaluation.

(a) *Notification to Individual.* The State must advise in advance any individual who takes the competency evaluation that a record of the successful completion of the evaluation will be included in the State's nurse aid registry.

(b) *Content of the competency evaluation program*—(1) *Written or oral examinations.* The competency evaluation must—

(i) Allow an aide to choose between a written and an oral examination;

(ii) Address each course requirement specified in § 483.152(b);

(iii) Be developed from a pool of test questions, only a portion of which is used in any one examination;

(iv) Use a system that prevents disclosure of both the pool of questions and the individual competency evaluations; and

(v) If oral, must be read from a prepared text in a neutral manner.

(2) *Demonstration of skills.* The skills demonstration must consist of a demonstration of randomly selected items drawn from a pool consisting of the tasks generally performed by nurse aides. This pool of skills must include all of the personal care skills listed in § 483.152(b)(3).

(c) *Administration of the competency evaluation.* (1) The competency examination must be administered and evaluated only by—

(i) The State directly; or

(ii) A State approved entity which is neither a skilled nursing facility that participates in Medicare nor a nursing facility that participates in Medicaid.

(2) No nurse aide who is employed by, or who has received an offer of employment from, a facility on the date on which the aide begins a nurse aide competency evaluation program may be charged for any portion of the program.

(3) If an individual who is not employed, or does not have an offer to be employed, as a nurse aide becomes employed by or receives an offer of employment from, a facility not later than 12 months after completing a nurse aide competency evaluation program, the State must provide for the reimbursement of costs incurred in completing the program on a pro rata basis during the period in which the individual is employed as a nurse aide.

(4) The skills demonstration part of the evaluation must be—

(i) Performed in a facility or laboratory setting comparable to the setting in which the individual will function as a nurse aide; and

(ii) Administered and evaluated by a registered nurse with at least one year's experience in providing care for the elderly or the chronically ill of any age.

(d) *Facility proctoring of the competency evaluation.* (1) The competency evaluation may, at the nurse aide's option, be conducted at the facility in which the nurse aide is or will be employed unless the facility is described in § 483.151(b)(2).

(2) The State may permit the competency evaluation to be proctored by facility personnel if the State finds that the procedure adopted by the facility assures that the competency evaluation program—

(i) Is secure from tampering;

(ii) Is standardized and scored by a testing, educational, or other organization approved by the State; and

(iii) Requires no scoring by facility personnel.

(3) The State must retract the right to proctor nurse aide competency evaluations from facilities in which the State finds any evidence of impropriety, including evidence of tampering by facility staff.

(e) *Successful completion of the competency evaluation program.* (1) The State must establish a standard for satisfactory completion of the competency evaluation. To complete the competency evaluation successfully an individual must pass both the written or oral examination and the skills demonstration.

(2) A record of successful completion of the competency evaluation must be included in the nurse aide registry provided in § 483.156 within 30 days of the date if the individual is found to be competent.

(f) *Unsuccessful completion of the competency evaluation program.* (1) If the individual does not complete the evaluation satisfactorily, the individual must be advised—

(i) Of the areas which he or she; did not pass; and

(ii) That he or she has at least three opportunities to take the evaluation.

(2) The State may impose a maximum upon the number of times an individual upon the number of times an individual may attempt to complete the competency evaluation successfully, but the maximum may be no less than three.

§ 483.154 Registry of nurse aides.

(a) *Establishment of registry.* The State must establish and maintain a registry of nurse aides that meets the requirement of this section. The registry—

(1) Must include as a minimum the information contained in paragraph (c) of this section:

(2) Must be sufficiently accessible to meet the needs of the public and health care providers promptly;

(3) May include home health aides who have successfully completed a home health aide competency evaluation program approved by the State if home health aides are differentiated from nurse aides; and

(4) Must provide that any response to an inquiry that includes a finding of abuse, neglect, or misappropriation of property also include any statement disputing the finding made by the nurse aide, as provided under paragraph (c)(1)(ix) of this section.

(b) *Registry operation.* (1) The State may contract the daily operation and maintenance of the registry to a non-State entity. However, the State must maintain accountability for overall operation of the registry and compliance with these regulations.

(2) Only the State survey and certification agency may place on the registry findings of abuse, neglect, or misappropriation of property.

(3) The State must determine which individuals who (i) have successfully completed a nurse aide training and competency evaluation program or nurse aide competency evaluation program; (ii) have been deemed as meeting these requirements; or (iii) have had these requirements waived by the State do not qualify to remain on the registry because they have performed no nursing or nursing-related services for a period of 24 consecutive months.

(4) The State may not impose any charges related to registration on individuals listed in the registry.

(5) The State must provide information on the registry promptly.

(c) *Registry Content.* (1) [The registry must contain at least the following information on each individual who has successfully completed a nurse aide training and competency evaluation program which meets the requirements of § 483.152 or a competency evaluation which meets the requirements of § 483.154 and has been found by the State to be competent to function as a nurse aide or who may function as a nurse aide because of meeting criteria in § 483.150:

(i) The individual's full name.

(ii) Information necessary to identify each individual;

(iii) The date the individual became eligible for placement in the registry through successfully completing a nurse aide training and competency evaluation program or competency evaluation program or by meeting the requirements of § 483.150; and

(iv) The following information on any finding by the State survey agency of abuse, neglect, or misappropriation of property by the individual:

(A) Documentation of the State's investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid;

(B) The date of the hearing, if the individual chose to have one, and its outcome; and

(C) A statement by the individual disputing the allegation, if he or she chooses to make one; and

(D) This information must be included in the registry within 10 working days of the finding and must remain in the registry permanently, unless the finding was made in error, the individual was found not guilty in a court of law, or the State is notified of the individual's death.

(2) The registry must remove entries for individuals who have performed no nursing or nursing-related services for a period of 24 consecutive months, unless the individual's registry entry includes documented findings of abuse, neglect, or misappropriation of property.

(d) *Disclosure of information.* The State must—

(1) Disclose all of the information in § 483.156(c)(1) (iii) and (iv) to all requesters and may disclose additional information it deems necessary; and

(2) Promptly provide individuals with all information contained in the registry on them when adverse findings are placed on the registry and upon request. Individuals on the registry must have sufficient opportunity to correct any misstatements or inaccuracies contained in the registry.

§ 483.158 FFP for nurse aide training and competency evaluation.

(a) State expenditures for nurse aide training and competency evaluation programs and competency evaluation programs are administrative costs. They are matched as indicated in § 433.15(b)(8) of this chapter.

(b) FFP is available for State expenditures associated with nurse aide training and competency evaluation programs and competency evaluation programs only for—

(1) Nurse aides employed by a facility;

(2) Nurse aides who have an offer of employment from a facility;

(3) Nurse aides who become employed by a facility not later than 12 months after completing a nurse aide training and competency evaluation program or competency evaluation program; or

(4) Nurse aides who receive an offer of employment from a facility not later than 12 months after completing a nurse aide training and competency evaluation program or competency evaluation program.

(Catalog of Federal Domestic Assistance Program No. 93.714, Medical Assistance Program; No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: January 7, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: March 26, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91-22275 Filed 9-25-91; 8:45 am]

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Thursday
September 26, 1991

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 724 and 846

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Program on Assessment of Individual Civil Penalties; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 724 and 846

RIN 1029-AB31

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Individual Civil Penalties

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) proposed to amend its Initial and Permanent Regulatory Program regulations governing the assessment of individual civil penalties in accordance with section 518(f) of the Surface Mining Control and Reclamation Act of 1977 (the Act). The proposed rule would provide that an individual civil penalty will be assessed against each officer, director, or agent of a permittee who has been served with a copy of the cessation order issued to the permittee and who has willfully and knowingly failed or refused to take all reasonable steps within his or her legal authority to bring about abatement of the violation.

DATES: *Written comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on November 25, 1991.

Public hearings: Upon request, OSM will hold public hearings on the proposed rule in Washington, DC, at 9:30 a.m. Eastern time on November 15, 1991. Upon request, OSM will also hold public hearings in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington at times and dates to be announced prior to any requested hearings. OSM will accept requests for public hearings until 5 p.m. Eastern time on October 28, 1991. Individuals wishing to attend, but not testify, at any hearing should contact the person identified under "**FOR FURTHER INFORMATION CONTACT**" beforehand to verify that the hearing will be held.

ADDRESSES: *Written comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131, 1100 L Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240.

Public hearings: Department of the Interior Auditorium, 1849 C Street, NW., Washington, DC. The addresses for any hearings scheduled in the States of California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

Request for public hearings: Submit request orally or in writing to the person and address specified under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: George M. Stone, Jr., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone: 202–208–2550 (Commercial) or 268–2550 (FTS).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practical, commenters should submit three copies of their comments. Comments received after the close of the comment period (see "**DATES**") or delivered to addresses other than those listed above (see "**ADDRESSES**"), may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold public hearings on the proposed rule on request only. The time, date, and address scheduled for the hearing in Washington, DC, are specified previously in this notice (see "**DATES**" and "**ADDRESSES**"). The times, dates, and addresses for hearings in other locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings which are held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Stone (see "**FOR FURTHER INFORMATION CONTACT**") either orally or in writing of the desired hearing location by 5 p.m. Eastern time October 28, 1991. If no one has contacted Mr. Stone to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results will be included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing provide the transcriber a written copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see "**ADDRESSES**") an advance copy of their testimony.

II. Background

A central goal of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, and its implementing regulations is the protection of the environment from the adverse effects of surface coal mining operations. In most instances, a consequence of a permittee's violation of the Act and subsequent failure or refusal to abate a violation is environmental damage. Section 518 of the Act authorizes the Secretary of the Interior to take enforcement actions and impose civil and criminal penalties for violations of the Act on the person(s) responsible for the violation including individuals, sole proprietorships, partnerships, and corporations. If the violator is a corporation, the Act provides additional sanctions which may be imposed on the corporation's directors, officers, or agents in certain circumstances as explained more fully below.

Under section 518(a) of the Act, OSM may assess a civil penalty against any person who violates any permit condition or any other provision of Title V of the Act. Such penalty shall not exceed $5,000 per violation. Each day of a continuing violation, however, may be deemed a separate violation for purpose of assessments. Penalties assessed under section 518(a) of the Act are normally assessed against the business entity or entities which committed the violation, i.e. the sole proprietorship, partnership, or the corporation. When assessing such a civil penalty, section 518(a) directs OSM to consider:

(1) The permittee's history of previous violations at the particular surface coal mining operation;

(2) The seriousness of the violation including any irreparable harm to the environment and any hazard to the health and safety of the public;

(3) Whether the permittee was negligent; and

(4) The demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation.

If a violation resulting in a notice of violation (NOV) has not been abated within the prescribed abatement period, a cessation order for failure to abate the violation is then issued to the permittee. An additional civil penalty is assessed under section 518(h) of the Act. The amount of the civil penalty assessed under section 518(h) is a minimum of $750 for each day the violation remains unabated. The Federal rules at 30 CFR 723.15(b)(2) and 845.15(b)(2) contain procedures to implement these statutory provisions for the initial and permanent regulatory programs, respectively. Those rules provide that a section 518(h) civil penalty may be assessed for up to 30 days, and if the violation remains unabated, then OSM must take alternative enforcement action pursuant to sections 518(e) (criminal penalties), 518(f) (individual civil penalties), 521(a)(4) (permit suspension or revocation for a pattern of violations), or 521(c) (requests for temporary or permanent injunctions) of the Act.

One alternative enforcement action, the assessment of individual civil penalties under section 518(f) of the Act, is the subject of this proposed rulemaking. Section 518(f) of the Act reads in part as follows:

> Whenever a corporate permittee violates a condition of a permit * * * or fails or refuses to comply with any order issued under section 521 of this Act, or any order incorporated in a final decision issued by the Secretary under this Act * * * any director, officer, or agent of such corporation who willfully and knowingly authorized, ordered, or carried out such violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment that may be imposed upon a person under subsections (a) and (e) of this section.

30 U.S.C. 1268(f).

In order to address the circumstances under which the Secretary may use his authority under section 518(f) of the Act to impose individual civil penalties on directors, officers, or agents of a corporate permittee, OSM promulgated regulations at 30 CFR parts 724 (initial regulatory program) and 846 (permanent regulatory program) on February 8, 1988. For information on the regulatory history of the existing individual civil penalty rules, see 53 FR 3664.

Before discussing the changes being proposed herein to the individual civil penalty regulations, it is helpful to understand the key provisions of the existing program rules.

Sections 30 CFR 724.12 and 846.12, entitled "When an individual civil penalty may be assessed," specify under what circumstances an individual civil penalty may be assessed. Under those regulations, an individual civil penalty may be assessed when: (1) A cessation order has been issued to a corporate permittee and remains unabated for 30 days, and (2) a director, officer, or agent of the corporate permittee knowingly and willfully authorized, ordered, or carried out the violation, failure, or refusal. The terms "knowingly," "willfully," and "violation, failure, or refusal" are defined at 30 CFR 724.5 and 846.5.

Sections 724.14 and 846.14, entitled "Amount of individual civil penalty," contain the criteria used to determine the amount of the individual civil penalty. These include the individual's history of authorizing, ordering, or carrying out previous violations, failures, or refusals at the particular surface coal mining operation; the seriousness of the violation or refusal; and the demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure, or refusal. Under the rules, there is a daily ceiling of $5,000 per violation. Each day of a continuing violation may be treated as a separate violation, and a separate individual civil penalty may, therefore, be assessed for each day the violation continues from the date of service of the NOV or other order until abatement or compliance is achieved.

Under §§ 724.17 and 846.17, entitled "Procedure for assessment of an individual civil penalty," OSM shall serve upon an individual being assessed an individual civil penalty, a notice of proposed individual civil penalty assessment. The notice must include a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of the underlying NOV and cessation order. The assessment becomes a final order of the Secretary and payable within 30 days of service of the notice of proposed individual civil penalty assessment upon the individual unless, within that period, the individual files a petition for review with the Office of Hearings and Appeals, or agrees to a schedule or plan for the abatement or correction of the violation, failure, or refusal.

Pursuant to §§ 724.18 and 846.18, entitled "Payment of penalty," the individual civil penalty becomes due under the following circumstances.

First, if no petition for review is filed and no schedule or plan for abatement is entered into, payment of the penalty becomes due upon issuance of a final order.

Second, if the individual named in a notice of proposed individual civil penalty assessment files for administrative review in accordance with 43 CFR 4.1300 *et seq.*, then the penalty is due upon issuance of a final administrative order affirming, increasing, or decreasing the proposed penalty.

Third, if OSM and the corporate permittee or individual have agreed in writing to a plan for abatement of or compliance with the unabated cessation order, no payment is due pending the timely completion of abatement work. If such abatement work is performed satisfactorily, OSM will notify the individual in writing that the proposed penalty has been withdrawn. If such abatement work is not performed satisfactorily, payment will be due upon OSM's issuance of a final order of individual civil penalty assessment.

If the penalty is not paid within 30 days after the issuance of a final order assessing an individual civil penalty, then the penalty will be considered delinquent and will be subject to interest at a rate established quarterly by the U.S. Department of Treasury.

OSM is committed to implement an effective enforcement plan to fulfill its obligations under the Act and applicable regulations, and, therefore, proposes to strengthen the standards governing use of the authority under section 518(f) of the Act to assess individual civil penalties. Today's proposals are consistent with the position OSM took in entering into the Settlement Agreement Between Save Our Cumberland Mountains, Inc., et al. and Manuel Lujan, Jr., Secretary of the United States Department of the Interior, et al., dated January 24, 1990.

The additions and changes proposed herein would clarify which corporate officials OSM will normally view as having the authority or control over the mining operation sufficient to cause abatement of the violation by the corporate permittee; they would codify a process to inform the appropriate corporate official that he or she will or may be liable for an individual civil penalty; and they would establish procedures that will provide the corporate official with an opportunity to demonstrate that he or she did everything within his or her legal authority to bring about abatement of the violation.

Under the proposal, if a violation, failure, or refusal continues to exist after a director or corporate officer or agent with line responsibility for the mine site has been served with a cessation order, such violation, failure, or refusal will be

deemed to be willful and knowing, in the absence of sufficient proof that the corporate official took all reasonable steps within his or her legal authority to bring about abatement.

In effect, OSM would be establishing an evidentiary presumption that certain facts are sufficient to establish that a violation, failure, or refusal to comply was knowing and willful for purposes of assessing an individual civil penalty. Such facts include the service of a cessation order requiring abatement upon a person with line responsibility for such abatement and the subsequent failure of the permittee to abate the violation. These facts would be sufficient to establish a prima facie civil case showing that the individual knowingly and willfully failed or refused to comply with the abatement order. "As a matter of law there is nothing new in charging a party with knowledge of what it is his duty to know * * *. [I]f you take the office you must take the consequences of knowledge * * *." *Ferry* v. *Ramsey*, 277 U.S. 88, 95 (1928). See also, *Manley* v. *Georgia*, 279 U.S. 1, 5–6, (1929).

If the presumption is established, OSM would assess an individual civil penalty in accordance with the proposed rule, unless OSM determines that the facts in the particular case warrant the initiation of a criminal investigation.

The proposed rule is not intended to apply to, or have any effect on, the substance or process of criminal enforcement under section 518(e) of the Act, 30 U.S.C. 1268(e). The proposed rule would only be applicable to 30 CFR parts 724 and 846, governing the assessment of individual civil penalties under section 518(f) of the Act.

OSM invites comments as to the degree to which the proposed rule will result in increased reclamation. Also, OSM is interested in comments as to whether implementation of the rule would result in increased administrative burdens for OSM which would outweigh the benefits of any reclamation encouraged by the rule.

A detailed explanation of the proposed additions and modifications is set forth below.

III. Discussion of Proposed Rule

Definitions—Section 724.5; Section 846.5

OSM proposes to codify the criteria it will use for determining which corporate officials may be subject to possible assessment of an individual civil penalty. Specifically, OSM intends to focus its enforcement and individual civil penalty actions on directors, the president or other chief executive officer, and any other officer or agent who has line responsibility with respect to a mine site.

Under the proposed definition, the term "*line responsibility with respect to a mine site*" would mean authority or demonstrated control over the conduct of surface coal mining operations, including the ability to cause the abatement of violations. The term would also include supervisors of such persons throughout other levels of the corporation. For example, the superintendent of a corporation's mining operation and each official in the superintendent's chain-of-command, up to and including the chief executive officer, would fall under this definition.

Under section 518(f) of the Act, if a violation is committed by a corporate permittee or a failure or refusal to comply with certain specified orders occurs, then any director, officer, or agent of the corporate permittee who knowingly and willfully authorized, ordered, or carried out such a violation, failure, or refusal may be subject to an individual civil penalty. If a corporate officer or agent has knowledge of an unabated violation (e.g., through service of a cessation order), and if he or she has the authority or demonstrated control over the conduct of surface coal mining operations—including the ability to cause abatement of the violation—and if abatement of the violation does not occur, then it is reasonable to conclude that the failure to abate is willful and knowing, in the absence of specific countervailing evidence.

This proposal is not intended to modify the requirement that the regulatory authority establish a knowing and willful violation, failure, or refusal as the basis for an individual civil penalty. It is intended, however, to identify certain circumstances which would satisfy that requirement, absent contrary information.

The proposed rule focuses on those corporate officials who have authority or control over the conduct of surface coal mining operations. The directors of the corporation and the president or other chief executive officer obviously have such authority or control, as do other corporate officers or agents with line responsibility over the mining operation. If such a corporate official receives a copy of a cessation order issued to the permittee or operator at the mine site and a notice of potential liability for an individual civil penalty (as described below under the discussion of proposed §§ 724.11 and 846.11), he or she would be under a duty to investigate to ascertain if the violation has been abated.

Information Collection—Section 724.10; Section 846.10

The proposed rule would list the information collection requirements in parts 724 and 846 and the Office of Management and Budget (OMB) clearance number indicating OMB approval of the information collection requirements. These sections list the new requirements contained in this proposed rule. In addition, the proposed sections list the estimated reporting burden per respondent for complying with the information collection requirements contained in parts 724 and 846, and list the addresses for OSM and OMB where comments on the information collection requirements contained in parts 724 and 846 may be sent.

Notification of Potential Liability for an Individual Civil Penalty—Section 724.11; Section 846.11

Neither the Act nor the current rules contain any procedure for informing a corporate official when he or she will or may be held liable for an individual civil penalty. Since 1983, OSM has implemented an agency-wide policy of serving upon corporate officials a written notice of potential liability for an individual civil penalty, along with a copy of the cessation order issued to the corporate permittee. OSM now proposes to codify this practice in the Federal rules, both to increase public awareness and to cause equivalent procedures to be adopted by State regulatory authorities.

The proposed rule reflects an emphasis on identifying and serving notices on persons associated with a mine site where coal extraction has not been completed as of the time of issuance of the cessation order, in order to concentrate enforcement resources on coal-producing mine sites where greater success is possible. Thus, proposed §§ 724.11(a)(1) and 846.11(a)(1) provide for service of the cessation order and notice of potential liability on the president or other chief executive officer, the directors, and any other corporate officer or agent who has line responsibility with respect to such a mine site. It is reasonable to assume in such cases that, since the permittee has not yet completed mining operations at the site, sufficient resources will be available to abate the violation. By serving the notice on all responsible corporate officials, therefore, OSM hopes to encourage prompt abatement by the permittee.

The same assumption cannot be made with respect to a site on which coal

extraction has been completed. Pursuant to proposed §§ 724.11(a)(2) and 846.11(a)(2), therefore, OSM intends to serve only those corporate officials who appear to have access to the resources necessary to abate the violation, based on OSM's research into the permittee and its officials. This distinction would enable OSM to establish priorities for its cases and allocate its resources accordingly.

Under the proposed rules at §§ 724.11(b) and 846.11(b), the notice of potential liability for an individual civil penalty will inform the corporate official that an individual civil penalty will be proposed against the official unless: (1) Abatement of the violation occurs within 30 days from the issuance of the cessation order (or from the abatement date set in the cessation order, if any); (2) within 45 days from the issuance of the cessation order (or from the abatement date set in the cessation order, if any), the official provides OSM with documentation showing that he or she was not the president or other chief executive officer, director, or other officer or agent of the corporation with line responsibility with respect to the mine site; or (3) within 45 days from the issuance of the cessation order (or from the abatement date set in the cessation order, if any), the official provides OSM with documentation showing that he or she has taken all reasonable steps within his or her legal authority to bring about abatement of the violation. Under this third criterion, evidence demonstrating a good faith effort by the individual to cause the violation to be abated would be required, together with an explanation of why the individual's efforts did not succeed.

In determining whom to serve under §§ 724.11(a) and 846.11(a), OSM will review other records (such as enforcement records, permit application data, and data from automated sources such as the Applicant/Violator System) in order to determine if additional persons have responsibility with respect to the mine site and should be notified of their potential liability for an individual civil penalty.

In addition, OSM will review the information submitted by individuals and, where appropriate, compare it with information submitted by other officers, directors, or agents of the corporation in order to corroborate and weigh the facts concerning each individual's knowledge and conduct concerning the violation at issue. To illustrate, but without being exhaustive, the following types of documentation may be considered by OSM in deciding whether to assess an individual civil penalty:

(1) Official company reports, minutes, or other records;

(2) Certified copies of legal documents filed with or issued by any State, municipal, or Federal government agency; or

(3) Affidavits, describing the extent of the corporate official's authority in the company, and deliberations concerning abatement of the violation, and the results of such deliberations.

OSM believes that the requirement to demonstrate that an individual has taken all reasonable steps within his or her legal authority to bring about abatement is properly placed upon those corporate officials who have actual or apparent authority over the conduct of a mining operation and who have access to the information necessary to show that they have discharged their legal responsibilities.

When an Individual Civil Penalty May Be Assessed—Section 724.12; Section 846.12

Under the current rules at §§ 724.12 and 846.12, an individual civil penalty will not be assessed against the corporate official until a cessation order issued to the corporate permittee has remained unabated for 30 days. After that point, individual civil penalty assessments are discretionary. This procedure is consistent with OSM's policy of using the assessment of an individual civil penalty as an alternate enforcement action. See 30 CFR 723.15(b)(2) and 845.15(b)(2).

Under proposed §§ 724.12(c) and 846.12(c), this discretion is curtailed with respect to mine sites for which coal extraction has not been completed at the time of the issuance of the cessation order. The proposal would require OSM (and ultimately State regulatory authorities) to propose and undertake all necessary procedures in such cases to assess an individual civil penalty against each director, officer, or agent who has been served a copy of the cessation order issued to the corporate permittee and a completed notice of potential liability for an individual civil penalty pursuant to §§ 724.11(a)(1) and 846.11(a)(1), and who has failed or refused to take all reasonable steps within his or her legal authority to bring about abatement of the violation.

Under proposed §§ 724.12(c)(2) and 846.12(c)(2), before OSM proposes an individual civil penalty, it would afford the individual the opportunity to provide OSM with documentation showing why an individual civil penalty should not be proposed against the individual. Consistent with the terms of the notice of potential liability under proposed §§ 724.11(b)(2) and 846.11(b)(2), such documentation would have to be presented to OSM within 45 days after the issuance of an imminent harm or failure-to-abate cessation order (or within 45 days after the abatement date set by an imminent harm cessation order, whichever is later). In order to avoid a proposed assessment, such documentation would have to show that the individual (a) is not the president or other chief executive officer, director, or other officer or agent of a corporation who has line responsibility with respect to the mine site, or (b) that the individual has taken all reasonable steps within his or her legal authority to bring about abatement of the violation.

Where a corporate official has submitted information to OSM under proposed §§ 724.12(c)(2) and 846.12(c)(2) and OSM has determined that the individual did not have the requisite responsibility for the mine site or has taken all reasonable steps within the individual's legal authority to bring about abatement of the violation, an individual civil penalty would not be assessed.

Under proposed §§ 724.12(c)(3) and 846.12(c)(3), OSM would be required to consider any information submitted by the individual potentially subject to the individual civil penalty in determining whether to propose a civil penalty against him or her.

As indicated previously in this preamble, under the provisions of proposed §§ 724.12(c)(4) and 846.12(c)(4), OSM would assess an individual civil penalty in accordance with the proposed rule unless OSM determines that the facts in the particular case warrant the initiation of a criminal investigation against the individual. In such a circumstance, OSM would have the discretion whether to initiate civil or criminal proceedings. If criminal proceedings are indicated, OSM would defer proceeding with respect to an individual civil penalty until any criminal proceeding against the individual has been concluded. This approach is consistent with the provisions of the U.S. Department of Justice's Guidelines for Civil and Criminal Parallel Proceedings, Directive No. 5–87 (October 13, 1987), which provide that when both civil and criminal actions are possible under a single statute, a criminal proceeding should generally be brought before a civil action.

To summarize, the primary purpose of assessing an individual civil penalty is to motivate the responsible person(s) to abate the outstanding violation, thereby eliminating any continuing environmental harm or threat to the

public health or safety. OSM believes that the changes proposed herein will better utilize the enforcement sanctions of section 518(f) of the Act and provide more definitive criteria and procedures to help bring about the abatement of violations at mining operations.

Effect of the Rule in Federal Program States and on Indian Lands

The proposed revisions, if adopted, will apply through cross-referencing in those States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The proposed rule, if adopted, will also apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR part 750. Comments are specifically solicited as to whether unique conditions exist in any of these Federal program States or on Indian lands relating to this proposal which should be reflected either as changes to the national rules or as specific amendments to any or all of the Federal programs or the Indian lands program.

Effects of the Rule on State Programs

Section 518(i) of the Act and 30 CFR 840.13(c) of the regulations require approved State programs to contain civil penalty assessment procedures which are the same as or similar to the provisions of section 518 of the Act and consistent with those of 30 CFR parts 843 and 845. If this proposed rule is adopted, OSM will then evaluate State programs to determine whether any changes in these programs will be necessary. If OSM determines that any State program provisions should be amended to be made no less effective than the revised Federal rules, the individual States will be notified in accordance with the provisions of 30 CFR 732.17.

IV. Procedural Matters

Federal Paperwork Reduction Act

The collections of information contained in this proposed rule at 30 CFR 724.11(b)(2) and 846.11(b)(2) have been submitted to the OMB for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by the OMB. The information collection and reporting burden for individuals wishing to provide information to the regulatory authority for use in considering whether or not to assess an individual civil penalty under this proposed rule is estimated to be 4 hours per submittal. The above estimate is based on OSM's experience as a regulatory authority. The estimated burden includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The burden estimates are the same for part 724 and 846. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project (1029–_____), Washington, DC 20503.

Executive Order 12291 and Regulatory Flexibility Act

The DOI has determined that this document is not a major rule under the criteria of Executive Order 12291 (February 17, 1981) and certifies that it would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule does not distinguish between small and large entities. These determinations are based on the findings that the regulatory additions in the rule would not change costs to industry or to the Federal, State, or local governments. Furthermore, the rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

National Environmental Policy Act

OSM has prepared a draft environmental assessment, and has made an interim finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The draft environmental assessment is on file in the OSM Administrative Record at the address previously specified (see "**ADDRESSES**"). A final environmental assessment will be completed and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Authors

The principal authors of this proposed rule are Kathleen M. Parry and Harvey Blank, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; telephone: 202–208–2550 (Commercial) or 268–2550 (FTS).

List of Subjects

30 CFR Part 724

Administrative practice and procedure, Reporting and recordkeeping requirements, Penalties, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Reporting and recordkeeping requirements, Penalties, Surface mining, Underground mining.

Accordingly, it is proposed to amend 30 CFR parts 724 and 846 as follows:

Editorial Note: This document was received by the Office of the Federal Register on September 20, 1991.

Dated: June 7, 1991.

David C. O'Neal,

Assistant Secretary, Land and Minerals Management.

SUBCHAPTER B—INITIAL PROGRAM REGULATIONS

PART 724—INDIVIDUAL CIVIL PENALTIES

1. The authority citation for part 724 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and Pub. L. 100–34.

2.–3. Section 724.5 is amended by adding a definition of "line responsibility with respect to a mine site" in alphabetical order to read as follows:

§ 724.5 Definitions.

* * * * *

Line responsibility with respect to a mine site means authority or demonstrated control over the conduct of surface coal mining operations, including the ability to cause the abatement of violations, and any level of supervisory responsibility over a person having such authority or control.

* * * * *

4. Part 724 is amended by adding § 724.10 to read as follows:

§ 724.10 Information collection.

The collections of information contained in 30 CFR 724.11(b)(2) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number _____. The information will be used to meet the requirements of section 518 of Public Law 95–87. This information will be used by the regulatory authority in determining

whether persons are properly subject to individual civil penalties under Public Law 95–87. Submittal of responses is voluntary. Public reporting burden for this information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project 1029–_____, Washington, DC 20503.

5. Part 724 is amended by adding § 724.11 to read as follows:

§ 724.11 Notification of potential liability for an individual civil penalty.

(a)(1) Whenever the Office issues a cessation order to a corporate permittee for a violation on a mine site on which coal extraction has not been completed as of the time of issuance of the cessation order, the Office shall use reasonable efforts to serve a copy of the cessation order and a notice of potential liability for an individual civil penalty upon the president or other chief executive officer, the directors, and any other officer or agent of the corporation who has line responsibility with respect to the mine site.

(2) Whenever the Office issues a cessation order to a corporate permittee for a violation on a mine site on which coal extraction has been completed as of the time of issuance of the cessation order, the Office may in its discretion serve a copy of the cessation order and a notice of potential liability for an individual civil penalty upon the president or other chief executive officer, any director, any other officer or agent of the corporation who has line responsibility with respect to the mine site.

(b) The notice of potential liability will inform the individual that he or she will be subject to assessment of an individual civil penalty unless:

(1) Abatement of the violation occurs within 30 days from issuance of a cessation order under 30 CFR 722.11 (a) or (b) or 722.13 (or where an abatement date has been set by a cessation order issued under 30 CFR 722.11 (a) or (b), within 30 days after that abatement date, whichever is later); or

(2) Within 45 days from issuance of a cessation order under 30 CFR 722.11 (a) or (b) or 722.13 (or where an abatement date has been set by a cessation order issued under 30 CFR 722.11 (a) or (b), within 45 days after that abatement date, whichever is later) the individual provides the Office with documentation showing that:

(i) He or she is not the president or other chief executive officer, a director, or any other officer or agent of a corporation who has line responsibility with respect to the mine site; or

(ii) He or she has taken all reasonable steps within his or her legal authority to bring about abatement of the violation.

6. Section 724.12 is amended by adding paragraph (c) to read as follows:

§ 724.12 When an individual civil penalty may be assessed.

* * * * *

(c)(1) If a cessation order is issued to a corporate permittee under 30 CFR 722.11 (a) or (b) or 722.13 with respect to a mine site for which coal extraction has not been completed as of the time of the issuance of the cessation order and the cessation order remains unabated 30 days after it is issued (or 30 days after an abatement date set in a cessation order issued under 30 CFR 722.11 (a) or (b), whichever is later), the Office shall propose an individual civil penalty against each officer, director, or agent of the corporate permittee who:

(i) Was served with a notice of potential liability for an individual civil penalty;

(ii) Was, at the time of such service, the president or other chief executive officer, a director, or any other officer or agent of the corporation who had line responsibility with respect to the mine site; and

(iii) Failed or refused to take all reasonable steps within his or her legal authority to bring about abatement of the violation.

(2) Before the Office proposes an individual civil penalty under paragraph (c)(1) of this section, the Office shall afford the individual the opportunity to provide the Office with documentation in accordance with the terms of the notice provided under § 724.11(b)(2) of this part.

(3) The Office shall consider any information submitted by an individual under paragraph (c)(2) of this section when deciding whether to propose an individual civil penalty.

(4) Notwithstanding the provisions of paragraph (c)(1) of this section, if the facts of a particular case indicate that a criminal investigation with respect to an individual is warranted, the Office shall have discretion whether to initiate civil or criminal proceedings. If criminal proceedings are indicated, the Office shall defer proceeding with respect to an individual civil penalty until any criminal proceeding against such individual has been concluded.

SUBCHAPTER L—PERMANENT PROGRAM ENFORCEMENT AND INSPECTION AND ENFORCEMENT PROCEDURES

PART 846—INDIVIDUAL CIVIL PENALTIES

1. The authority citation for part 846 continues to read as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and Pub. L. 100–34.

2. In part 846, the table of contents is revised to read as follows:

Sec.
846.1 Scope.
846.5 Definitions.
846.10 Information collection.
846.11 Notification of potential liability for an individual civil penalty.
846.12 When an individual civil penalty may be assessed.
846.14 Amount of individual civil penalty.
846.17 Procedure for assessment of individual civil penalty.
846.18 Payment of penalty.

3. Section 846.5 is amended by adding a definition of "line responsibility with respect to a mine site" in alphabetical order to read as follows:

§ 846.5 Definitions.

* * * * *

Line responsibility with respect to a mine site means authority or demonstrated control over the conduct of surface coal mining operations, including the ability to cause the abatement of violations, and any level of supervisory responsibility over a person having such authority or control.

* * * * *

4. Part 846 is amended by adding § 846.10 to read as follows:

§ 846.10 Information collection.

The collections of information contained in 30 CFR 846.11(b)(2) have been approved by the Office of Management and Budget under 44 U.S.C 3507 and assigned clearance number _____. The information will be used to meet the requirements of section 518 of Public Law 95–87. This information will be used by the regulatory authority in determining whether persons are properly subject to individual civil penalties under Public Law 95–87. Submittal of responses is voluntary. Public reporting burden for this information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Information Collection Clearance Officer, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; and to the Office of Management and Budget, Paperwork Reduction Project 1029–_____, Washington, DC 20503.

5. Part 846 is amended by adding § 846.11 to read as follows:

§ 846.11 Notification of potential liability for an individual civil penalty.

(a)(1) Whenever the Office issues a cessation order to a corporate permittee for a violation on a mine site on which coal extraction has not been completed as of the time of issuance of the cessation order, the Office shall use reasonable efforts to serve a copy of the cessation order and a notice of potential liability for an individual civil penalty upon the president or other chief executive officer, the directors, and any other officer or agent of the corporation who has line responsibility with respect to the mine site.

(2) Whenever the Office issues a cessation order to a corporate permittee for a violation on a mine site on which coal extraction has been completed as of the time of issuance of the cessation order, the Office may in its discretion serve a copy of the cessation order and a notice of potential liability for an individual civil penalty upon the president or other chief executive officer, any director, any other officer or agent of the corporation who has line responsibility with respect to the mine site.

(b) The notice of potential liability will inform the individual that he or she will be subject to assessment of an individual civil penalty unless:

(1) Abatement of the violation occurs within 30 days from issuance of a cessation order under 30 CFR 843.11(a) or (b) (or where an abatement date has been set by a cessation order issued under 30 CFR 843.11(a), within 30 days after that abatement date, whichever is later); or

(2) Within 45 days from issuance of a cessation order under 30 CFR 843.11(a) or (b) (or where an abatement date has been set by a cessation order issued under 30 CFR 843.11(a), within 45 days after that abatement date, whenever is later) the individual provides the Office with documentation showing that:

(i) He or she is not the president or other chief executive officer, a director, or any other officer or agent of a corporation who has line responsibility with respect to the mine site; or

(ii) He or she has taken all reasonable steps within his or her legal authority to bring about abatement of the violation.

6. Section 846.12 is amended by adding paragraph (c) to read as follows:

§ 846.12 When an individual civil penalty may be assessed.

* * * * *

(c)(1) If a cessation order is issued to a corporate permittee under 30 CFR 843.11(a) or 843.11(b) with respect to a mine site for which coal extraction has not been completed as of the time of the issuance of the cessation order and the cessation order remains unabated 30 days after it is issued (or 30 days after an abatement date set in a cessation order issued under 30 CFR 843.11(a), whichever is later), the Office shall propose an individual civil penalty against each officer, director, or agent of the corporate permittee who:

(i) Was served with a notice of potential liability for an individual civil penalty;

(ii) Was, at the time of such service, the president or other chief executive officer, a director, or any other officer or agent of the corporation who had line responsibility with respect to the mine site; and

(iii) Failed or refused to take all reasonable steps within his or her legal authority to bring about abatement of the violation.

(2) Before the Office proposes an individual civil penalty under paragraph (c)(1) of this section, the Office shall afford the individual the opportunity to provide the Office with documentation in accordance with the terms of the notice provided under § 846.11(b)(2) of this part.

(3) The Office shall consider any information submitted by an individual under paragraph (c)(2) of this section when deciding whether to propose an individual civil penalty.

(4) Notwithstanding the provisions of paragraph (c)(1) of this section, if the facts of a particular case indicate that a criminal investigation with respect to an individual is warranted, the Office shall have discretion whether to initiate civil or criminal proceedings. If criminal proceedings are indicated, the Office shall defer proceeding with respect to an individual civil penalty until any criminal proceeding against such individual has been concluded.

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Thursday
September 26, 1991

Part IV

Department of Defense

Department of the Army

32 CFR Part 518

Release of Information and Records From Army Files; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 518

Release of Information and Records From Army Files

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This rule revises 32 CFR part 518 (55 FR 10870, March 23, 1990) and Army Regulation 25–55, Release of Information and Records From Army Files, dated 10 January 1990. This revision incorporates Department of Defense (DOD) policies concerning processing requests for DOD records, determining pertinent terms, prompt action on Freedom of Information Act (FOIA) requests, qualification of records under rules of exemption, creation versus extraction of records from an existing database, which agencies outside DOD are subject to FOIA, and the relationship between the FOIA and the Privacy Act (PA).

EFFECTIVE DATE: October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Angela Petrarca, HQDA (SAIS–PS), Washington, DC 20310–0107, telephone: (202) 697–5796.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Army revises 32 CFR part 518 which is derived from Army Regulation 25–55 which implements within the Department of the Army the provisions of Department of Defense Directives 5400.7–R and 5400.7 series, Department of Defense Freedom of Information Act Program (32 CFR part 286) pertaining to action on requests for release of departmental records under the Freedom of Information Act (5 U.S.C. 552). This rule is being published by the Department of the Army for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). All written comments received will be considered in making subsequent amendments or revisions to 32 CFR part 518. All publications and forms referenced in this part may be obtained from National Technical Information Services. U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as non-major. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

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

32 CFR part 518 is revised as follows:

PART 518—THE ARMY FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General Provisions

References

Sec.
518.1 References.
518.2 References (Army).

Purpose and Applicability

518.3 Purpose.
518.4 Applicability.

DoD Public Information

518.5 ODISC4 Authority to approve exceptions.
518.6 Public information.
518.7 Control system.

Definitions

518.8 Definitions.
518.9 FOIA request.
518.10 Agency record.
518.11 DoD component.
518.12 Initial Denial Authority.
518.13 Appellate authority.
518.14 Administrative appeal.
518.15 Public interest.
518.16 Electronic data.
518.17 Law enforcement investigation.

Policy

518.18 Compliance with the FOIA.
518.19 Openness with the public.
518.20 Avoidance of procedural obstacles.
518.21 Prompt action on requests.
518.22 Use of exemptions.
518.23 Public domain.
518.24 Creating a record.
518.25 Description of requested record.
518.26 Referrals.
518.27 Authentication.
518.28 Unified and specified commands.
518.29 Relationship between the FOIA and the Privacy Act (PA).
518.30 Records management.

Subpart B—FOIA Reading Rooms

Requirements

518.31 Reading room.
518.32 Material availability.

Indexes

518.33 "(a)(2)" Materials.
518.34 Other Materials.

Subpart C—Exemptions

General Provisions

518.35 General.
518.36 Jeopardy of Government Interest.

Exemptions

518.37 FOIA Exemptions.

Subpart D—For Official Use Only

General Provisions

518.38 General.
518.39 Prior FOUO application.
518.40 Historical papers.
518.41 Time to mark records.
518.42 Distribution statements.
518.43 Location of markings.

Dissemination and transmission

518.44 Release and transmission procedures.
518.45 Transporting FOUO information.
518.46 Electrically transmitted messages.
518.47 Telephone usage.

Safeguarding FOUO Information

518.48 During duty hours.
518.49 During nonduty hours.

Termination, Disposal and Unauthorized Disclosures

518.50 Termination.
518.51 Disposal.
518.52 Unauthorized disclosure.

Subpart E—Release and Processing Procedures

General Provisions

518.53 Public information.
518.54 Requests from private parties.
518.55 Requests from government officials.
518.56 Privileged release to officials.
518.57 Required coordination.

Initial Determinations

518.58 Initial denial authority.
518.59 Reasons for not releasing a record.
518.60 Denial tests.
518.61 Reasonably segregable portions.
518.62 Response to requester.
518.63 Extension of time.
518.64 Misdirected requests.
518.65 Records of non-U.S. Government source.
518.66 File of initial denials.
518.67 Special mail services.
518.68 Receipt accounts.

Appeals

518.69 General.
518.70 Time of receipt.
518.71 Time limits.
518.72 Delay in responding to an appeal.
518.73 Response to the requester.
518.74 Consultation.

Judicial Actions

518.75 General.
518.76 Jurisdiction.
518.77 Burden of proof.
518.78 Actions by the court.
518.79 Non-United States government source information.
518.80 Litigation status sheet.

Subpart F—Fee Schedule

General Provisions

518.81 Authorities.
518.82 Application.
518.83 Fee restrictions.
518.84 Fee waivers.
518.85 Fee assessment.
518.86 Aggregating requests.
518.87 Effect of the debt collection act of 1982 (Pub. L. 97–365).
518.88 Computation of fees.

Collection of Fees and Fee Rates

518.89 Collection of fees.
518.90 Search time.
518.91 Duplication.
518.92 Review time (in the case of commercial requesters).
518.93 Audiovisual documentary materials.
518.94 Other records.
518.95 Cost for special services.

Collection of Fees and Fee Rates for Technical Data

518.96 Fees for technical data.

Subpart G—Reports

Reports Control

518.97 General.

Annual Report

518.98 Reporting time.
518.99 Annual report content.

Subpart H—Education and Training

Responsibility and Purpose

518.100 Responsibility.
518.101 Purpose.
518.102 Scope and principles.
518.103 Implementation.
518.104 Uniformity of legal interpretation.

Appendices to Part 518

Appendix A—Unified Commands—Processing Procedures for FOI Appeals
Appendix B—Addressing FOIA Requests
Appendix C—Litigation Status Sheet
Appendix D—Other Reason Categories
Appendix E—DoD Freedom of Information Act Program Components
Appendix F—DD Form 2564, Annual Report—Freedom of Information Act
Appendix G—Internal Control Review Checklist

Authority: 5 U.S.C. 551, 552, 552a, 5101–5108, 5110–5113, 5115, 5332–5334, 5341–42, 5504–5509, 7154; 10 U.S.C. 130, 1102, 2320–2321, 2328, 18 U.S.C. 798, 3500; 31 U.S.C. 3710; 35 U.S.C. 181–188; 42 U.S.C. 2162; 44 U.S.C. 33; and Executive Order 12600.

Subpart A—General Provisions

References

§ 518.1 References.

(a) Title 5, United States Code, section 552.

(b) DoD Directive 5400.7, "DoD Freedom of Information Act Program," May 13, 1988.

(c) Public Law 86–36, "National Security Information Exemption."

(d) DoD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982.

(e) DoD 5400.11–R, "Department of Defense Privacy Program," August 1983, authorized by DoD Directive 5400.11, June 9, 1982.

(f) DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified and Subordinate Commands," November 1, 1988.

(g) Title 5, United States Code, section 551, "Administrative Procedures Act."

(h) DoD 5200.1–R, "DoD Information Security Program Regulation," January 1987, authorized by DoD Directive 5200.1, June 7, 1982.

(i) Title 35, United States Code, section 181–188, "Patent Secrecy."

(j) Title 42, United States Code, section 2162, "Restricted Data and Formerly Restricted Data."

(k) Title 18, United States Code, section 98, "Communication Intelligence."

(l) Title 18, United States Code, section 3500, "The Jencks Act."

(m) DoD Directive 5230.24, "Distribution Statements on Technical Documents," March 18, 1987.

(n) DoD Directive 5400.4, "Provision of Information to Congress," January 30, 1978.

(o) DoD Directive 7650.1, "General Accounting Office Access to Records," August 26, 1982.

(p) ACP–121 (United States Supplement 1).

(q) Title 44, United States Code, chapter 33, "Disposal of Records."

(r) DoD Instruction 7230.7, "User Charges," January 29, 1985.

(s) DoD Directive 5000.11, "Data Elements and Data Codes Standardization Program," December 7, 1964.

(t) DoD Directive 7750.5, "Management and Control of Information Requirements," August 7, 1986.

(u) DoD 7220.9–M, "Department of Defense Accounting Manual," 1983, authorized by DOD Instruction 7220.9, October 22, 1981.

(v) DoD Directive 5230.25, "Withholding of Unclassified Technical Data From Public Disclosure," November 6, 1984.

(w) DoD Directive 5230.9, "Clearance of DoD Information for Public Release," April 2, 1982.

(x) DoD Directive 7650.2, "General Accounting Office Audits and Reports," July 19, 1985.

(y) Title 10, United States Code, section 2328, "Release of Technical Data under Freedom of Information Act: Recovery of Costs".

(z) Title 10, United States Code, section 130, "Authority to Withhold from Public Disclosure Certain Technical Data."

(aa) Title 10, United States Code, section 2320–2321, "Rights in Technical Data."

(bb) Title 10, United States Code, section 1102, "Confidentiality of Medical Quality Records: Qualified Immunity Participants."

(cc) DoD Federal Acquisition Regulation Supplement (DFARS), subpart 227.4, "Technical Data, Other Data, Computer Software and Copyrights," October 28, 1988.

(dd) Executive Order 12600, "Predisclosure Procedures for Confidential Commercial Information," June 23, 1987.

(ee) Title 31, United States Code, section 3717, "Interest and Penalty on Claims."

(ff) Title 5, United States Code, section 552a, as amended, "The Privacy Act of 1974."

(gg) DoD 5000.12–M, "DoD Manual for Standard Data Elements," October 1986, authorized by DoD Instruction 5000.12, July 1989.

(hh) DoD Instruction 5400.10, "OSD Implementation of DoD Freedom of Information Act Program," January 24, 1991.

(ii) Title 32, Code of Federal Regulations, part 518, The Army Freedom of Information Act Program.

(jj) Title 10, United States Code, section 128, "Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information".

(kk) Public Law 101–189, National Defense Authorization Act, November 1989, 103 Stat. 1352.

§ 518.2 References (Army).

(a) Required publications.[1]

(1) AR 1–20 (Legislative Liaison) (cited in §§ 518.44 and 518.46.

(2) AR 20–1 (Inspector General Activities and Procedures) (cited in §§ 518.4, 518.58 and appendix B).

(3) AR 25–1 (The Army Information Resource Management Program) (cited in §§ 518.3 and 518.29).

(4) AR 25–9 (Army Data Management and Standards Program) (cited in § 518.98).

(5) AR 25–400–2 (The Modern Army Recordkeeping System (MARKS)) (cited in §§ 518.30, 518.51, 518.66, and appendix B).

[1] All publications and forms referenced in this section are available from National Technical Information Services, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

(6) AR 27–20 (Claims) (cited in § 518.4 and 518.51).

(7) AR 36–2 (Processing Internal and External Audit Reports and Follow-up on Findings and Recommendations) (cited in § 518.4).

(8) AR 40–66 (Medical Record and Quality Assurance Administration) (cited in § 518.17).

(9) AR 40–400 (Patient Administration) (cited in § 518.4).

(10) AR 25–11 (Record Communications) (cited in § 518.46).

(11) AR 195–2 (Criminal Investigation Activities) (cited in §§ 519.4–519.56).

(12) AR 340–21 (The Army Privacy Program) (cited in §§ 518.22, 518.37 and 518.56).

(13) AR 360–5 (Public Information) (cited in §§ 518.4 and 518.54).

(14) AR 380–5 (Department of the Army Information Security Program) (cited in §§ 518.4, 518.37, 518.53 and 518.56).

(15) AR 530–1 (Operations Security (OPSEC)) (cited in §§ 518.53 and 518.54).

(16) AR 600–85 (Alcohol and Drug Abuse Prevention and Control Program) (cited in § 518.4 and 518.54).

(b) Related publications. A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.

(1) AR 5–13 (Installation Management and Organization).

(2) AR 10-series (Organization and Functions).

(3) AR 25–3 (Army Life Cycle Management of Information Systems).

(4) AR 27–10 (Military Justice).

(5) AR 27–40 (Litigation).

(6) AR 27–60 (Patents, Inventions, and Copyrights).

(7) AR 60–20 (Army and Air Force Exchange Service (AAFES) Operating Policies) (AFR 147–14).

(8) AR 70–31 (Standards for Technical Reporting).

(9) AR 190–45 (Military Police Law Enforcement Reporting).

(10) AR 380–10 (Department of the Army Policy for Disclosure of Information, Visits, and Accreditation of Foreign Nationals (U)).

(11) AR 381–45 (Investigative Records Repository (IRR)).

(12) AR 385–40 (Accident Reporting and Records).

(13) AR 640–10 (Individual Military Personnel Records).

(14) DA Pam 25–30 (Consolidated Index of Army Publications and Blank Forms).

(15) DA Pam 25–51 (The Army Privacy Program-Systems Notices and Exemption Rules).

(16) DA Pam 385–95 (Aircraft Accident Investigation and Reporting).

(17) DoD 4500.11–PH (Defense Privacy Board Advisory Opinions).

(18) Title 10, United States Code, section 128, "Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information".

(c) Prescribed forms.

(1) DA Form 4948–R (Freedom of Information Act (FOIA/Operations Security) (OPSEC) Desktop Guide) (prescribed in §§ 518.50 and 518.49).

(2) DA Label 87 (For Official Use Only Cover Sheet) (prescribed in §§ 518.41 and 518.44).

(3) DD Form 2086 (Record of Freedom of Information (FOI) Processing Cost) (prescribed in § 518.81).

(4) DD Form 2086–1 (Record of Freedom of Information (FOI) Processing Cost for Technical Data) (prescribed in § 518.92a).

Purpose and Applicability

§ 518.3 Purpose.

The purpose of this Regulation is to provide policies and procedures for the Department of Defense (DoD) implementation of the Freedom of Information Act and DoD Directive 5400.7 (references (a) and (b)) and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program. This Army regulation implements provisions for access and release of information from all Army information systems (automated and manual) in support of the Information Resources Management Program (AR 25–1).

§ 518.4 Applicability.

(a) This Regulation applies to the Office of the Secretary of Defense (OSD), which includes for the purpose of this Regulation the Joint Staff, Unified Commands, the Military Departments, the Defense Agencies, and the DoD Field Activities (hereafter referred to as "DoD Components"), and takes precedence over all Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at enclosure 1 (appendix G).

(b) The National Security Agency records are subject to the provisions of this Regulation, only to the extent the records are not exempt under Public Law 86–36 (reference (c)).

(c) This part applies to—

(1) Active Army.

(2) Army National Guard.

(3) U.S. Army Reserve.

(4) Organizations for which the Department of the Army (DA) is the Executive Agent.

(d) This regulation governs written FOIA requests from members of the public. It does not preclude release of personnel or other records to agencies or individuals in the Federal Government for use in official work. Section 518.52(a) gives procedures for release of personnel information to Government agencies outside DOD.

(e) Soldiers and civilian employees of the Department of the Army may, as private citizens, request DA or other agencies' records under the FOIA. They must prepare requests at their own expense and on their own time. They may not use Government equipment, supplies, or postage to prepare personal FOIA requests. It is not necessary for soldiers or civilian employees to go through the chain of command to request information under the FOIA.

(f) Requests for DA records processed under the FOIA may be denied only in accordance with the FOIA (5 U.S.C. 552(b)), as implemented by this regulation. Guidance on the applicability of the FOIA is also found in the Federal Acquisition Regulation (FAR) and in the Federal Personnel Manual (FPM).

(g) Release of some records may also be affected by the programs that created them. They are discussed in the following regulations:

(1) AR 20–1 (Inspector General reports).

(2) AR 27–10 (military justice).

(3) AR 27–20 (claims reports).

(4) AR 27–60 (patents, inventions, and copyrights).

(5) AR 27–40 (litigation: release of information and appearance of witnesses).

(6) AR 36–2 (GAO audits).

(7) AR 40–66 and AR 40–400 (medical records).

(8) AR 70–31 (technical reports).

(9) AR 20–1, AR 385-40, and DA Pam 385–95 (aircraft accident investigations).

(10) AR 195–2 (criminal investigation activities).

(11) AR 190–45 (Military Police records and reports).

(12) AR 360–5 (Army public affairs: public information, general policies on release of information to the public).

(13) AR 380–10 (release of information on foreign nationals).

(14) AR 381–45 (U.S. Army Intelligence and Security Command investigation files).

(15) AR 385–40 (safety reports and records).

(16) AR 600–85 (alcohol and drug abuse records).

(17) AR 640–10 (military personnel records).

(18) AR 690 series, FPM Supplement 293–31; FPM chapters 293, 294, and 339 (civilian personnel records).

(19) AR 380–5 and DOD 5200.1–R (national security classified information).

(20) Federal Acquisition Regulation (FAR), DOD Federal Acquisition Regulation Supplement (DFARS), and the Army Federal Acquisition Regulation Supplement (AFARS) (procurement matters).

(21) AR 380–5, paragraph 7–101e (policies and procedures for allowing persons outside the Executive Branch to do unofficial historical research in classified Army records.

DOD Public Information

§ 518.5 ODISC4 Authority to approve exceptions.

This ODISC4 has the authority to approve exceptions to this part which are consistent with controlling law and regulation. The ODISC4 may delegate this authority in writing to a division chief within the proponent agency who holds the rank of colonel or the civilian equivalent. The approval authority coordinate all questions regarding the scope of authority to approve exceptions with Headquarters Department of the Army, Office of The Judge Advocate General, ATTN: DAJA–AL, Washington, DC 20310–2200.

§ 518.6 Public information.

The public has a right to information concerning the activities of its Government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA. In the event a requested record is exempt under the FOIA, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by the release of the record. (See § 518.36 for clarification.) In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request unless the requested records are in a Privacy Act system of records; such records in a Privacy Act system of records will not be released absent a written request under the FOIA, unless otherwise releasable under the Privacy Act. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

§ 518.7 Control system.

A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this Regulation. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this Regulation, unless otherwise required by § 518.31.

Definitions

§ 518.8 Definitions and terms.

As used in this regulation, definitions and terms are listed in appendix F to this part.

§ 518.9 FOIA request.

A written request for DoD records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7 (reference b), this part, or DoD Component supplementing regulations or instructions. This part is the Department of the Army's supplementing regulation.

§ 518.10 Agency record.

(a) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DoD's possession and control at the time the FOIA request is made.

(b) The following are not included within the definition of the word "record":

(1) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(2) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (c) of this section.

(3) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(4) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(5) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(c) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rate, and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(1) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(2) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of a DoD Component, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

(3) See subpart C of this part for guidance on release determinations of computer software.

(d) A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this Regulation and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(e) If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply

and they need not be processed under the FOIA. In such cases, Components should direct the requester to the appropriate source to obtain the record.

§ 518.11 DoD component.

An element of the Department of Defense, as defined in § 518.4, authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or appellate authority, and general counsel. The Department of the Army is a DOD Component.

§ 518.12 Initial denial authority (IDA).

An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure. The Department of the Army's Initial Denial Authorities are designated in § 518.58(d).

§ 518.13 Appellate authority.

The Head of the DoD Component or the Component head's designee having jurisdiction of this purpose over the record. The Department of the Army's appellate authority is the Office of General Counsel.

§ 518.14 Administrative appeal.

A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

§ 518.15 Public interest.

Public interest is official information that sheds light on an agency's performance of its statutory duties because the information falls within the statutory purpose of the FOIA in informing citizens about what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct.

§ 518.16 Electronic data.

Electronic data are those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data. See § 518.10 (b)(2) and (c) for a discussion of computer software.

§ 518.17 Law enforcement investigation.

An investigation conducted by a command or agency for law enforcement purposes relating to crime, waste, or fraud or for national security reasons. Such investigations may include gathering evidence for criminal prosecutions and for civil or regulatory proceedings.

Policy

§ 518.18 Compliance with the FOIA.

DoD personnel are expected to comply with the provisions of the FOIA and this Regulation in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

§ 518.19 Openness with the public.

The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(a) Operations Security (OPSEC). DA officials who release records under the FOIA must also consider OPSEC. The Army implementing directive is AR 530–1. Section 518.53 of this publication gives the procedure for FOIA personnel and the IDA to follow when a FOIA request appears to involve OPSEC.

(b) DA Form 4948–R. This form lists references and information frequently used for FOIA requests related to OPSEC. Persons who routinely deal with the public (by telephone or letter) on such requests should keep the form on their desks as a guide. DA Form 4948–R (Freedom of Information Act (FOIA)/ Operations Security (OPSEC) Desk Top Guide) will be locally reproduced on 8½ x 11-inch paper. A copy for reproduction purposes is located at the back of this regulation. The name and telephone number of the command FOIA/OPSEC adviser will be entered on the form.

§ 518.20 Avoidance of procedural obstacles.

DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this regulation and any supplemental regulations published by the DoD Components.

§ 518.21 Prompt action on requests.

When a member of the public complies with the procedures established in this part for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. When a Component has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. A DoD Component may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the component processing the request.

(a) The 10-day period prescribed for review of initial requests under the FOIA (5 U.S.C. 552(a)(6)) starts only when the request—

(1) Is in writing.

(2) Reasonably describes the record requested.

(3) Is received by the proper official designated to answer the request (see appendix B to this part).

(4) Meets the procedural requirements of this part (see § 518.85(b)(9)).

(b) All requests shall refer explicitly or implicitly to the Freedom of Information Act, to ensure their prompt recognition as FOIA actions.

(c) Members of the public who make FOIA requests should carefully follow the guidance in this part. They should send requests to the office that has the desired record or to a specific agency FOIA official for referral. The Army Freedom of Information and Privacy Act Division, Information Systems Command, Attn: ASQNS–OF–F, room 1146, Hoffman Building I, Alexandria, VA 22331–0301 can supply correct addresses.

(d) See Army Regulation 340–21 for Privacy Act procedures.

§ 518.22 Use of exemptions.

(a) It is the DoD policy to make records publicly available, unless they qualify for exemption under one or more of the nine exemptions. Components (IDA) may elect to make a discretionary release, however, a discretionary release is generally not appropriate for records exempt under exemptions 1, 3, 4, 6, and 7(c). Exemptions 4, 6, and 7(c) cannot be claimed when the requester is the submitter of the information.

(b) Parts of a requested record may be exempt from disclosure under the FOIA. The proper DA official may delete exempt information and release the remainder to the requester. The proper official also has the discretion under the FOIA to release exempt information; he

or she must exercise this discretion in a reasonable manner, within regulations. The excises copies shall reflect the denied information by means of BLACKENED areas, which are SUFFICIENTLY BLACKENED as to reveal no information. The best means to ensure illegibility is to cut out the information from a copy of the document and reproduce the appropriate pages. If the document is classified, all classification markings shall be lined through with a single black line, which still allows the marking to be read. The document shall then be stamped "Unclassified".

§ 518.23 Public domain.

Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available in Components' reading rooms to facilitate public access. Exempt records released pursuant to this part or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

§ 518.24 Creating a record.

(a) A record must exist and be in the possession and control of the Department of Defense at the time of the search to be considered subject to this part and the FOIA. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, would be referred to the originating Agency for direct response to the requester. There is no obligation to create not compile a record to satisfy an FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record.

(b) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of record, programming, or particular format are questionable, in other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach.

(c) Requested records, or portions thereof, may be located at several Army offices. The official receiving the FOIA request will refer it to those other offices for a direct reply if—

(1) The information must be reviewed for release under the FOIA; and

(2) Assembling the information would interfere materially with DA operations at the site first receiving the request.

§ 518.25 Description of requested record.

(a) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined below in § 518.61(b) of this publication. Components are not obligated to act on the request until the requester responds to the specificity letter. When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act. DA officials will reply to unclear requests by letter. The letter will—

(1) Describe the defects in the request.

(2) Explain the types of information in paragraph (b) of this section, and ask the requester for such information.

(3) Explain that no action will be taken on the request until the requester replies to the letter.

(b) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(1) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(2) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(c) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(d) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(e) The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel with reasonable effort, the description is adequate.

§ 518.26 Referrals.

(a) A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. In cases where the Component receiving the request has reason to believe that the existence or nonexistence of the record may in itself be classified, that Component will consult the DoD Component having cognizance over the record in question before referring the request. If the DoD Component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DoD Component originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

Within the Army, referrals will be made directly to offices that may have custody of requested records. If the office receiving the FOIA request does not know where the requested records are located, the request and an explanatory cover letter will be forwarded to The Army Freedom of Information and Privacy Act Division, Information Systems Command, Attn: ASQNS–OP–F, room 1146, Hoffman Building I, Alexandria, VA 22331–0301.

(b) Whenever a record or a portion of a record is, after prior consultation, referred to another DoD Component or to a Government agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(c) A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the Department of Defense, if the record originated in the other DoD Component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(d) A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have an equally valid interest in withholding the record as the DoD Component that created the record. In such situations, provide the record and a release recommendation on the record with the referral action. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor shall be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

(e) Within the Department of Defense, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

(f) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this Regulation. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

(g) Agencies outside the Department of Defense that are subject to the FOIA:

(1) A Component may refer an FOIA request for any record that originated in an agency outside the DoD or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the Component must respond to the request.

(2) A DoD Component shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a Component may only respond directly to the requester after coordination with the outside agency.

(3) Notwithstanding anything to the contrary in § 518.26, a Component shall notify requesters seeking National Security Council (NSC) or White House documents that they should write directly to the NSC or White House for such documents. DoD documents in which the NSC or White House has a concurrent reviewing interest shall be forwarded to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), Attn: Directorate For Freedom of Information and Security Review (DFOISR), which shall effect coordination with the NSC or White House, and return the documents to the originating agency after NSC review and determination. NSC or White House documents discovered in Components' files which are responsive to the FOIA request shall be forwarded to OASD(PA), Attn: DFOISR, for subsequent coordination with the NSC or White House, and returned to the Component with a release determination.

(h) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(i) On occasion, the Department of Defense receives FOIA requests for General Accounting Office (GAO) documents containing DoD information. Even though the GAO is outside the Executive Branch, and not subject to the FOIA, all FOIA requests for GAO documents containing DoD information received either from the public, or on referral from the GAO, will be processed under the provisions of the FOIA. In DA, requests received for GAO documents that contain classified Army information will be handled by the Army Inspector General's Office.

§ 518.27 Authentication.

Records provided under this Part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $5.20 for each authentication.

§ 518.28 Unified and specified commands.

(a) The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 (reference (f)); it authorizes and requires the Unified Commands to process Freedom of Information (FOI) requests in accordance with DoD Directive 5400.7 (reference (b)) and this Regulation. The Unified Commands shall forward directly to the OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in appendix A. For Army components of unified commands, if the requested records are joint documents, process the FOIA request through unified command channels. If the requested documents are Army-unique, process the FOIA request through Army channels.

(b) The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

§ 518.29 Relationship between the FOIA and the Privacy Act (PA).

Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure that requesters

receive the greatest amount of access rights under both Acts:

(a) Requesters who seek records about themselves contained in a PA system of records and who cite or imply the PA, will have their requests processed under the provisions of the PA.

(b) Requesters who seek records about themselves which are not contained in a PA system of records and who cite or imply the PA, will have their requests processed under the provisions of the FOIA, since they have no access under the PA.

(c) Requesters who seek records about themselves which are contained in a PA system of records and who cite or imply the FOIA or both Acts will have their requests processed under the time limits of the FOIA and the exemptions and fees of the PA. This is appropriate since greater access will be received under the PA.

(d) Requesters who seek access to agency records and who cite or imply the PA and FOIA, will have their requests processed under the FOIA.

(e) Requesters should be advised in final responses why their request was processed under a particular Act.

§ 518.30 Records management.

FOIA records shall be maintained and disposed of in accordance with DoD Component Disposition instructions and schedules. See AR 25–400–2. AR 25–1 contains Army policy for records management requirements in the life cycle management of information. Information access and release, to include potential electronic access by the public, will be considered during information systems design.

Subpart B—FOIA Reading Rooms

Requirements

§ 518.31 Reading room.

Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. In addition to the materials described below, Components may elect to place other documents in their reading room as a means to provide public access to such documents. DoD Components may share reading room facilities if the public is not unduly inconvenienced. When appropriate, the cost of copying may be imposed on the person requesting the material in accordance with the provisions of subpart F of this part. The Army FOIA Reading Room is operated by The Freedom of Information and Privacy Act Division, Information Systems Command It is located in room 1146, Hoffman Building I, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301. It is open from 0800 to 1530 Monday through Friday, except holidays.

§ 518.32 Material availability.

The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOIA reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

(a) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 (reference (g)), that may be cited, used, or relied upon as precedents in future adjudications.

(b) Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(c) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(1) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

Indexes

§ 518.33 "(a)(2)" materials.

(a) Each DoD Component shall maintain in each facility prescribed in § 518.31, an index of materials described in § 518.4, that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this Regulation.

(b) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in subpart F.

(c) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

§ 518.34 Other materials.

(a) Any available index of DoD Component material published in the **Federal Register**, such as material required to be published by section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms. Army "(a)(2)" materials are published in DA Pam 25–30.

(b) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

General Provisions

§ 518.35 General.

Records that meet the exemption criteria in the exemption part of subpart C may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to an FOIA request.

§ 518.36 Jeopardy of government interest.

An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no jeopardy to government interest would be served by release. It is appropriate for DoD Components to use their discretionary authority on a case-by-case basis in the release of given records. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this publication, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record. Further guidance on this issue may be found in § 518.37, Number 4. and § 518.65.

Exemptions

518.37 FOIA exemptions.

The following types of records may be withheld by the IDA in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law. A discretionary release (also see § 518.23) to one requester may preclude the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's privacy interest.

(a) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1–R (reference h). Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in § 518.53(c)(4) apply. In addition, this exemption shall be invoked when the following situations are apparent:

(1) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(2) Information that concerns one or more of the classification categories established by executive order and DoD 5200.1–R (reference (h)) shall be classified if its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

(b) *Number 2.* Those related solely to the internal personnel rules and practices of DoD or any of its Components. This exemption has two profiles, high b2 and low b2.

(1) Records qualifying under high b2 are those containing or constituting statitutes, rules, regulations, orders, manuals, directives, and instructions the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the DoD. Examples include:

(i) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualification of candidates for employment, entrance on duty, advancement, or promotion.

(iii) Computer software meeting the standards of § 518.10(c), the release of which would allow circumvention of statute or DoD rules, regulations, orders, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Records qualifying under the low b2 profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose these records. Examples include: Rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and trivial administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings.

(3) Negotiation and bargaining techniques, practices, and limitations.

(c) *Number 3.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(1) National Security Agency Information Exemption, Pub. L. 86–36, Section 6 (reference (c)).

(2) Patent Secrecy, 35 U.S.C. 181–188 (reference (i)). Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(3) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162 (reference (j)).

(4) Communication Intelligence, 18 U.S.C. 798 (reference (k)).

(5) Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25 (reference (w) and (aa)).

(6) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102 (reference (cc)).

(7) Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128 (reference ii).

(8) Protection of Intelligence Sources and Methods, 50 U.S.C. 403(d)(3).

(d) *Number 4.* Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

(1) Commercial or financial information received in confidence in

connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), subpart 227.4 (references (aa) and (cc)). Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 (reference (v)) (see § 518.37(e)).

(7) Computer software meeting the conditions of section 518.10(c), which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(e) *Number 5.* Except as provided in paragraphs (e)(2) through (5) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e) (reference (a)), or within or among DoD Components. Also exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege.

(1) Examples include:

(i) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

(ii) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(iii) Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

(iv) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate Government functions.

(v) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interests.

(vi) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal, State, or military court, as well as records that qualify for the attorney-client privilege.

(vii) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(viii) Computer software meeting the standards of § 518.10(c), which is deliberative in nature, the disclosure of which would inhibit or chill the decision making process. In this situation, the use of software must be closely examined to ensure its deliberative nature.

(ix) Planning, programming, and budgetary information which is involved in the defense planning and resource allocation process (see reference (kk)).

(2) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interest of the agency in maintaining its confidentiality, then the record or document need not be made available under this Regulation. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(3) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or referenced in the record containing the decision.

(f) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties.

(1) Examples of other files containing personal information similar to that

contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administratve action, including disciplinary action, may be taken.

(2) Home addresses are normally not releasable without the consent of the individuals concerned. In addition, the release of lists of DoD military and civilian personnel's names and duty addresses who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(i) A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government a privacy interest exists in its nondisclosure. The fact that the Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicated the information is not freely available.

(ii) Published telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

(3) This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(4) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11 (reference (d)).

(5) A clearly unwarranted invasion of the privacy of the persons indentified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record. When withholding personal information from the subject record, legal counsel should first be consulted.

(6) Requests for access to or release of records, before appellate review, of courts-martial or special courts-martial involving a bad conduct discharge should be addressed as in appendix B, paragraph 5. This guidance does not preclude furnishing records of a trial to an accused.

(g) *Number 7.* Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law. This exemption also applies to law enforcement investigations such as Inspector General investigations. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

(1) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(i) Could reasonably be expected to interfere with enforcement proceedings.

(ii) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(A) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested.

(B) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(C) Refusal to confirm or deny should not be used when (*1*) the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or (*2*) the person whose personal privacy is in jeopardy is decreased, and the agency is aware of the fact.

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a source within the Department of Defense, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(v) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(vi) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(vii) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Examples include:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with the Department of Defense (Army) when no indictment has been obtained nor any civil action filed against them by the United States.

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500, reference (l)) is not diminished.

(4) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11 (reference (d)). The Army implementing directive is AR 340–21.

(5) Exclusions. Excluded from the above exemption are the following two situations applicable to the Department of Defense:

(i) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of

the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to the FOIA, the response to the requester will state that no records were found.

(h) *Number 8.* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

General Provisions

§ 518.38 General.

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

§ 518.39 Prior FOUO application.

The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

§ 518.40 Historical papers.

Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (reference (a)).

§ 518.41 Time to mark records.

The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

§ 518.42 Distribution statement.

Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 (reference (m)), shall bear that statement and may be marked FOUO as appropriate.

§ 518.43 Location of markings.

(a) An unclassified document containing FOUO information shall be marked "For Official Use Only" in bold letters at least 3/16 of an inch high at the bottom on the outside of the front cover (if any), one each page containing FOUO information, and on the outside of the back cover (if any).

(b) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(c) Within a classified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page. The paragraphs containing the "For Official Use Only" information should also be marked with the initials FOUO.

(d) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein. Markings on microform will conform to the requirements of paragraphs (b) and (c) of this section. As a minimum, each frame of a microform containing FOUO information will be marked "FOR OFFICIAL USE ONLY" at the bottom center of the appropriate page or frame. Classified or protective markings placed by a software program at both top and bottom of a page or frame of a computer-generated report are acceptable. Storage media (disk packs or magnetic tapes) containing personal information subject to the Privacy Act will be labeled "FOR OFFICIAL USE ONLY-Privacy Act Information."

(e) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer: "This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions * * * apply."

(f) Permanently bound volumes need to be marked only on the outside of the front and back covers, title page, and first and last pages. Volumes stapled by office-type hand or electric staples are not considered permanently bound.

Dissemination and Transmission

§ 518.44 Release and transmission procedures.

Until FOUO status is terminated, the release and transmission instructions that follow apply:

(a) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(b) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only," and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(c) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4 (reference (n)). Army implementing instructions are in § 518.52 and in AR 1–20. Release to the GAO is governed by DoD Directive 7650.1 (reference (o)). Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be

removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

§ 518.45 Transporting FOUO information.

Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail. When material marked FOUO is removed from storage, attach DA Label 87 (For Official Use Only Cover Sheet).

§ 518.46 Electrically transmitted messages.

Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP[EN]121 (U.S. Supp 1) (reference (p)) for FOUO information. Army follows the procedures in AR 25–11.

§ 518.47 Telephone usage.

(a) FOUO information may be discussed over the telephone lines with DoD, other Government agencies, and Government support contractors for official purposes.

(b) Facsimile communications marked FOUO may be transmitted by nonsecure terminals with the FOUO markings intact between U.S. DoD, other U.S. Government agencies, and U.S. Government support contractors for official purposes.

Safeguarding FOUO Information

§ 518.48 During duty hours.

During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental personnel. When material marked FOUO is removed from storage, attach DA Label 87.

§ 518.49 During nonduty hours.

At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Public Law 86–36 (reference (c)) shall meet the safeguards outlined for that group of records. Army personnel handling National Security Agency (NSA) records will follow NSA instructions on storing and safeguarding those records.

Termination, Disposal and Unauthorized Disclosures

§ 518.50 Termination.

The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

§ 518.51 Disposal.

(a) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(b) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. chapter 33 (reference (q)), as implemented by DoD Component instructions concerning records disposal. Army implementing disposition instructions are in AR 5–400–2.

§ 518.52 Unauthorized disclosure.

The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act (reference (gg)) may also result in civil and criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures

General Provisions

§ 518.53 Public information.

(a) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD or Department of the Army record made under the FOIA may be denied only when:

(1) The record is subject to one or more of the exemptions in subpart C of this part.

(2) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(3) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

(b) Individuals seeking DoD information should address their FOIA requests to one of the addresses listed in Appendix B.

(c) Release of information under the FOIA can have an adverse impact on OPSEC. The Army implementing directive for OPSEC is AR 530–1. It requires that OPSEC points of contact be named for all HQDA staff agencies and for all commands down to battalion level. The FOIA official for the staff agency or command will use DA Form 4948–R to announce the OPSEC/FOIA advisor for the command. Persons named as OPSEC points of contact will be OPSEC/FOIA advisors. Command OPSEC/FOIA advisors should implement the policies and procedures in AR 530–1, consistent with this regulation and with the following considerations:

(1) Documents or parts of documents properly classified in the interest of national security must be protected. Classified documents may be released in response to a FOIA request only under AR 380–5, chapter III. AR 380–5 provides that if parts of a document are not classified and can be segregated with reasonable ease, they may be released, but parts requiring continued protection must be clearly identified.

(2) The release of unclassified documents could violate national security. When this appears possible, OPSEC-FOIA advisors should request a classification evaluation of the document by its proponent under AR 380–5, paragraphs 2–204, 2–600, 2–800, and 2–801. In such cases, other FOIA exemptions (para 3–200) may also apply.

(3) A combination of unclassified documents, or parts of them, could combine to supply information that might violate national security if released. When this appears possible, OPSEC/FOIA advisors should consider classifying the combined information per AR 380–5, paragraph 2–211.

(4) A document or information may not be properly or currently classified when a FOIA request for it is received. In this case, the request may not be denied on the grounds that the document or information is classified except in accordance with Executive Order 12356, § 1.6(d), and AR 380–5, paragraph 2–204, and with approval of the Army General Counsel.

(d) OPSEC/FOIA advisors will—

(1) Advise persons processing FOIA requests on related OPSEC requirements.

(2) Help custodians of requested documents prepare requests for classification evaluations.

(3) Help custodians of requested documents identify the parts of documents that must remain classified under this paragraph and AR 380–5.

(e) OPSEC/FOIA advisors do not, by their actions, relieve FOIA personnel and custodians processing FOIA requests of their responsibility to protect classified or exempted information.

§ 518.54 Requests from private parties.

The provisions of the FOIA are reserved for persons with private interests as opposed to federal or foreign governments seeking information. Requests from private persons will be made in writing, and will clearly show all other addressees within the Federal Government to whom the request was also sent. This procedure will reduce processing time requirements, and ensure better inter and intra-agency coordination. Components are under no obligation to establish procedures to receive hand delivered requests. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in § 518.24. DA officials will release the following records, upon request, to the persons specified below, even though these records are exempt from release to the general public. The 10–day limit (§ 518.22) applies.

(a) *Medical records.* Commanders or chiefs of medical treatment facilities will release information.

(1) On the condition of sick or injured patients to the patient's relatives.

(2) That a patient's condition has become critical to the nearest known relative or to the person the patient has named to be informed in an emergency.

(3) That a diagnosis of psychosis has been made to the nearest known relative or to the person named by the patient.

(4) On births, deaths, and cases of communicable diseases to local officials (if required by local laws).

(5) Copies of records of present or former soldiers, dependents, civilian employees, or patients in DA medical facilities will be released to the patient or to the patient's representative on written request. The attending physician can withhold records if he or she thinks that release may injure the patient's mental or physical health; in that case, copies of records will be released to the patient's next of kin or legal representative or to the doctor assuming the patient's treatment. If the patient is adjudged insane, or is dead, the copies will be released, on written request, to the patient's next of kin or legal representative.

(6) Copies of records may be given to a Federal or State hospital or penal institution if the person concerned is an inmate or patient there.

(7) Copies of records or information from them may be given to authorized representatives of certain agencies. The National Academy of Sciences, the National Research Council, and other accredited agencies are eligible to receive such information when they are engaged in cooperative studies, with the approval of The Surgeon General of the Army. However, certain information on drug and alcohol use cannot be released. AR 600–85 covers the Army's alcohol and drug abuse prevention and control program.

(8) Copies of pertinent parts of a patient's records can be furnished to the staff judge advocate or legal officer of the command in connection with the Government's collection of a claim. If proper, the legal officer can release this information to the tortfeasor's insurer without the patient's consent.

Note: Information released to third parties under paragraphs (a) (5), (6), and (7) of this section must be accompanied by a statement of the conditions of release. The statement will specify that the information not be disclosed to other persons except as privileged communication between doctor and patient.

(b) *Military personnel records.* Military personnel records will be released under these conditions:

(1) DA must provide specific information about a person's military service (statement of military service) in response to a request by that person or with that person's written consent to his or her legal representative.

(2) Papers relating to applications for, designation of beneficiaries under, and allotments to pay premiums for, National Service Life Insurance or Serviceman's Group Life Insurance will be released to the applicant or to the insured. If the insured is adjudged insane (evidence of an insanity judgment must be included) or dies, the records will be released, on request, to designated beneficiaries or to the next of kin.

(3) Copies of DA documents that record the death of a soldier, a dependent, or a civilian employee will be released, on request, to that person's next of kin, life insurance carrier, and legal representative. A person acting on behalf of someone else concerned with the death (e.g., the executor of a will) may also obtain copies by submitting a written request that includes evidence of his or her representative capacity. That representative may give written consent for release to others.

(4) Papers relating to the pay and allowances or allotments of a present or former soldier will be released to the soldier or his or her authorized representative. If the soldier is deceased, these papers will be released to the next of kin or legal representatives.

(c) *Civilian personnel records.* Civilian Personnel Officers (CPOs) with custody of papers relating to the pay and allowances or allotments of current or former civilian employees will release them to the employee or his or her authorized representative. If the employee is dead, these records will be released to the next of kin or legal representative. However, a CPO cannot release statements of witnesses, medical records, or other reports or documents pertaining to compensation for injuries

or death of a DA civilian employee (Federal Personnel Manual, chap 294). Only officials listed in § 518.58(d) (18) can release such information.

(d) *Release of information to the public concerning accused persons before determination of the case.* Such release may prejudice the accused's opportunity for a fair and impartial determination of the case. The following procedures apply:

(1) *Information that can be released.* Subject to paragraph (d)(2) of this section, the following information concerning persons accused of an offense may be released by the convening authority to public news agencies or media.

(i) The accused's name, grade or rank, unit, regular assigned duties, and other information as allowed by AR 340–21, paragraph 3–3a.

(ii) The substance or text of the offense of which the person is accused.

(iii) The identity of the apprehending or investigating agency and the length or scope of the investigation before apprehension. The factual circumstances immediately surrounding the apprehension, including the time and place of apprehension, resistance, or pursuit.

(iv) The type and place of custody, if any.

(2) *Information that will not be released.* Before evidence has been presented in open court, subjective observations or any information not incontrovertibly factual will not be released. Background information or information relating to the circumstances of an apprehension may be prejudicial to the best interests of the accused, and will not be released except under paragraph (d) of this section, unless it serves a law enforcement function. The following kinds of information will not be released:

(i) Observations or comments on an accused's character and demeanor, including those at the time of apprehension and arrest or during pretrial custody.

(ii) Statements, admissions, confessions, or alibis attributable to an accused, or the fact of refusal or failure of the accused to make a statement.

(iii) Reference to confidential sources, investigative techniques and procedures, investigator notes, and activity files. This includes reference to fingerprint tests, polygraph examinations, blood tests, firearms identification tests, or similar laboratory tests or examinations.

(iv) Statements as to the identity, credibility, or testimony of prospective witnesses.

(v) Statements concerning evidence or argument in the case, whether or not that evidence or argument may be used at the trial.

(vi) Any opinion on the accused's guilt.

(vii) Any opinion on the possibility of a plea of guilty to the offense charged, or of a plea to a lesser offense.

(3) Other considerations.

(i) Photographing or televising the accused. DA personnel should not encourage or volunteer assistance to news media in photographing or televising an accused or suspected person being held or transported in military custody. DA representatives should not make photographs of an accused or suspect available unless a law enforcement function is served. Requests from news media to take photographs during courts-martial are governed by AR 360–5.

(ii) Fugitives from justice. This paragraph does not restrict the release of information to enlist public aid in apprehending a fugitive from justice.

(iii) Exceptional cases. Permission to release information from military personnel records other than as outlined in paragraph (b) of this section to public news agencies or media may be requested from The Judge Advocate General (TJAG). Requests for information from military personnel records other than as outlined in paragraph (b) of this section above will be processed according to this regulation.

(e) *Litigation, tort claims, and contract disputes.* Release of information or records under this paragraph is subject to the time limitations prescribed in § 518.62. The requester must be advised of the reasons for nonrelease or referral.

(1) *Litigation.* (i) Each request for a record related to pending litigation involving the United States will be referred to the staff judge advocate or legal officer of the command. He or she will promptly inform the Litigation Division, Office of the Judge Advocate General (OTJAG), of the substance of the request and the content of the record requested. (Mailing address: HQDA (DAJA–LT), WASH DC 20310–2210; telephone, AUTOVON 227–3462 or commercial (202) 697–3462.)

(ii) If information is released for use in litigation involving the United States, the official responsible for investigative reports (AR 27–40, para 2–4) must be advised of the release. He or she will note the release in such investigative reports.

(iii) Information or records normally exempted from release (i.e., personnel and medical records) may be releasable to the judge or court concerned, for use in litigation to which the United States is not a party. Refer such requests to the local staff judge advocate or legal officer, who will coordinate it with the Litigation Division, OTJAG paragraph ((a)of this section).

(2) *Tort claims.* (i) A claimant or a claimant's attorney may request a record that relates to a pending administrative tort claim filed against the DA. Refer such requests promptly to the claims approving or settlement authority that has monetary jurisdiction over the pending claim. These authorities will follow AR 27–20. The request may concern an incident in which the pending claim is not as large as a potential claim; in such a case, refer the request to the authority that has monetary jurisdiction over the potential claim.

(ii) A potential claimant or his or her attorney may request information under circumstances clearly indicating that it will be used to file a tort claim, though none has yet been filed. Refer such requests to the staff judge advocate or legal officer of the command. That authority, when subordinate, will promptly inform the Chief, U.S. Army Claims Service, of the substance of the request and the content of the record. (Mailing address: U.S. Army Claims Service, Attn: JACS–TCC, Fort George G. Meade, MD 20755–5360; telephone, AUTOVON 923–7860 or commercial (301) 677–7860.)

(iii) DA officials listed in § 518.54(d) who receive requests under (a) or (b) of this section will refer them directly to the Chief, U.S. Army Claims Service. They will also advise the requesters of the referral and the basis for it.

(iv) The Chief, U.S. Army Claims Service, will process requests according to this regulation and AR 27–20, paragraph 1–10.

(3) *Contract disputes.* Each request for a record that relates to a potential contract dispute or a dispute that has not reached final decision by the contracting officer will be treated as a request for procurement records and not as litigation. However, the officials listed in §§ 518.50(a) and 518.54(d) will consider the effect of release on the potential dispute. Those officials may consult with the U.S. Army Legal Services Agency. (Mailing address: U.S. Army Legal Services Agency, Attn: JALS–CA, Nassif Building, 5611 Columbia Pike, Falls Church, VA 22041–5013; telephone, AUTOVON 289–2023 or commercial (703) 756–2023.) If the request is for a record that relates to a pending contract appeal to the Armed Services Board of Contract Appeals or to a final decision that is still subject to appeal (i.e., 90 days have not lapsed

after receipt of the final decision by the contractor), then the request will be—

(i) Treated as involving a contract dispute; and

(ii) Referred to the U.S. Army Legal Services Agency. (For address and phone number, see paragraph (e)(3) of this section.)

(f) *Dissemination of unclassified information concerning physical protection of special nuclear material.* (1) Unauthorized dissemination of unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material, is prohibited under 10 U.S.C. 128 and para 3[EN]200, exemption number 3.

(2) This prohibition shall be applied by the Deputy Chief of Staff for Operations and Plans as the IDA, to prohibit the dissemination of any such information only if and to the extent that it is determined that the unauthorized dissemination of such information could reasonably be expected to have a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(i) Illegal production of nuclear weapons; or

(ii) Theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(3) In making such a determination, DOD personnel may consider what the likelihood of an illegal production, theft, diversion, or sabotage would be if the information proposed to be prohibited from dissemination were at no time available for dissemination.

(4) DOD personnel shall exercise the foregoing authority to prohibit the dissemination of any information described:

(i) So as to apply the minimum restrictions needed to protect the health and safety of the public or the common defense and security; and

(ii) Upon a determination that the unauthorized dissemination of such information could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(A) Illegal production of nuclear weapons; or

(B) Theft, diversion, or sabotage of special nuclear materials, equipment, or facilities.

(5) DOD employees shall not use this authority to withhold information from the appropriate committees of Congress.

(g) *Release of names and duty addresses.* (1) Requests for release of personnel lists containing names and duty addresses will be denied under Exemption 2 of the FOIA. Coordinate all such requests with the appropriate IDA.

(2) Telephone directories, organizational charts, and/or staff directories published by installations or activities in CONUS and U.S. Territories will be released when requested under FOIA. In all such directories or charts, names of personnel assigned to sensitive units, routinely deployable units, or units stationed in foreign territories will be redacted and denied under Exemption 6 of the FOIA. By DoD policy, the names of general officers (or civilian equivalent) or public affairs officers may be released at any time. The sanitized copy will be redacted by cutting out or masking the names and reproducing the document. The IDA is the U.S. Army Information Systems Command-Pentagon, Freedom of Information and Privacy Act Division, Attn: ASQNS-OP-F, room 1146, Hoffman Building I, Alexandria, VA 22331-0301.

(3) Public Affairs Offices may release information determined to have legitimate news value, such as notices of personnel reassignments to new units or installations within the continental United States, results of selection/promotion boards, school graduations/completions, and awards and similar personal achievements. They may release the names and duty addresses of key officials, if such release is determined to be in the interests of advancing official community relations functions.

§ 518.55 Requests from Government Officials.

Requests from officials of State, or local Governments for DoD Component records shall be considered the same as any other requester. Requests from members of Congress not seeking records on behalf of a Congressional Committee, Subcommittee, either House sitting as a whole, or made on behalf of their constituents shall be considered the same as any other requester (see §§ 518.24 and 518.56). Requests from officials of foreign governments shall be considered the same as any other requester. Requests from officials of foreign governments that do not invoke the FOIA shall be referred to appropriate foreign disclosure channels and the requester so notified.

§ 518.56 Privileged release to officials.

(a) Subject to DoD 5200.1-R (reference (h)), and AR 380-5 applicable to classified information, DoD Directive 5400.11 (reference (d)), and AR 340-21 applicable to personal privacy, or other applicable law, records exempt from release under Subpart C, Exemptions, of this part may be authenticated and released, without requiring release to other FOIA requesters, in accordance with DoD Component regulations to U.S. Government officials requesting them on behalf of Federal government bodies, whether legislative, executive, administrative, or judicial, as follows:

(1) To a Committee or Subcommittee of Congress, or to either House sitting as a whole in accordance with DoD Directive 5400.4 (reference (n)). The Army implementing directive is AR 1-20. Commanders or chiefs will notify the Chief of Legislative Liaison of all releases of information to members of Congress or staffs of congressional committees. Organizations that in the normal course of business are required to provide information to Congress may be excepted. Handle requests by members of Congress (or staffs of congressional committees) for inspection of copies of official records as follows:

(i) National security classified records. Follow AR 380-5.

(ii) Civilian personnel records. Members of Congress may examine offical personnel folders as permitted by 5 CFR 297.503(i).

(iii) Information related to disciplinary action. This subparagraph refers to records of trial by courts-martial; nonjudicial punishment of military personnel under the Uniform Code of Military Justice, Article 15; nonpunitive measures such as administrative reprimands and admonitions; suspensions of civilian employees; and similar documents. If the Department of the Army has not issued specific instructions on the request, the following instructions will apply. Subordinate commanders will not release any information without securing the consent of the proper installation commander. The installation commander may release the information unless the request is for a classified or "For Official Use Only" document. In that case the commander will refer the request promptly to the Chief of Legislative Liaison (see paragraph (d) of this section for action, including the recommendations of the transmitting agency and copies of the requested records with the referral.

(iv) Military personnel records. Only HQDA can release information from these records. Custodians will refer all requests from Congress directly and promptly to the Chief of Legislative Liaison, Department of the Army, HQDA (SALL) WASH DC 20310-1600.

(v) Criminal investigation records. Only the Commanding General, U.S. Army Criminal Investigation Command (USACIDC), can release any USACIDC-originated criminal investigation file. For further information, see AR 195–2, Criminal Investigation Activities.

(vi) Other exempt records. Commanders or chiefs will refer requests for all other categories of exempt information under § 518.33 directly to the Chief of Legislative Liaison per paragraph (d) of this section. They will include a copy of the material requested and, as appropriate, recommendations concerning release or denial.

(vii) All other records. The commander or chief with custody of the records will furnish all other information promptly.

(2) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(3) To other Federal Agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

(i) Disciplinary actions and criminal investigations. Requests for access to, or information from, the records of disciplinary actions or criminal investigations will be honored if proper credentials are presented. Representatives of the Office of Personnel Management may be given information from personnel files of employees actually employed at organizations or activities. Each such request will be considered on its merits. The information released will be the minimum required in connection with the investigation being conducted.

(ii) Other types of requests. All other official requests received by DA elements from agencies of the executive branch (including other military departments) will be honored, if there are no compelling reasons to the contrary. If there are reasons to withhold the records, the requests will be submitted for determination of the propriety of release to the appropriate addresses shown in appendix B.

(4) To State and local officials, as determined by the head of a DoD Component or designee.

(b) DoD Components shall inform officials receiving records under the provisions of § 518.56(a), that those records are exempt from public release under the FOIA and are privileged. DOD Components shall also advise officials of any special handling instructions.

§ 518.57 Required coordination.

Before forwarding a FOIA request to an IDA for action, records custodians will obtain an opinion from their servicing judge advocate concerning the releasability of the requested records. A copy of that legal review, the original FOIA request, two copies of the requested information (with one copy clearly indicating which portions are recommended for withholding, which FOIA exemptions support such withholding, and which portions, if any, have already been released), a copy of the interim response acknowledging receipt and notifying the requester of the referral to the IDA, and a cover letter containing a telephone point of contact will be forwarded to the IDA with the command's recommendation to deny a request in whole or in part.

Initial Determinations

§ 518.58 Initial denial authority.

(a) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA. The DA officials in paragraph (d) of this section are designated as the Army's only IDAs. Only an IDA, his or her delegate, or the Secretary of the Army can deny FOIA requests for DA records. Each IDA will act on direct and referred requests for records within his or her area of functional responsibility. (See the proper AR in the 10-series for full discussions of these areas; they are outlined in paragraph (d) of this section.) Included are records created or kept within the IDA's area of responsibility; records retired by, or referred to, the IDA's headquarters or office; and records of predecessor organizations. If a request involves the areas of more than one IDA, the IDA to whom the request was originally addressed will normally respond to it; however, the affected IDAs may consult on such requests and agree on responsibility for them. IDAs will complete all required coordination at initial denial level. This includes classified records retired to the National Archives and Records Administration when a mandatory declassification review is necessary.

(b) The initial determination of whether to make a record available or grant a fee waiver upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this Regulation is applicable and should be invoked. DAs may delegate all or part of their authority to an office chief or subordinate commander. Such delegations must not slow FOIA actions. If an IDA's delegate denies a FOIA or fee waiver request, the delegate must clearly state that he or she is acting for the IDA and identify the IDA by name and position in the written response to the requester. IDAs will send the names, offices, and telephone numbers of their delegates to the Director of Information Systems for Command, Control, Communications, and Computers. IDAs will keep this information current. (The mailing address is HQDA (SAIS–PS), WASH DC 20310–0107.

(c) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media. A FOIA release or denial action, appeal, or court review may generate public or press interest. In such case, the IDA (or delegate) should consult the Chief of Public Affairs or the command or organization PAO. The IDA should inform the PAO contacted of the issue and obtain advice and recommendations on handling its public affairs aspect. Any advice or recommendations requested or obtained should be limited to this aspect. Coordination must be completed within the 10-day FOIA response limit. (The point of contact for the Army Chief of Public Affairs is HQDA (SAPA–OSR), WASH DC 20310–1500; telephone, AUTOVON 227–4122 or commercial (202) 697–4122.) If the request involves actual or potential litigation against the United States, release must be coordinated with The Judge Advocate General. (See § 518.54(e).)

(d) The following officials are designated IDAs for the areas of responsibility outlined below:

(1) The Administrative Assistant to the Secretary of the Army is authorized to act for the Secretary of the Army on requests for all records maintained by the Office of the Secretary of the Army and its serviced activities, except those specified in paragraphs (d)(2) through (d)(6) of this section, as well as requests requiring the personal attention of the Secretary of the Army.

(2) The Assistant Secretary of the Army (Financial Management) is

authorized to act on requests for finance and accounting records.

(3) The Assistant Secretary of the Army (Research, Development, and Acquisition) is authorized to act on requests for procurement records other than those under the purview of the Chief of Engineers and the Commander, U.S. Army Materiel Command.

(4) The Director of Information Systems for Command, Control, Communications, and Computers (DISC4) is authorized to act on requests for records pertaining to the Army Information Resources Management Program (automation, telecommunications, visual information, records management, publications and printing, and libraries).

(5) The Inspector General is authorized to act on requests for all Inspector General records under AR 20–1.

(6) The Auditor General is authorized to act on requests for records relating to audits done by the U.S. Army Audit Agency under AR 10–2. This includes requests for related records developed by the Audit agency.

(7) The Deputy Chief of Staff for Operations and Plans is authorized to act on requests for records relating to strategy formulation; force development; individual and unit training policy; strategic and tactical command and control systems; nuclear and chemical matters; use of DA forces; and military police records and reports, prisoner confinement, and correctional records.

(8) The Deputy Chief of Staff for Personnel is authorized to act on requests for case summaries, letters of instruction to boards, behavioral science records, general education records, and alcohol and drug prevention and control records. Excluded are individual treatment/test records, which are a responsibility of The Surgeon General.

(9) The Deputy Chief of Staff for Logistics is authorized to act on requests for records relating to DA logistical requirements and determinations, policy concerning materiel maintenance and use, equipment standards, and logistical readiness.

(10) The Chief of Engineers is authorized to act on requests for records involving civil works, military construction, engineer procurement, and ecology; and the records of the U.S. Army Engineer divisions, districts, laboratories, and field operating agencies.

(11) The Surgeon General is authorized to act on requests for medical research and development records, and the medical records of active duty military personnel, dependents, and persons given physical examination or treatment at DA medical facilities, to include alcohol and drug treatment/test records.

(12) The Chief of Chaplains is authorized to act on requests for records involving ecclesiastical relationships, rites performed by DA chaplains, and nonprivileged communications relating to clergy and active duty chaplains' military personnel files.

(13) The Judge Advocate General (TJAG) is authorized to act on requests for records relating to claims, courts-martial, legal services, and similar legal records. TJAG is also authorized to act on requests for records described elsewhere in this regulation, if those records relate to litigation in which the United States has an interest. In addition, TJAG is authorized to act on requests for records that are not within the functional areas of responsibility of any other IDA.

(14) The Chief, National Guard Bureau, is authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and active Army National Guard military personnel, including technician personnel, unless such records clearly fall within another IDA's responsibility. This authority includes, but is not limited to, National Guard organization and training files; plans, operations, and readiness files; policy files; historical files; files relating to National Guard military support, drug interdiction, and civil disturbances; construction, civil works, and ecology records dealing with armories, facilities within the States, ranges, etc.; Equal Opportunity investigative records; aviation program records and financial records dealing with personnel, operation and maintenance, and equipment budgets.

(15) The Chief of Army Reserve is authorized to act on requests for all personnel and medical records of retired, separated, discharged, deceased, and reserve component military personnel, and all U.S. Army Reserve (USAR) records, unless such records clearly fall within another IDA's responsibility. Records under the responsibility of the Chief of Army Reserve include records relating to USAR plans, policies, and operations; changes in the organizational status of USAR units; mobilization and demobilization policies; active duty tours; and the Individual Mobilization Augmentation program.

(16) The Commander, United States Army Materiel Command (AMC) is authorized to act on requests for the records of AMC headquarters and its subordinate commands, units, and activities that relate to procurement, logistics, research and development, and supply and maintenance operations.

(17) The Commander, USACIDC, is authorized to act on requests for criminal investigative records of USACIDC headquarters and its subordinate activities. This includes criminal investigation records, investigation-in-progress records, and military police reports that result in criminal investigation reports.

(18) The Commander, United States Total Army Personnel Command, is authorized to act on requests for military personnel files relating to active duty (other than those of reserve and retired personnel) military personnel matters, personnel locator, physical disability determinations, and other military personnel administration records; records relating to military casualty and memorialization activities; heraldic activities; voting; records relating to identification cards; naturalization and citizenship; commercial solicitation; Military Postal Service Agency and Army postal and unofficial mail service; civilian personnel records and other civilian personnel matters; and personnel administration records.

(19) The Commander, United States Army Community and Family Support Center, is authorized to act on requests for records relating to morale, welfare, and recreation activities; nonappropriated funds; child development centers, community life programs, and family action programs; retired activities; club management; Army emergency relief; consumer protection; retiree survival benefits; and records dealing with DA relationships with Social Security, Veterans' Affairs, United Service Organization, U.S. Soldiers' and Airmen's Home, and American Red Cross.

(20) The Commander, United States Army Intelligence and Security Command, is authorized to act on requests for intelligence investigation and security records, foreign scientific and technological information, intelligence training, mapping and geodesy information, ground surveillance records, intelligence threat assessment, and missile intelligence data relating to tactical land warfare systems.

(21) The Commander, U.S. Army Safety Center, is authorized to act on requests for Army safety records.

(22) The General Counsel, Army and Air Force Exchange Service (AAFES), is authorized to act on requests for AAFES records, under AR 60–20/AFR 147–14.

(23) The Commander, Forces Command (FORSCOM), as a specified

commander, is authorized to act on requests for specified command records that are unique to FORSCOM under § 518.29.

(24) Special IDA authority for time-event related records may be designated on a case-by-case basis. These will be published in the **Federal Register**. Current information on special delegations may be obtained from the Office of the Director of Information Systems for Command, Control, Communications, and Computers, Attn: SAIS–PSP, WASH DC 20310–0107.

§ 518.59 Reasons for not releasing a record.

There are seven reasons for not complying with a request for a record:

(a) The request is transferred to another DoD Component, or to another federal agency.

(b) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record.

(c) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(d) The requester has failed unreasonably to comply with procedural requirements, including payment of fees imposed by this part or DoD Component supplementing regulations.

(e) The request is withdrawn by the requester.

(f) The information requested is not a record within the meaning of the FOIA and this Regulation.

(g) The record is denied in accordance with procedures set forth in the FOIA and this part.

§ 518.60 Denial tests.

To deny a requested record that is in the possession and control of a DoD Component, it must be determined that the record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in subpart C of this part. The excised copies shall reflect the denied information by means of BLACKENED areas, which are SUFFICIENTLY BLACKENED as to reveal no information. The best means to ensure illegibility is to cut out the information from a copy of the document and reproduce the appropriate pages. If the document is classified, all classification markings shall be lined through with a single black line, which still allows the marking to be read. The document shall then be stamped "Unclassified".

§ 518.61 Reasonably segregable portions.

Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that is not to reasonable to segregate portions of the records for release.

§ 518.62 Response to requester.

(a) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond. The action command or office holding the records will date- and time-stamp each request on receipt. The 10-day limit will start from the date stamped.

(b) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(c) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component. The IDA will inform the requester of his or her right to appeal, in whole or part, the denial of the FOIA or fee waiver request and that the appeal must be sent through the IDA to the Secretary of the Army (Attn: General Counsel). (See § 518.69).

(d) The response to the requester should contain information concerning the fee status of the request, consistent with the provisions of subpart F, this regulation. Generally, the information shall reflect one or more of the following conditions:

(1) All fees due have been received.

(2) Fees have been waived because they fall below the automatic fee waiver threshold.

(3) Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver was accepted.

(4) A request for waiver has been denied.

(5) Fees due in a specified amount have not been received.

(e) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this Regulation. Merely referring to a classification or to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(f) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

§ 518.63 Extension of time.

(a) In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(1) The requested record is located in whole or in part at places other than the office processing the request.

(2) The request requires the collection and evaluation of a substantial number of records.

(3) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this Regulation or should be released as a matter of discretion.

(b) The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component, or in accordance with regulations of the DoD Component, or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted. The time may be extended only once during the initial consideration period. Only the responsible IDA can extend it, and the

IDA must first coordinate with the Office of the Army General Counsel.

(c) In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with notification that he or she may treat the delay as an initial denial with a right to appeal, or with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Components are reminded that the requester still retains the right to treat this delay as a de facto denial with full administrative remedies.

(d) As an alternative to the taking of formal extensions of time as described in § 518.63 (a), (b), and (c), the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

§ 518.64 Misdirected requests.

Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

§ 518.65 Records of non-U.S. government source.

(a) When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information (also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552 (reference (a) Exemption (b)(4) subpart C, exemptions, § 518.37, paragraph (d) and reference (dd), this part) will be notified promptly of that request and afforded reasonable time (e.g., 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under Exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and estalished that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under Exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order to take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known. When the requester brings court action to compel disclosure, the submitter shall be promptly notified of this action.

(b) The coordination provisions of this paragraph also apply to any non-U.S. Government record in the possession and control of the Department of Defense from multi-national organizations, such as the North American Treaty Organization (NATO) and North American Aerospace Defense Command (NORAD), or foreign governments. Coordination with foreign governments under the provisions of this paragraph shall be made through Department of State.

§ 518.66 File of initial denials.

Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation. Records will be maintained in accordance with AR 25–400–2.

§ 518.67 Special mail services.

DoD Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

§ 518.68 Receipt accounts.

The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts, except receipts for industrially-funded and non-appropriated funded activities. Components are reminded that the below account numbers must be preceded by the appropriate disbursing office two digit prefix. Industrially-funded and nonappropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(a) Receipt Account 3210 Sale of Publications and Reproductions, Freedom of Information Act. This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles. Deliver collections within 30 calendar days to the servicing finance and accounting office.

(b) Receipt Account 3210 Fees and Other Charges for Services, Freedom of Information Act. This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

Appeals

§ 518.69 General.

(a) If the official designated by the DoD Component to make initial determinations on requests for records (IDA) declines to provide a record because the official considers it exempt, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a request for a waiver or reduction of fees, and for no record determinations when the requester considers such a response adverse in nature. Appeals of denials of Office of the Secretary of Defense and Joint Staff documents or fee waivers may be sent to the address in appendix B, paragraph 2a to this Part.

(b) Appeals of adverse determinations made by Army IDAs must be made through the denying IDA to the Secretary of the Army (Attn: General Counsel). On receipt of an appeal, the IDA will—

(1) Send the appeal to the Office of the Secretary of the Army, Office of the General Counsel, together with a copy of the documents that are the subject of the appeal, marked to show the portions withheld; the initial denial letter; and any other relevant material.

(2) Assist the General Counsel as requested during his or her consideration of the appeal.

(c) Appeals of denial of records made by the General Counsel, AAFES, shall be made to the Secretary of the Army

when the Commander, AAFES, is an Army officer.

§ 518.70 Time of receipt.

An FOIA appeal has been received by a DoD Component when it reaches the office of an appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

§ 518.71 Time limits.

(a) The requester shall be advised to file an appeal so that it reaches the appellate authority no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained for a period of six years to meet the statute of limitations of claims requirement.

(b) Final determinations on appeals normally shall be made within 20 working days after receipt.

§ 518.72 Delay in responding to an appeal.

(a) If additional time is needed due to the unusual circumstances described in § 518.63, of this part, the final decision may be delayed for the number of working days (not to exceed 10), that were not used as additional time for responding to the initial request.

(b) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requests shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 518.63, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

§ 518.73 Response to the requester.

(a) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(b) Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, at a minimum, shall include the following:

(1) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemptions or exemption invoked under provisions of this regulation.

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(3) The final denial shall include the name and title or position of the official responsible for the denial.

(4) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(5) The response shall advise the requester of the right to judicial review.

§ 518.74 Consultation.

(a) Final refusal, involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components, ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(b) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be provided to the Department of Justice, ATTN: Office of Legal Policy, Office of Information and Policy, Washington, DC 20530.

Judicial Actions

§ 518.75 General.

(a) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind the Department of Defense to particular judicial interpretations or procedures.

(b) A requester may seek an order from a United States District Court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and in this Regulation.

§ 518.76 Jurisdiction.

The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

§ 518.77 Burden of proof.

The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

§ 518.78 Action by the Court.

(a) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(b) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(c) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit Systems Protection Board shall conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(d) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

§ 518.79 Non-United States Government source information.

A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment

source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

§ 518.80 Litigation status sheet.

FOIA managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Ligitation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the OASD(PA), Attn: DFOISR, with an information copy to the General Counsel, Department of Defense, Attn: Office of Legal Counsel. A revised Litigation Status Sheet shall be provided at each stage of the litigation. In the Department of the Army, HQDA TJAG (DAJA-LT), WASH DC 20310-2210 is responsible for preparing this report.

Subpart F—Fee Schedule

General Provisions

§ 518.81 Authorities

The Freedom of Information Act (5 U.S.C. 552), as amended; by the Freedom of Information Reform Act of 1986; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et seq.); the Defense Authorization Act for FY 87, Section 954, (Pub. L. 99-661); as amended by the Defense Technical Corrections Act of 1987 (Pub. L. 100-26).

§ 518.82 Application

(a) The fees described in this Subpart apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines. They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7 (reference (r)) (AR 37-60), which does not supersede the collection of fees under the FOIA. Nothing in this Chapter shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552 (a)(4)(A)(vi)) means any statute that enables a Government Agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(b) The term "direct costs" means those expenditures a Component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, or example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed in the Collection of Fees and Fee Rates portions of this subpart. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(c) The term "search" includes all time spent looking for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the document to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time. See § 518.82(e), for the definition of review, and § 518.90(b), for information pertaining to computer searches.

(d) The term "duplication" refers to the process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably usable by requesters. If it is not possible to provide copies which are clearly usable, the requester shall be notified that their copy is the best available and that the agency's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a Component estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(e) The term "review" refers to the process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. Components may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

§ 518.83 Fee restrictions.

(a) No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication

without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Component for billing the requester and processing the fee collected, no charges would result.

(b) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DoD Component, or another Federal Agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(c) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

(d) For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8½ × 11" or "11 × 14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.

(e) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time.

§ 518.84 Fee waivers.

(a) Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in § 518.81 when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.

(b) When assessable costs for an FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(c) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(1) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."

(i) The subject of the request. Components should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of the Department of Defense. Requests for records in the possession of the Department of Defense which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value will likely not contribute to public understanding of the operations or activities of the Department of Defense. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the Department of Defense; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the Department of Defense, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the Department of Defense.

(ii) The informative value of the Information to be disclosed. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the Department of Defense. While the subject of a request may contain information which concerns operations or activities of the Department of Defense, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the Department of Defense must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the Department of Defense.

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons.The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigency are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(iv) The significance of the contribution to public understanding. In applying this factor, Components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public. A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether

disclosure will likely lead to a significant public understanding of the issue. Components shall not make value judgments as to whether the information is important enough to be made public.

(2) Disclosure of the information "is not primarily in the commercial interest of the requester."

(i) The existence and magnitude of a commercial interest. If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of § 518.85 apply. Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefits must clearly override any personal or non-profit interest.

(ii) The primary interest in disclosure. Once a requester's commercial interest has been determined, Components should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(d) Components are reminded that the above factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

(e) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(1) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(2) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00—$30.00).

§ 518.85 Fee Assessment.

(a) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(b) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

(1) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the component will:

(i) Notify the requester that he should provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(ii) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

(2) Requesters must submit a fee declaration appropriate for the below categories.

(i) *Commercial.* Requesters must indicate a willingness to pay all search, review and duplication costs.

(ii) *Education or Noncommercial Scientific Institution or News Media.* Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(iii) *All Others.* Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(3) If the above conditions are not met, then the request need not be processed and the requester shall be so informed.

(4) In the situation described by § 518.81(b) (1) and (2), Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Component estimates exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(5) No DoD Component may require advance payment of any fee; i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

(6) Where a Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Component shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(7) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that

he has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 (reference (ff)), and confirmed with respective Finance and Accounting Offices.

(8) After all work is completed on a request, and the documents are ready for release, Components may request payment prior to forwarding the documents if there is no payment history on the requester, or if the requester has previously failed to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing). In the case of the latter, the provisions of § 518.85(b)(7), apply. Components may not hold documents ready for release pending payment from requesters with a history of prompt payment.

(9) When Components act under § 518.85, (a)(1) through (a)(7), of this part, the administrative time limits of the FOIA (i.e., 10 working days from receipt of initial requests, and 20 working days from receipt of appeals, plus permissible extensions of these time limits) will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(10) Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request. Components may also charge search and review (in the case of commercial requesters) time if records located are determined to be search charges are likely to exceed $25,000 it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) Commercial Requesters. Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought (see § 518.26).

(1) the term "commercial use" request refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Component must determine the use to which a requester will put the documents requested. Moreover, where a Components has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification before assigning the request to a specific category.

(2) When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial requesters (unlike other requesters) are not entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(d) Educational Institution Requesters. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the record sought (see § 518.26). The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(e) Non-Commercial Scientific Institution Requesters. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought (see § 518.26). The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in § 518.81(c) and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(f) Components shall provide documents to requesters in § 518.85 (d) and (e), for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(g) Representatives of the news media. Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see § 518.26).

(1) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Example of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record of a requester in making this determination.

(2) To be eligible for inclusion in this category, a requester must meet the criteria in § 518.85(g)(1) and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a

defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(3) "Representative of the news media" does not include private libraries, private repositories of Government records, or middlemen, such as information vendors or data boxes.

(h) All Other Requesters. Components shall charge requesters who do not fit into any of the above categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought (see § 518.26). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974 (reference (ff)), which permit fees only for duplication. Components are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest as defined under § 518.84(a). (See also § 518.65(c)(2).DD Form 2086 (Record of Freedom of Information (FOI) Processing Cost) will be used to annotate fees for processing FOIA information. The form is available through normal publications channels.

§ 518.86 Aggregating requests.

Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period, however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

§ 518.87 Effect of the Debt Collection Act of 1982 (Pub. L. 97-365).

The Debt Collection Act of 1982 (Pub. L. 97-365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717 (reference (ff)). Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act of 1982.

§ 518.83 Computation of fees.

The fee schedule in this chapter shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

Collection of Fees and Fee Rates

§ 518.89 Collection of fees.

Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the Component has determined that the fee will be in excess of $250 (see § 518.81).

§ 518.90 Search time.

(a) Manual search

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below	12
Professional	01-06/GS9-GS/GM15.	25
Executive	07/GS/GM16/ES1 and above.	45

(b) *Computer search.* Computer search is based on direct cost of the central processing unit, input-output devices, and money capacity of the actual computer configuration. The salary scale (equating to paragraph a above) for the computer operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search.

§ 518.91 Duplication.

Type	Cost per page (cents)
Pre-Printed material	02.
Office copy	15.
Microfiche	25.
Computer copies (tapes or printouts).	Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape).

§ 518.92 Review time (in the case of commercial requesters).

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below	12
Professional	01-06/GS9-GS15	25
Executive	07/GS16/ES1 and above.	45

§ 518.93 Audiovisual documentary materials.

Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality. Army audiovisual materials are referred to as "visual information."

§ 518.94 Other records.

Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

§ 518.95 Costs for special services.

Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Therefore, Components may

recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(a) Certifying that records are true copies.

(b) Sending records by special methods such as express mail, etc.

Collection of Fees and Fee Rates for Technical Data

§ 518.96 Fees for technical data.

(a) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this Section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. DoD Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full cost shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under the Collection of Fees and Fee Rates portion of this subpart for other types of information released under the FOIA. DD Form 2086–1 (Record of Freedom of Information (FOI) Processing Cost for Technical Data) will be used to annotate fees for technical data. The form is available through normal publications channels.

(b) Waiver. Components shall waive the payment of costs required in § 518.96(a), which are greater than the costs that would be required for release of this same information under the Collection of Fees and Fee Rates portion of this subpart if:

(1) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(3) The Component determines in accordance with § 518.80(a), that such a waiver is in the interest of the United States.

(c) Fee Rates.

(1) Search time. (i) Manual Search.

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below	13.25
(Minimum Charge)		8.30

Professional and Executive (To be established at actual hourly rate prior to search. A minimum charge will be established at ½ hourly rates.)

(ii) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in § 518.96(c)(1)(i), for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(2) Duplication.

Type	Cost
Aerial photographs, specifications, permits, charts, blueprints, and other technical documents	$2.50
Engineering data (microfilm):	
Aperture cards:	
Silver duplicate negative, per card	.75
When key punched and verified, per card	.85
Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
35mm roll film, per frame	.50
16mm roll film, per frame	.45
Paper daprints (engineering drawings), each	1.50
Paper reprints of microfilm indices, each	.10

(3) Review time.

Type	Grade	Hourly rate ($)
Clerical	E9/GS8 and below	13.25
(Minimum Charge).		8.30

Professional and Executive (To be established at actual hourly rate prior to review. A minimum charge will be established at ½ hourly rates.)

(d) Other technical data records. Charges for additional services not specifically provided in § 518.96(c), consistent with DoD Instruction 7230.7 (reference (r)), shall be made by Components at the following rates:

1. Minimum charge for office copy (up to six images)	$3.50
2. Each additional image	.10
3. Each typewritten page	3.50
4. Certification and validation with seal, each	5.20
5. Hand-drawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports

Reports Control

§ 518.97 General.

The reporting requirement outlined in this subpart is assigned Report Control Symbol DD–PA(A) 1365. See appendix F for DD Form 2564, Annual Report Freedom of Information Act.

Annual Report

§ 518.98 Reporting time.

Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those times prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 (reference(s)) AR 25–9. The standard data elements are contained in DoD Directive 5000.12–M (reference (99)). The Army will follow guidelines below and submit the information to the Army Freedom of Information and Privacy Act Division, Information Systems Command, Attn: ASQNS–OP–F, Room 1146, Hoffman Building I, Alexandria,

VA 22331–0301 by the second week of each January.

(a) Each reporting activity will submit the information requested in § 518.99, items (a)(1), (a)(2), (a)(5), (a)(6), (b)(3), (i), (j)(l), (j)(2) and (j)(2)(i). Data will be collected throughout the year on DD Form 2086.

(b) Each IDA will submit the information requested in § 518.99, excluding items (d) through (h).

(c) The Judge Advocate General, Army, will submit the information requested in § 518.99, item (9).

(d) The Army General Counsel will submit the information requested in § 518.99, items (d) through (f).

(e) The Information Systems Command will compile the data submitted in the Department of the Army's annual Reporting of Freedom of Information Processing Costs (RCS DD–PA(A) 1365). This report will be coordinated through the DISC4 (SAIS–PDC), WASH DC 20310–0107, to the Director of Freedom of Information and Security Review by 31 January each year.

§ 518.99 Annual report content.

The following instructions shall be used in preparing the annual report for submission on DD Form 2564 (see appendix G to this part). DD Form 2564 may be ordered through publication channels or reproduced locally:

(a) Item 1.

(1) *Total requests.* Enter the total number of FOIA requests responded to during the calendar year.

(2) *Granted in full.* Enter the total number of FOIA requests responded to and granted in full during the calendar year. (This may include requests granted by your office, yet still requiring action by another office).

(3) *Denied in part.* Enter the total number of FOIA requests responded to and denied in part based on one or more of the nine FOIA exemptions. (Do not report denial of fee waivers).

(4) *Denied in full.* Enter the total number of FOIA requests responded to and denied in full based on one or more of the nine FOIA exceptions. (Do not report denial of fee waivers).

(5) *"Other Reason" responses.* Enter the total number of FOIA requests in which you were unable to provide all or part of the requested information based on an "Other Reason" response. Item (b)(3) of this section explains the six possible "Other Reasons".

(6) *Total actions.* Enter the total number of FOIA actions taken during the calendar year. This number will be the sum of paragraphs (a)(2) through (a)(5) of this section.

(b) Item 2.

(1) *Exemptions invoked on initial determinations.* Enter the number of times an exemption was claimed for each request that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraphs (a)(3) and (a)(4) of this section.

(2) *b(3) Status invoked on initial determinations.* Identify the statutes cited and number of times invoked when you claim a (b)(3) exemption. The total number of instances will be equal to the total in paragraph (b)(1) of this section. Citea the specific sections when invoking the Atomic Energy of 1954 or the National Security Act of 1947. To qualify as a b(3) exemption, the statute must contain clear wording that the information covered will not be disclosed. The following examples are not b(3) statutes:

(i) 5 U.S.C. 552a—Privacy Act.

(ii) 17 U.S.C. 101 et. seq.—Copyright Act.

(iii) 18 U.S.C. 793—Gathering, Transmitting or Losing Defense Information.

(iv) 18 U.S.C. 794—Gathering or Delivering Defense Information to Aid Foreign Governments.

(v) 18 U.S.C. 1905—Trade Secrets Act.

(vi) U.S.C. 1498—Patent and Copyright Cases.

(3) *"Other Reasons" cited on initial determinations.* Indentify the "Other Reasons" response cited when responding to a FOIA request and enter the number of times each was claimed.

(i) *Transferred request.* Enter the number of times a request was transferred to another DoD Component or Federal Agency for action.

(ii) *Lack of records.* Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligations to create a record.

(iii) *Failure of requester to reasonably describe record.* Enter the number of times a FOIA request could not be acted upon since the requester failed to reasonably describe the record(s) being sought.

(iv) *Other failures by requester to comply with published rules and/or directives.* Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(v) *Request withdrawn by requester.* Enter the number of times a requester withdrew a request and/or appeal.

(vi) *Not an agency record.* Enter the number of times a requester was provided a request indicating the requested information was not an agency record.

(vii) *Total.* Enter the sum of paragraphs (b)(3) (i) through (vi) of this section. This number will be equal to or greater than the number in paragraph (a)(5) of this section, since more than one reason may be claimed for each "Other Reason" response.

(c) Item. 3.

Initial denial authorities by participation. Enter the name, rank (if military), title, and activity of each individual who signed a partial or total denial response and give the number of instances of participation. The total number of instances will equal the sum of paragraphs (a)(3) and (a)(4) of this section. Show the individual's full title and complete organization (do not use acronymns or abbreviations, other than U.S.) See example below.

Smith, John G. BG Director, Personnel and Administration, 6 U.S. European Command

(d) Item 4.

(1) *Total requests.* Enter the total number of FOIA appeals responded to during the calendar year.

(2) *Granted in full.* Enter the total number of FOIA appeals responded to and granted in full during the year.

(3) *Denied in part.* Enter the total number of FOIA appeals responded to and denied in part based on one or more of the nine FOIA exemptions.

(4) *Denied in full.* Enter the total number of FOIA appeals responded to and denied in full based on one or more of the nine FOIA requests.

(5) *"Other Reason" responses.* Enter the total number of FOIA appeals in which you were unable to provide the requested information based on "Other Reason" response. Item (b)(3) of this section explains the six possible "Other Reasons."

(6) *Total actions.* Enter the total number of FOIA appeal actions taken during the calendar year. This number will be the sum of paragraphs (d)(2) and (d)(5) of this section.

(e) Item 5.

(1) *Exemptions invoked on appeal determinations.* Enter the number of times an exemption was claimed for each appeal that was denied in full or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal to or greater than the sum of paragraphs (d)(3) and (d)(4) of this section.

(2) *b(3) Statutes invoked on appeal determinations.* Identify the statutes cited and number of times invoked when you claimed a(b)(3) exemption. The total number of instances will be equal to the total in paragraph (e)(1) of this section. Cite the specific sections when invoking

the Atomic Energy Act of 1954 or the National Security Act of 1947. To qualify as a b(3) exemption, the statute must contain clear wording that the information covered will not be disclosed. Examples which are not b(3) statues are listed in paragraph (b)(2) of this section.

(3) *"Other Reasons" cited on appeal determinations.* Identify the "Other Reasons" response cited when responding to a FOIA appeal and enter the number of times each was claimed. See paragraph (b)(3) of this section for description of "Other Reasons".

(f) Item 6.

Appeal denial authorities by participation. Enter the name, rank (if military), title, and activity of each individual who signed a partial or total appeal denial response and give the number of instances of participation. The total number of instances will equal the sum of paragraphs (d)(3) and (d)(4) of this section. Show the full title and complete organization (do not use acronyms or abbreviations, other than U.S.). See Item 3 of this section for example.

(g) Item 7.

Court opinions and actions taken. Briefly describe the results of each suit the Judge Advocate General and/or the General Counsel participated in during the calendar year. See following example:

Armed Forces Relief and Benefit Association v. Department of Defense, Department of the Army, Department of the Air Force, and Department of the Navy. C.A. 89–0689, U.S.D.C.D.C., March 15, 1989. Plaintiff filed suit for defendent's refusal to release serviceman's name and duty address. Information was held pursuant to 5 U.S.C. 552 (b)(2) and (b)(6). Plaintiff voluntarily dismissed suit June 19, 1989.

(h) Item 8.

FOIA implementation rules and regulations. List all changes or revisions of FOIA rules or regulations affecting the implementation of the FOIA program, followed by the **Federal Register** reference (volume number, date, and page) that announces the change of revision to the public. Append a copy of each. See following example:

DoD Regulation 5400.7–R "DoD Freedom of Information Act Program"—32 CFR 286, Vol. 54, No. 155, pg. 33190, 14 August 1989.

(i) Item 9.

Fee collected from the public. Enter the total amount of fees collected from the public during the calendar year. This includes search, review, and reproduction costs only.

(j) Item 10.

(1) *Availability of records.* Reports all new categories or segregable positions of records now being released upon request.

(2) *FOI Program costs.*

(i) *Personnel costs.* Items (b) and (c) of this section are used to captured manyears and salary costs of personnel primarily involved in planning, program management and/or administrative handling of FOIA requests. Determine salaries for military personnel by using the Composite Standard Pay rates (DoD 7229.9–M, Department of Defense Accounting Manual). For civilian personnel use Office of Personnel Management salary table and add 16 percent for benefits. A sample computation is shown as follows. Table G–1 shows how the cost computation is made.

TABLE G–1.—SAMPLE COMPUTATION

Grade	No. of personnel	Salary	Percentage of time	Costs
O–5	1	$88,463	10	$8,846
O–1	1	37,219	30	11,165
GS–12	1	41,557	50	20.799
Total			90	40,790

Notes:
1. To determine the manyear computation: Add the total percentages of time and divide the percentage by 100.
2. Sample Computation: Manyears = 140% divided by 100 = 1.4 manyears.

(a) *Estimated manyears.* Add the total percentages of time for personnel involved in administering the FOI program and divide by 100. In the example shown above, (10 + 30 + 50)/100 = .9 manyears.

(b) *Manyear costs.* Total costs associated with salaries of individuals involved in administering FOIA program. In the example shown above, the total cost is $40,790.

(c) *Estimated manhour costs by Category.* This section accounts for all other personnel not reported in (a) and (b) of this section who are involved in processing FOIA requests. Enter the total hourly cost for each of the five areas described below.

(1) *Search time.* This includes only those direct costs associated with the time spent looking for material that is responsive to a request, including line by line identification of material within a document to determine if it is responsive to the request. Searches may be done manually or by computer using existing programming.

(2) *Review and existing.* This includes all direct costs incurred during the process of examining documents located in response to a request to determine whether any portion of any document located is permitted to be withheld. It also includes excising document to prepare them for release. It does not include time spent resolving general legal or policy issues regarding the applications of exemptions.

(3) *Coordination and approval.* This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(4) *Correspondence/form preparation.* This includes all costs involved in typing responses, filling out forms, etc., to respond to a FOIA request.

(5) *Other activities.* This includes all other processing costs not covered above, such as processing time by the mail room.

(6) *Total.* Enter the sum of (c)(1) through (c)(5) of this section.

(d) *Overhead.* This is the cost of supervision, space, and administrative support. It is computed as 25% of the sum of (b) and (c) of this section.

(e) *Total.* (1) Enter the sum of (b), (c), and (d) of this section.

(2) *Other case-related costs.* Using the fee schedule, enter the total amounts incurred in each of the areas below.

(i) *Computer search time.* This includes costs of central processing unit, input/output devices, memory, etc., of the computer system used, as well as the wage of the machine's operator/programmer.

(ii) *Office copy reproduction.* This includes the cost of reproducing normal documents with office copying equipment.

(iii) *Microfiche reproduction.* This includes the cost of reproducing normal documents with office copying equipment.

(iv) *Printed records.* This is the cost of providing reproduced copies of forms, publications, or reports.

(v) *Computer copy.* This is the actual cost of duplicating magnetic tapes, floppy diskettes, computer printouts, etc.

(vi) *Audiovisual materials.* This is the actual cost of duplicating audio or video tapes or like materials, to include the wage of the person doing the work.

(vii) *Other.* Reports all other costs which are easily identifiable, such as per diem, operation of courier vehicles, training courses, printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

(viii) *Subtotal.* Enter the sum of (e)(2)(i) through (vii) of this section.

(ix) *Overhead.* This is the cost of supervision, space and administrative support. It is computed as 25% of (e)(2)(viii) of this section.

(x) *Total.* Enter the sum of (e)(2)(viii) and (ix) of this section.

(3) *Cost of routing requests processed.* This item optional. Some reporting activities may find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. Care should be exercised so that costs are comprehensive to include a 25% overhead, yet not duplicated elsewhere in the report. Multiply the number of routine requests processed items the cost factor to compute this amount.

(4) *Total costs.* Enter the sum of (1) through (3) of this section.

(f) *Format time limit extension.* Enter the total number of instances in which it was necessary to seek a formal 10 working day time extension for one of the reasons explained as follows:

(1) *Location.* The need to search for and collect the requested records from another

activity that as separate from the office processing the request.

(2) *Volume.* the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records in a single request.

(3) *Consultation.* The need for consultation with another agency having a substantial interest in the material requested.

(4) *Court involvement.* Where court actions were taken on the basis of exhaustion of administrative procedures because the department/activity was unable to comply with the request within the applicable time limits, and in which a court allowed additional time upon a showing of exceptional circumstances, provide a copy of each court opinion and court order containing such an extension of time.

(5) *Total.* Enter the sum of paragraphs (j)(2)(i) through (j)(2)(iv) above of this section.

Subpart H—Educational and Training

Responsibility and Purpose

§ 518.100 Responsibility.

The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this Regulation. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOIA requests, and should provide a thorough understanding of the procedures outlined in this Regulation.

§ 518.101 Purpose.

The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

§ 518.102 Scope and principles.

Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this Regulation. The Program should be designed to accomplish the following objectives:

(a) Familiarize personnel with the requirements of the FOIA and its implementation by this Regulation.

(b) Instruct personnel, who act in FOIA matters, concerning the provisions of this Regulation, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(c) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(d) Advise personnel of the penalties for noncompliance with the FOIA.

§ 518.103 Implementation.

To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this Regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD(PA).

§ 518.104 Uniformity of legal interpretation.

In accordance with DoD Directive 5400.7 (reference (b)), the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program. This regulation provides procedures for contacting the DOD General Counsel where required.

Appendices

Appendix A—Unified Commands—Processing Procedures for FOI Appeals

1. *General.*

a. In accordance with DoD Directive 5400.7 (reference (b)) and this Regulation, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Programs. This policy represents an exception to the policies in DoD Directive 5100.3 (reference (f)).

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and DoD Instruction 5400.10 (reference (hh)) and to forward directly to the OASD(PA) all correspondence associated with the appeal of an initial denial for information under the provisions of the FOIA.

2. *Responsibilities of Commands.*

Unified Commanders in Chief shall:

a. Designate the officials authorized to deny initial FOIA requests for records.

b. Designate an office as the point-of-contact for FOIA matters.

(c) Refer FOIA cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

d. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of the Department of Defense, if required, is authorized.

e. Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate. Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

f. Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

g. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the Assistant Secretary of Defense (Public Affairs), the Pentagon, Washington, DC 20301–1400.

h. Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

3. *Fees for FOI Requests.*

The fees charged for requested records shall be in accordance with subpart F.

4. *Communications.*

Excellent communications capabilities currently exist between the OASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOIA cases that are time sensitive.

5. *Reporting Requirements.*

a. The Unified Commands shall submit to the ASD(PA) an annual report. The instructions for the report are outlined in subpart G.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD–PA(A)1365.

Appendix B—Addressing FOIA Rquests

1. *General.*

a. The Department of Defense includes the Office of the Secretary of Defense and the Joint Staff, the Military Departments, the Unified Commands, the Defense Agencies, and the DoD Field Activities.

b. The Department of Defense does not have a central repository for DoD records. FOIA requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOIA requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. *Listing of DoD Component Addresses for FOIA Requests.*

a. Office of the Secretary of Defense and the Joint Staff. Send all requests for records from the below listed offices to: Office of the Assistant Secretary of Defense (Public Affairs), Attn: Directorate for Freedom of Information and Security Review, room 2C757, The Pentagon, Washington, DC 20301–1400.

(1) Executive Secretariat.

(2) Under Secretary of Defense (Policy).

(a) Assistant Secretary of Defense (International Security Affairs).
(b) Assistant Secretary of Defense (International Security Policy).
(c) Assistant Secretary of Defense (Special Operations/Low Intensity Conflict).
(d) Principal Deputy Under Secretary of Defense (Strategy and Resources).
(e) Deputy Under Secretary of Defense (Trade Security Policy).
(f) Deputy Under Secretary of Defense (Security Policy).
(g) Director of Net Assessment.
(h) Director Defense Security Assistance Agency.
(i) Defense Technology Security Administration.
(3) Under Secretary of Defense (Acquisition).
(a) Assistant Secretary of Defense (Production and Logistics).
(b) Assistant Secretary of Defense (Command, Control, Communications, and Intelligence).
(c) Assistant to the Secretary of Defense (Atomic Energy).
(d) Director, Defense Research and Engineering.
(e) Director, Small and Disadvantaged Business Utilization.
(4) Comptroller of the Department of Defense.
(5) Assistant Secretary of Defense (Force Management and Personnel).
(6) Assistant Secretary of Defense (Health Affairs).
(7) Assistant Secretary of Defense (Legislative Affairs).
(8) Assistant Secretary of Defense (Public Affairs).
(9) Assistant Secretary of Defense (Program Analysis and Evaluation).
(10) Assistant Secretary of Defense (Reserve Affairs).
(11) General Counsel, Department of Defense.
(12) Director, Operational Test and Evaluation.
(13) Assistant to the Secretary of Defense (Intelligence Oversight).
(14) Assistant to the Secretary of Defense (Intelligence Policy).
(15) Defense Advanced Research Projects Agency.
(16) Strategic Defense Initiative Organization.
(17) Defense Systems Management College.
(18) National Defense University.
(19) Armed Forces Staff College.
(20) Department of Defense Dependent Schools.
(21) Uniformed Services University of the Health Sciences.

b. Department of the Army. Army records may be requested from those Army officials who are listed in 32 CFR part 518 (reference (ii)), appendix B. Send requests to the Chief, Freedom of Information and Privacy Act Division, Information Systems Command—Pentagon, Attn: ASQNS–OP–F, room 1146, Hoffman I, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301 for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records. Send requests to particular installations or organizations as follows:

(1) Current publications and records of DA field commands, installations, and organizations.
(a) Send the request to the commander of the command, installation, or organization, to the attention of the Freedom of Information Act Official.
(b) Consult AR 25–400–2 for more detailed listings of all record categories kept in DA offices.
(c) Contact the installation or organization public affairs officer for help if you cannot determine the official within a specific organization to whom your request should be addressed.
(2) Department of the Army publications.
(a) Write to the U.S. Government Printing Office, which has many DA publications for sale. Address: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–0001.
(b) Use the facilities of about 1,000 Government publication depository libraries throughout the United States. These libraries have copies of many DA publications. Obtain a list of these libraries from the Superintendent of Documents at the above address.
(c) Send requests for current administrative, training, technical, and supply publications to the National Technical Information Service, U.S. Department of Commerce, Attn: Order Preprocessing Section, 5285 Port Royal Road, Springfield, VA 22151–2171; commercial telephone, (703) 487–4600. The National Technical Information Service handles general public requests for unclassified, uncopyrighted, and nondistribution-restricted Army publications not sold through the Superintendent of Documents.
(3) Military personnel records. Send requests for military personnel records of information as follows:
(a) Army Reserve personnel not on active duty and retired personnel—Commander, U.S. Army Reserve Personnel Center, 9700 Page Blvd., St. Louis, MO 63132–5200; commercial telephone, (314) 263-7600.
(b) Army officer personnel discharged or deceased after 1 July 1917 and Army enlisted personnel discharged or deceased after 1 November 1912—Director, National Personnel Records Center, 9700 Page Blvd., St. Louis, MO 63132–5100.
(c) Army personnel separated before the dates specified in (ii) above—Textual Reference Division, Military Reference Branch, National Archives and Records Administration, Washington, DC 20408–0001.
(d) Army National Guard officer personnel[EM]Chief, National Guard Bureau. Army National Guard enlisted personnel[EM]Adjutant General of the proper State.
(e) Active duty commissioned and warrant officer personnel—Commander, U.S. Total Army Personnel Command, Attn: TAPC–ALS, Alexandria, VA 22332–0405; commercial telephone, (703) 325–4053. Active duty enlisted personnel—Commander, U.S. Army Enlisted Records and Evaluation Center, Attn: PCRE–RF, Fort Benjamin Harrison, IN 46249–4701; commercial telephone, (317) 542–3643.
(4) Medical records.
(a) Medical records of non-active duty military personnel. Use the same addresses as for military personnel records.
(b) Medical records of military personnel on active duty. Address the medical treatment facility where the records are kept. If necessary, request locator service per (e) above.
(c) Medical records of civilian employees and all dependents. Address the medical treatment facility where the records are kept. If the records have been retired, send requests to the Director, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118–4199.
(5) Legal records.
(a) Records of general courts-martial and special courts-martial in which a bad conduct discharge was approved. For cases not yet forwarded for appellate review, apply to the staff judge advocate of the command having jurisdiction over the case. For cases forwarded for appellate review and for old cases, apply to the U.S. Army Legal Service Agency, Attn: JALS–CC, Nassif Building, Falls Church, VA 22041–5013; AUTOVON 289–1888, commercial telephone, (202) 756–1888.
(b) Records of special courts-martial not involving a bad conduct discharge. These records are kept for 10 years after completion of the case. If the case was completed within the past 3 years, apply to the staff judge advocate of the headquarters where it was reviewed. If the case was completed from 3 to 10 years ago, apply to the National Personnel Records Center (Military Records), 9700 Page Blvd., St. Louis, MO 63132–5100. If the case was completed more than 10 years ago, the only evidence of conviction is the special courts-martial order in the person's permanent records. Request as in (3) above.
(c) Records of summary courts-martial. Locally maintained records are retired 3 years after action of the supervisory authority. Request records of cases less than 3 yeas old from the staff judge advocate of the headquarters where the case was reviewed. After 10 years, the only evidence of conviction is the summary courts-martial order in the person's permanent records. Request as in (3) above.
(d) Requests submitted under (b) and (c) above. These requests will be processed in accordance with chapter V. The IDA is The Judge Advocate General, HQDA (DAJA–CL), WASH DC 20310–2213; AUTOVON 225–1891, commercial telephone, (202) 695–1891.
(e) Administrative settlement of claims. Apply to the Chief, U.S. Army Claims Service, Attn: JACS–TCC, Fort George G. Meade, MD 20755–5360; AUTOVON 923–7860, commercial telephone, (301) 677–7860.
(f) Records involving debarred or suspended contractors. Apply to HQDA (JALS–PF), WASH DC 20310–2217; AUTOVON 285–4278, commercial telephone, (202) 504–4278.
(g) Records of all other legal matters (other than records kept by a command, installation, or organization staff judge advocate). Apply to HQDA (DAJA–AL), WASH DC 20310–2212; AUTOVON 224–4316, commercial telephone, (202) 694–4316.

(6) Civil works program records. Civil works records include those relating to construction, operation, and maintenance for the improvement of rivers, harbors, and waterways for navigation, flood control, and related purposes, including shore protection work by the Army. Apply to the proper division or district office of the Corps of Engineers. If necessary to determine the proper office, contact the Commander, U.S. Army Corps of Engineers, Attn: CECC–K, WASH DC 20314–1000; commercial telephone, (202) 272–0028.

(7) Civilian personnel records. Send requests for personnel records of current civilian employees to the employing installation. Send requests for personnel records of former civilian employees to the Director, National Personnel Records Center, 111 Winnebago St., St. Louis, MO 63118–4199.

(8) Procurement records. Send requests for information about procurement activities to the contracting officer concerned or, if not feasible, to the procuring activity. If the contracting officer or procuring activity is not known, send inquiries as follows:

(a) Army Materiel Command procurement: Commander, U.S. Army Materiel Command, Attn: AMCPA, 5001 Eisenhower Ave., Alexandria, VA 22333–0001.

(b) Corps of Engineers procurement: Commander, U.S. Army Corps of Engineers, Attn: CECC–K, WASH DC 20314–1000; commercial telephone, (202) 272–0028.

(c) All other procurement: HQDA (DAJA–KL), WASH DC 20310–2208; AUTOVON 225–6209, commercial telephone, (202) 695–6209.

(9) Criminal investigation files. Send requests involving criminal investigation files to the Commander, U.S. Army Criminal Investigation Command, Attn: CICR–FP, 2301 Chesapeake Ave., Baltimore, MD 21222–4099; commercial telephone, (301) 234–9340. Only the Commanding General, USACIDC, can release any USACIDC-originated criminal investigation file.

(10) Personnel security investigation files and general Army intelligence records. Send requests for personnel security investigation files, intelligence investigation and security records, and records of other Army intelligence matters to the Commander, U.S. Army Intelligence and Security Command, Attn: IACSF–FI, Fort George G. Meade, MD 20755–5995.

(11) Inspector General records. Send requests involving records within the Inspector General system to HQDA (SAIG–ZXL), WASH DC 20310–1714. AR 20–1 governs such records.

(12) Army records in Government records depositories.

(a) Noncurrent Army records are in the National Archives of the United States, WASH DC 20408–0001; in Federal Records Centers of the National Archives and Records Administration; and in other records depositories. Requesters must write directly to the heads of these depositories for copies of such records.

(b) A list of pertinent records depositories is published in AR 25–400–2, table 6–1.

(c) Department of the Navy. Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is an FOIA request. Send requests to Chief of Naval Operations, Code OP–09B30, room 5E521, Pentagon, Washington, DC 20350–2000, for records of the Headquarters, Department of the Navy, and to Freedom of Information and Privacy Act Office, Code MI–3, HQMC, room 4327, Washington, DC 20308–0001, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

(d) Department of the Air Force. Air Force records may be requested from the Commander of any Air Force installation, major command, or separate operating agency (Attn: FOIA Office). For Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records, send requests to Secretary of the Air Force, Attn: SAF/AAIS(FOIA), Pentagon, room 4A1088C, Washington, DC 20330–1000.

(e) Defense Contract Audit Agency (DCAA). DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOIA requests to the Defense Contract Audit Agency, Attn: CMR, Cameron Station, Alexandria, VA 22304–6178, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

(f) Defense Communications Agency (DCA). DCA records may be requested from any DCA field activity or from its headquarters. Requesters should send FOIA requests to Defense Communications Agency, Code H104, Washington, DC 20305–2000.

(g) Defense Intelligence Agency (DIA). FOIA requests for DIA records may be addressed to Defense Intelligence Agency, Attn: RTS–1, Washington, DC 20340–3299.

(h) Defense Investigative Service (DIS). All FOIA requests for DIS records should be sent to the Defense Investigative Service, Attn: V0020, 1900 Half St., SW., Washington, DC 20324–1700.

(i) Defense Logistics Agency (DLA). DLA records may be requested from its headquarters or from any of its field activities. Requestors should send FOIA requests to defense Logistics Agency, Attn: DLA–XAM, Cameron Station, Alexandria, VA 22304–6100.

(j) Defense Mapping Agency (DMA). FOIA requests for DMA records may be sent to the Defense Mapping Agency, 8613 Lee Highway, Fairfax, VA 22031–2137.

(k) Defense Nuclear Agency (DNA). FOIA requests for DNA records may be sent to the Defense Nuclear Agency, Public Affairs Office, room 113, 6801 Telegraph Road, Alexandria, VA 22310–3398.

(l) National Security Agency (NSA). FOIA requests for NSA records may be sent to the National Security Agency/Central Security Service, Attn: Q–43, Fort George G. Meade, MD 20755–6000.

(m) Office of the Inspector General, Department of Defense (IG, DoD). FOIA requests for IG, DoD records may be sent to the Department of Defense Office of the Inspector General, Assistant Inspector General for Investigations, Attn: Deputy Director FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202–2884.

(n) Defense Finance and Accounting Service (DFAS). DFAS records may be requested from any of its regional offices or from its Headquarters. Requesters should send FOIA requests to Defense Finance and Accounting Service, Crystal Mall 3, room 416, Washington, DC 20376–5001 for records of its headquarters, or if there is uncertainty as to which DFAS region may have the records sought.

3. *Other Addressees.*

Although the below organizations are OSD and Joint Staff Components for the purposes of the FOIA, requests may be sent directly to the addresses indicated.

(a) Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS). Director, OCHAMPUS, Attn: Freedom of Information Officer, Aurora, CO 80045–6900.

(b) Chairman, Armed Services Board of Contract Appeals (ASBCA). Chairman, Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, VA 22041–3208.

(c) U.S. Central Command. U.S. Central Command/CCJI/AG, MacDill Air Force Base, FL 33608–7001.

(d) U.S. European Command. Headquarters, U.S. European Command/ECJ1–AR(FOIA), APO New York 09128–4209.

(e) U.S. Southern Command. U.S. Commander-in-Chief, Southern Command, Attn: SCJ1, APO Miami 34003–0007.

(f) U.S. Pacific Command. U.S. Commander-in-Chief, Pacific Command, USPACOM FOIA Coordinator (J18A), Administrative Support Division, Joint Secretariat, Box 28, Camp H.M. Smith, HI 96861–5025.

(g) U.S. Special Operations Command. U.S. Special Operations Command, Attn: SOJ6–SI (FOI Officer), MacDill, Air Force Base, FL 33608.

(h) U.S. Atlantic Command. Commander-in-Chief, Atlantic Command, Code J02P6, Norfolk, VA 23511–5100.

(i) U.S. Space Command. Chief Records Management Division, Directorate of Administration, United States Space Command Peterson Air Force Base, CO 80914–5001.

(j) U.S. Transportation Command. U.S. Commander-in-Chief, Transportation Command, Attn: TCDA–RM, Scott Air Force Base, IL 62225–7001.

4. *National Guard Bureau.*

FOIA requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau (NGB–DAI), Pentagon, room 2C362, Washington, DC 20310–2500.

5. *Miscellaneous.*

If there is uncertainty as to which DoD component may have the DoD record sought, the requester may address a Freedom of Information request to the Office of the Assistant Secretary of Defense (Public Affairs), Attn: Directorate for Freedom of Information and Security Review, room 2C757, The Pentagon, Washington, DC 20301-1400.

Appendix C—Litigation Status Sheet

1. Case Number* (Number used by Component for references (for DA, use case name)
2. Requester
3. Document Title or Description
4. Litigation
a. Date Complaint Filed
b. Court
c. Case File Number*
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
a. Court's Finding
b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
a. Date Complaint Filed
b. Court
c. Case File Number*
d. Court's Finding
e. Disciplinary Action (as appropriate)

Appendix D—Other Reason Categories

1. *Transferred Requests.* This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one Component to another, or to another Federal Agency.

2. *Lack of Records.* This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. *Failure of Requester to Reasonably Describe Record[EH].* This category is specifically based on section 552(a)(3)(a) of the FOIA (reference (a)).

4. *Other Failures by Requesters to Comply with Published Rules or Directives.* This category is based on section 5529a)(3)(b) of the FOIA (reference (a)) and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. *Request Withdrawn by Requester.* This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

6. *Not an Agency Record.* This category covers situations where the information requested is not an agency record within the meaning of the FOIA and this regulation

Appendix E—DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/Joint Staff/Unified Commands,
Defense Agencies, and the DoD Field Activities
Department of the Army
Department of the Navy
Department of the Air Force
Defense Communications Agency
Defense Contract Audit Agency
Defense Finance and Accounting Service
Defense Intelligence Agency
Defense Investigative Service
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
National Security Agency
Office of the Inspector General, Department of Defense

BILLING CODE 3710-08-M

Appendix F--DD Form 2564,

Annual Report--Freedom of Information Act

ANNUAL REPORT
FREEDOM OF INFORMATION ACT

REPORT CONTROL SYMBOL

1. INITIAL DETERMINATIONS

a. TOTAL REQUESTS	b. GRANTED IN FULL	c. DENIED IN PART	d. DENIED IN FULL	e. "OTHER REASONS"	f. TOTAL ACTIONS

2a. EXEMPTIONS INVOKED ON INITIAL DETERMINATIONS

(b) (1)	(b) (2)	(b) (3)	(b) (4)	(b) (5)	(b) (6)	(b) (7)	(b) (8)	(b) (9)	TOTAL

2b. (b)(3) STATUTES INVOKED ON INITIAL DETERMINATIONS *(Continue on separate sheet if necessary)*

(1) (b)(3) STATUTES CLAIMED	(2) NUMBER OF INSTANCES

2c. "OTHER REASONS" CITED ON INITIAL DETERMINATIONS

1	2	3	4	5	6	TOTAL

3. INITIAL DENIAL AUTHORITIES BY PARTICIPATION *(Continue on separate sheet if necessary)*

a. NAME *(Last, First, Middle Initial)*	b. RANK *(If Military)*	c. TITLE AND ORGANIZATION	d. NUMBER OF INSTANCES

4. APPEAL DETERMINATIONS

a. TOTAL REQUESTS	b. GRANTED IN FULL	c. DENIED IN PART	d. DENIED IN FULL	e. "OTHER REASONS"	f. TOTAL ACTIONS

5a. EXEMPTIONS INVOKED ON APPEAL DETERMINATIONS

(b) (1)	(b) (2)	(b) (3)	(b) (4)	(b) (5)	(b) (6)	(b) (7)	(b) (8)	(b) (9)	TOTAL

5b. (b)(3) STATUTES INVOKED ON APPEAL DETERMINATIONS *(Continue on separate sheet if necessary)*

(1) (b)(3) STATUTES CLAIMED	(2) NUMBER OF INSTANCES

5c. "OTHER REASONS" CITED ON APPEAL DETERMINATIONS

1	2	3	4	5	6	TOTAL

6. APPEAL DENIAL AUTHORITIES BY PARTICIPATION *(Continue on separate sheet if necessary)*

a. NAME *(Last, First, Middle Initial)*	b. RANK *(If Military)*	c. TITLE AND ORGANIZATION	d. NUMBER OF INSTANCES

DD Form 2564, AUG 90

7. COURT OPINIONS AND ACTIONS TAKEN *(Continue on separate sheet if necessary)*	
8. FREEDOM OF INFORMATION ACT IMPLEMENTATION RULES OR REGULATIONS *(Continue on separate sheet if necessary)*	
9. FEES COLLECTED FROM THE PUBLIC	
TOTAL AMOUNT COLLECTED FROM PUBLIC	$
10a. AVAILABILITY OF RECORDS *(Continue on separate sheet if necessary)*	
10b. FOI PROGRAM COSTS	
I. PERSONNEL COSTS	
A. ESTIMATED MANYEARS	
B. MANYEAR COSTS	$
C. ESTIMATED MANHOUR COSTS BY CATEGORY	
(1) Search Time	$
(2) Review and Excising	$
(3) Coordination and Approval	$
(4) Correspondence / Form Preparation	$
(5) Other Activities	$
(6) Total ((1) through (5))	$
D. OVERHEAD ((B + C) x 25%)	$
E. TOTAL (B through D)	$
II. OTHER CASE-RELATED COSTS	
A. COMPUTER SEARCH TIME	$
B. OFFICE COPY REPRODUCTION	$
C. MICROFICHE REPRODUCTION	$
D. PRINTED RECORDS	$
E. COMPUTER COPY	$
F. AUDIOVISUAL MATERIALS	$
G. OTHER	$
H. SUBTOTAL (A through G)	$
I. OVERHEAD (25% x H)	$
J. TOTAL (H + I)	$
III. COST OF ROUTINE REQUESTS PROCESSED	$
IV. TOTAL COSTS (I through III)	$

10c. FORMAL TIME LIMIT EXTENSIONS				
(1) LOCATION	(2) VOLUME	(3) CONSULTATION	(4) COURT	(5) TOTAL

DD Form 2564 Reverse, AUG 90

BILLING CODE 3710-08-C

Appendix G—Internal Control Review Checklist

Task: Army Information Management.
Subtask: Records Management.
This Checklist: Freedom of Information Act Program.
Organization:
Action Officer:
Reviewer:
Date Completed:
Assessable Unit: The specific managers responsible for using this checklist (e.g., at applicable FOA, MACOM, SIO, and TOE division headquarters) will be designated by the cognizant headquarters' staff functional principal. The responsible principal and mandatory schedule for using the checklist will be shown in the annual updated Management Control Plan

Event Cycle 1: Establish and Implement a Freedom of Information Act Program.
Risk: If the prescribed policies, procedures, and responsibilities of the Freedom of Information Act Program are not followed the public would not have the ability to obtain access to and release of Army records.
Control Objective: To ensure that prescribed policies, procedures, and responsibilities contained in 5 U.S.C. 552 are followed to allow access and release of Army records to the public.
Control Technique: The document used to accomplish the control objective is AR 25–55, The Department of the Army Freedom of Information Act Program.
1. Ensure that a Freedom of Information Act Program is established and implemented.
2. Appoint an individual with Freedom of Information Act responsibilities and ensure designation of appropriate staff to assist him/her.
3. Appoint an individual with Operations Security (OPSEC) responsibilities, if required.

Test Questions

1. Is a Freedom of Information Act Program established and implemented in your organization?
Response: Yes ____ No ____ NA ____
Remarks: 1

2. Is an individual appointed Freedom of Information Act Responsibilities?
Response: Yes ____ No ____ NA ____
Remarks: 1

3. Is an individual appointed OPSEC responsibilities, if required?
Response: Yes ____ No ____ NA ____
Remarks: 1

4. Is DA Form 4948–R, Freedom of Information Act (FOIA)/Operations Security (OPSEC) Desk Top Guide used?
Response: Yes ____ No ____ NA ____
Remarks: 1

5. Does DA Form 4948–R contain the current name and office telephone number of the FOIA/OPSEC advisor?
Response: Yes ____ No ____ NA ____
Remarks: 1

6. Are provisions of AR 25–55 concerning the protection of OPSEC sensitive information regularly brought to the attention of managers responsible for responding to FOIA requests and those responsible for control of Army records?
Response: Yes ____ No ____ NA ____
Remarks: 1

7. Are rules governing "For Official Use Only" information understood and properly applied by functional proponents?
Response: Yes ____ No ____ NA ____
Remarks: 1

8. Are names and duty addresses of Army personnel (civilian and military) assigned to units that are sensitive, routinely deplorable, or stationed in foreign territories being denied or forwarded to the proper initial denial authority (IDA) for denial?
Response: Yes ____ No ____ NA ____
Remarks: 1

9. Is the format contained in AR 25–55, used when preparing the annual FOIA report?
Response: Yes ____ No ____ NA ____
Remarks: 1

10. Is the worksheet contained in AR 25–55 used when preparing the annual FOIA report?
Response: Yes ____ No ____ NA ____
Remarks: 1

11. Is the input for the annual FOIA report forwarded to the Army Freedom of Information and Privacy Act Division, Information Systems Command by the second week of each January?
Response: Yes ____ No ____ NA ____
Remarks: 1

EVENT

Cycle 2: Processing FOIA Requests.
Risk: Failure to process FOIA requests correctly and release non-exempt Army records to the public could subject the Department of the Army or individuals to litigation.
Control Objective: FOIA requests are processed correctly.

Control Technique

1. Ensure FOIA requests are logged into a formal control system.
2. Ensure FOIA requests are answered promptly and correctly.
3. Ensure Army records are withheld only when fall under the purview of one or more of the nine FOIA exemptions.
4. Ensure FOIA requests are denied by properly delegated/designated IDAs.
5. Ensure all appeals are forwarded to the Office of the Army General Counsel.

Test Questions

1. Are FOIA requests logged into a formal control system?
Response: Yes ____ No ____ NA ____
Remarks: 1

2. Are all FOIA requests date and time stamped upon receipt?
Response: Yes ____ No ____ NA ____
Remarks: 1

3. Is the 10 working day time limit met when replying to FOIA requests?
Response: Yes ____ No ____ NA ____
Remarks: 1

4. When more than 10 working days are required to respond, is the FOIA requester informed, explaining the circumstances requiring the delay and provided an approximate date for completion?
Response: Yes ____ No ____ NA ____
Remarks: 1

5. Are Army records withheld only when they fall under one or more of the nine FOIA exemptions?
Response: Yes ____ No ____ NA ____
Remarks: 1

6. Is the FOIA requester informed when a FOIA request is referred to another Army activity or organization?
Response: Yes ____ No ____ NA ____
Remarks: 1

7. Do denial letters contain the name and title or position of the official who made the denial determination; explain the basis for the denial determination; cite the exemptions on which the denial is based; and advise the FOIA requester of his or her right to appeal the denial within 60 days to the Secretary of the Army (Office of the Army General Counsel)?
Response: Yes ____ No ____ NA ____
Remarks: 1

8. Is the FOIA requester informed of the appellate procedures when an IDA denies a record in whole or in part?
Response: Yes ____ No ____ NA ____
Remarks: 1

9. Is the Chief of Legislative Liaison notified of all releases of information to members of Congress or staffs of congressional committees?
Response: Yes ____ No ____ NA ____
Remarks: 1

10. Are FOIA requests denied only by properly delegated/designated IDAs?
Response: Yes ____ No ____ NA ____
Remarks: 1

11. Is the servicing Judge Advocate consulted prior to forwarding a FOIA request to an IDA for action?
Response: Yes ____ No ____ NA ____
Remarks: 1

12. Are the following items included when forwarding a FOIA request to an IDA for a determination of releasability?

a. A copy of the legal review provided by the local legal advisor?
Response: Yes ____ No ____ NA ____
Remarks: 1

b. The original copy of the FOIA request?
Response: Yes ____ No ____ NA ____
Remarks: 1

c. Copies of the requested information indicating portions recommended for withholding?
Response: Yes ____ No ____ NA ____
Remarks: 1

d. A copy of the acknowledgement of receipt to the requester?
Response: Yes ____ No ____ NA ____
Remarks: 1

e. A telephone point of contact?
Response: Yes ____ No ____ NA ____
Remarks: 1

f. The recommended FOIA exemption?
Response: Yes ____ No ____ NA ____
Remarks: 1

g. Any recommendation to deny a request in whole or in part?
Response: Yes ____ No ____ NA ____

Remarks: 1

13. Are all FOIA appeals forward to the Office of the General Counsel for a decision with a copy of denied and released records?
Response: Yes ____ No ____ NA ____
Remarks: 1

14. Is a copy of the FOIA denial letter included when forwarding appeals to the Office of the General Counsel?
Response: Yes ____ No ____ NA ____
Remarks: 1

15. Is DD Form 2086–R, Record of Freedom of Information (FOI) Processing Cost, used to record costs associated with the processing of a FOIA request?
Response: Yes ____ No ____ NA ____
Remarks: 1

16. Is DD Form 2086–1–R, Record of Freedom of Information (FOI) Processing Cost for Technical Data, used to record costs associated with the processing of a FOIA request for technical data?

17. Is the FOIA requester notified when charges will exceed $250.00?
Response: Yes ____ No ____ NA ____
Remarks: 1

18. Are fees collected at the time the requester is provided the records?
Response: Yes ____ No ____ NA ____
Remarks: 1

19. Are commercial requesters charged for all search, review, and duplication costs?
Response: Yes ____ No ____ NA ____
Remarks: 1

20. Are educational institutions, noncommercial scientific institutions, or news media charged for duplication only, in excess of 100 pages, if more than 100 pages of records are requested?
Response: Yes ____ No ____ NA ____
Remarks: 1

21. Are the first 2 hours of search time, and the first 100 pages of duplication provided without charge to all "other" category requesters?
Response: Yes ____ No ____ NA ____
Remarks: 1

22. Are FOIA fees collected and delivered to the servicing finance and accounting office within 30 calendar days after receipt?
Response: Yes ____ No ____ NA ____
Remarks: 1

23. Are FOIA fees collected for technical data retained by the organization providing the technical data?
Response: Yes ____ No ____ NA ____
Remarks: 1

Event Cycle 3: Records Management.
Risk: Valuable records needed for court actions are destroyed or cannot be located.
Control Objective: Records containing "For Official Use Only" information are correctly marked and FOIA requests are properly maintained throughout their life cycle.
Control Technique: Ensure the prescribed policies and procedures are followed during the life cycle of information.

Test Questions

1. Are unclassified documents containing "For Official Use Only" information marked "FOR OFFICIAL USE ONLY" in bold letters at least 3/16 of an inch high at the bottom of the outside of the front cover (if any), on the first page, and on the outside of the back cover (if any)?
Response: Yes ____ No ____ NA ____
Remarks: 1

2. Are individual pages containing both "For Official Use Only" and classified information marked at the top and bottom with the highest security classification of information appearing on the page?
Response: Yes ____ No ____ NA ____
Remarks: 1

3. Are photographs, films, tapes, slides, and microform containing "For Official Use Only" information so marked "For Official Use Only" to ensure recipient or viewer is aware of the information therein?
Response: Yes ____ No ____ NA ____
Remarks: 1

4. Is "For Official Use Only" material transmitted outside the Department of the Army properly marked "This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemption * * * applies"?
Response: Yes ____ No ____ NA ____
Remarks: 1

5. Are permanently bound volumes of "For Official Use Only" information so marked on the outside of the front and back covers, title page, and first and last page?
Response: Yes ____ No ____ NA ____
Remarks: 1

6. Is DA Label 87 (For Official Use Only Cover Sheet) affixed to "For Official Use Only" documents when removed from a file cabinet?
Response: Yes ____ No ____ NA ____
Remarks: 1

7. Do electrically transmitted messages contain the abbreviation "FOUO" before the beginning of the text?
Response: Yes ____ No ____ NA ____
Remarks: 1

8. Are "For Official Use Only" records stored properly during nonduty hours?
Response: Yes ____ No ____ NA ____
Remarks: 1

9. Are FOIA records maintained and disposed of in accordance with AR 25–400–2, The Modern Army Recordkeeping System (MARKS)?
Response: Yes ____ No ____ NA ____
Remarks: 1

1. Explain rationale for YES responses or provide cross-reference where rationale can be found. For NO responses, cross-reference to where corrective action plans can be found. If response is NA, explain rationale.

I attest that the above-listed internal controls provide reasonable assurance that Army resources are adequately safeguarded. I am satisfied that if the above controls are fully operational, the international controls for this subtask throughout the Army are adequate.

Director of Information for Command, Control, Communications, and Computers

Functional Proponent

I have reviewed this subtask within my organization and have supplemented the prescribed internal control review checklist when warranted by unique environmental circumstances. The controls prescribed in this checklist, as amended, are in place and operational for my organization (except for the weaknesses described in the attached plan, which includes schedules for correcting the weaknesses).

Operating Manager

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

[FR Doc. 91–21940 Filed 9–25–91; 8:45 am]

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federal register

Thursday
September 26, 1991

Part V

Department of Education

Special Projects and Demonstrations for Providing Supported Services to Individuals With Severe Handicaps—Community-Based Projects; Notice of Proposed Priorities for Fiscal Year 1992

DEPARTMENT OF EDUCATION

Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps—Community-Based Projects

AGENCY: Department of Education.

ACTION: Notice of proposed priorities for Fiscal Year 1992.

SUMMARY: The Secretary proposes priorities for fiscal year 1992 under the program of Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps authorized by title III, section 311(d) of the Rehabilitation Act, as amended. The Secretary takes this action to focus Federal financial assistance on areas of identified national need. These priorities are intended to expand and improve supported employment services to individuals with severe handicaps in rural areas, individuals with long-term mental illnesses, individuals with traumatic brain injury, individuals with severe physical disabilities, and individuals who are blind with at least one other disabling condition.

DATES: Comments must be received on or before October 28, 1991.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Fred Isbister, U.S. Department of Education, 400 Maryland Avenue, SW., room 3228 Switzer Building, Washington, DC 20202–2899.

FOR FURTHER INFORMATION CONTACT: RoseAnn Godfrey, U.S. Department of Education, 400 Maryland Avenue, SW., room 3225 Switzer Building, Washington, DC 20202–2899. Telephone: (202) 732–1319. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: The purposes of the community-based supported employment projects are to stimulate the development of innovative approaches for improving and expanding the provision of supported employment services to individuals with severe handicaps and to enhance local capacity to provide supported employment services. The Secretary funded 12 community-based projects in fiscal year (FY) 1989. These three-year projects are currently serving individuals with a wide range of severe disabilities. The Secretary has selected the following proposed priorities in FY 1992 in order to fund additional community-based projects that would increase services to individuals with severe handicaps who could benefit from supported employment.

The Rehabilitation Act of 1973, as amended, has been extended through FY 1992. We anticipate that the Rehabilitation Act will be reauthorized in FY 1992.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one of these absolute priorities:

Proposed Priority 1—Individuals With Severe Handicaps in Rural Areas

Information from the Research and Training Center on Rural Rehabilitation Services at the University of Montana substantiates that individuals with severe handicaps in rural areas are underserved and that their rehabilitation needs are different than the needs of individuals in urban areas. In addition, all community-based supported employment projects awarded in FY 1989 were located in urban areas. Information received from the 27 Title III statewide systems change grants funded in FY 1985 and FY 1986 identified the need to expand supported employment services to rural areas. Most of the efforts of the systems change grantees were to develop supported employment services in the more populated areas of their States. One particular problem identified by these projects was that in providing supported employment services to individuals in rural areas a general lack of transportation services existed.

Projects under this priority must provide supported employment services to individuals with severe handicaps in rural areas. For the purposes of this priority, rural is defined as the area outside of a metropolitan statistical area as specified by the Office of Management and Budget and documented in the publications of the 1990 Decennial Census. As part of their overall program of supported employment services, projects must specifically address the availability of transportation services, as appropriate, in order to ensure that individuals served under the projects are able to commute to their employment.

All projects under this priority must arrange for the provision of extended services for the individuals with severe disabilities they serve. Extended services are on-going support services that are needed by an individual in supported employment to enable the individual to maintain a particular job placement when time-limited services (not to exceed 18 months) provided with funds under this program have ceased.

Proposed Priority 2—Individuals With Long-Term Mental Illnesses

Statistics regarding the participation of individuals with long-term mental illnesses in supported employment programs show that this population accounts for approximately 20 percent of the individuals served (Virginia Commonwealth University, 1991). However, significant issues still exist in providing supported employment services to this population. Many individuals with long-term mental illnesses have existing skills that may be difficult to transfer to the work setting. Even if they learn skills quickly, problems may arise in putting the job skills into practice and sustaining the skills over time. Different job intervention strategies are usually needed due to the nature of psychiatric disabilities. In maintaining individuals with long-term mental illnesses in supported employment, studies have shown that emphasis should be placed on instructional interventions that focus on the "application" of appropriate job behaviors rather than the "acquisition" of these behaviors. Studies also indicate that the focus of the instructional content of new job skills and behaviors should be on interpersonal and intrapersonal demands of the job environment rather than the demands associated with specific job tasks ("The Choose-Get-Keep Model," Danley and Anthony, 1987).

Projects under this priority must develop innovative approaches for

improving and expanding the provision of supported employment services to individuals with long-term mental illnesses and must focus on variations in job intervention strategies needed to assist these individuals in maintaining employment.

All projects under this priority must arrange for the provision of extended services for the individuals with severe disabilities they serve. Extended services are on-going support services that are needed by an individual in supported employment to enable the individual to maintain a particular job placement when time-limited services (not to exceed 18 months) provided with funds under this program have ceased.

Proposed Priority 3—Unserved and Underserved Populations

Although there has been a tremendous growth in the number of individuals participating in supported employment, specific populations continue to be underrepresented. These populations include individuals with severe physical disabilities, individuals with traumatic brain injuries, and individuals with sensory impairments. Data collected by the Rehabilitation Research and Training Center on Supported Employment at the Virginia Commonwealth University for FY 1989 indicate that individuals with cerebral palsy accounted for 2.4 percent, individuals with sensory impairments accounted for 3.4 percent, and individuals with traumatic brain injuries accounted for 2.3 percent of the total number served.

Historically, the supported employment program model was developed to provide services to individuals with developmental disabilities. Recently, other disability populations have benefited from supported employment services. In an effort to expand and improve services to these populations under the supported employment program, innovative models must be considered in serving the needs of these individuals.

In order to increase supported employment services to these underrepresented populations, projects under this priority must develop innovative approaches for expanding the provision of supported employment services to one or more of the following unserved or underserved disability populations: (1) Individuals with severe physical disabilities. (2) Individuals with traumatic brain injuries. (3) Individuals who are blind and have at least one other disabling condition.

All projects under this priority must arrange for the provision of extended services for the individuals with severe disabilities they serve. Extended services are on-going support services that are needed by an individual in supported employment to enable the individual to maintain a particular job placement when time-limited services (not to exceed 18 months) provided with funds under this program have ceased. Because of the special needs of individuals with severe physical disabilities, individuals with traumatic brain injuries, and individuals with sensory disabilities, all projects under this priority must include or arrange for the provision of rehabilitation engineering services, as appropriate, for the individuals they serve.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3225, Mary E. Switzer Building, 330 "C" Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

APPLICABLE PROGRAM REGULATIONS: 34 CFR part 380.

Program Authority: 29 U.S.C. 777a(d).

(Catalog of Federal Domestic Assistance Number 84.128A, Special Projects and Demonstrations for Providing Supported Employment Services to Individuals with Severe Handicaps).

Dated: May 29, 1991.

Lamar Alexander,

Secretary of Education.

[FR Doc. 91–23162 Filed 9–25–91; 8:45 am]

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federal register

Thursday
September 26, 1991

Part VI

Committee for Purchase From the Blind and Other Severely Handicapped

41 CFR Part 51-1 et al.

Committee Regulations; Revisions; Final Rule

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

41 CFR Parts 51-1, 51-2, 51-3, 51-4, 51-5, 51-6, 51-7, 51-8, 51-9, and 51-10 (Ch. 51)

Revisions to Committee Regulations

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Final rule.

SUMMARY: This final rule is intended to clarify and update the language of regulations governing the Committee for Purchase from the Blind and Other Severely Handicapped and its administration of the Javits-Wagner-O'Day (JWOD) Act. The rule states Government and Committee policy on implementation of the JWOD Act and the duties and responsibilities of the Committee, central nonprofit agencies, nonprofit agencies employing persons who are blind or have severe disabilities, and Government agencies in connection with the JWOD Program. Procedures for environmental analysis are revised in accordance with current guidance from the Council on Environmental Quality. The minimum figure below which fees will not be charged for processing requests under the Freedom of Information Act is changed. The rule will lessen the administrative burden of operating the JWOD Program without increasing the burden on its participants.

EFFECTIVE DATE: October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Beverly L. Milkman (703) 557-1145. Copies of this notice will be made available on request in computer diskette format.

SUPPLEMENTARY INFORMATION: This final rule is the result of an extensive review and update by the Committee of its regulations. The regulations have not been reviewed in this comprehensive a fashion since they were promulgated in 1973.

The regulation reflects a general attempt to clarify regulatory language and reflect actual practice at this time. Obsolete references have been updated: E.g., "Department of Health, Education and Welfare" and "Defense Supply Agency" are now "Department of Education" and "Defense Logistics Agency." Except where quoting the JWOD Act, terminology referring to the community the JWOD Program serves has been modernized as well and changed to reflect a "people first" orientation. "Workshop for the blind" and "workshop for other severely handicapped," are now "nonprofit agency for the blind" and "nonprofit agency employing persons with severe disabilities." "National Industries for the Severely Handicapped" has been changed to "HISH" to reflect a name change effective May 1, 1991. The term "ordering office" has been deleted in favor of the more broadly defined "contracting activity."

Among the more significant changes made by this regulation, part 51-1, General, has been revised to state at the very beginning of the regulations that it is the policy of the Government to increase employment and training opportunities for persons who are blind or have other severe disabilities through the JWOD Program, and that it is the policy of the Committee to encourage all Federal entities and employees to provide the necessary support to ensure that the JWOD Act is implemented in an effective manner. Part 51-1 has also been rearranged to put the discussion of mandatory source priorities ahead of the list of definitions.

Part 51-2 on Committee responsibilities has been expanded and rearranged to relate more clearly to the steps in the Procurement List addition process. A time limitation on submitting reconsideration requests has been added to § 51-2.6 on Committee reconsideration of Procurement List decisions. A new § 51-2.9 has been added to inform the public of the procedure for presentations at Committee meetings by persons interested in proposed additions to the Procurement List. This information is currently contained in an internal memorandum. In part 51-3 on central nonprofit agencies (CNAs), a new provision has been added to the list of CNA responsibilities under the JWOD Act to permit them to perform other administrative functions reasonably related to the JWOD Program but not specifically mentioned in the list (§ 51-3.2(m)).

Several changes have been made in part 51-4 on nonprofit agency responsibilities. The responsibility of a nonprofit agency to maintain assessments of a direct labor individual's ability to engage in normal competitive employment has been clarified in § 51-4.3. Section 51-4.4 on subcontracting has been changed to encourage subcontracting to other nonprofit agencies, as well as small businesses, and to provide additional guidance on the permissible limits of subcontracting portions of production processes for commodities on the Procurement List. Former § 51-4.5 on production of commodities has been deleted because the matter is addressed in one of the expanded provisions on suitability of an item for addition to the Procurement List, at § 51-2.4(c). Former § 51-4.6 has been renumbered to § 51-4.5 and changed to clarify the procedure for dealing with violations of nonprofit agency responsibilities and to state that removal from the JWOD Program is a possible penalty.

Part 51-5, Procurement Requirements and Procedures, which addresses requirements placed on Government contracting and ordering personnel by the JWOD Program, has been split into two parts reflecting the two areas it covers. The new part 51-5, Contracting Requirements, deals with general requirements, mandatory procurement, purchase exceptions, pricing, and related matters. A new part 51-6, Procurement Procedures, provides more order-specific guidance on matters such as orders and allocations, complaints, and disputes, and specification changes for individual commodities and services.

Among the changes in the new part 51-5, the mandatory nature of JWOD procurements has been made clearer in § 51-5.2. Granting of purchase exceptions has been slightly restricted and the threshold for Committee approval of CNA action has been raised from $2500 to $25,000, the current Government small purchase limitation (§ 51-5.4). Section 51-5.7 on payments for orders, which predates the Prompt Payment Act, has brought into line with the Act. A new § 51-5.8 has been added to permit the Committee to investigate alleged violations of the JWOD Act or these regulations by Government entities.

The new part 51-6 clarifies guidance on the direct order and allocation processes, waivers of specifications, orders in excess of nonprofit agency capability, and deletions from the Procurement List. A new § 51-6.3 encourages the use of long-term ordering agreements. A new § 51-6.14 expands a former provision giving the Committee a role in quality complaints not resolved at a lower level to cover any disputes arising under new part 51-6.

Creation of a new part 51-6 has required a renumbering of existing parts 51-6 through 51-9 as parts 51-7 through 51-10. The new part 51-7, Procedures for Environmental Analysis, is a complete rewrite of the existing part 51-6 following a model provided by the Council on Environmental Quality. It is expected to lessen the administrative burden in this area connected with Procurement List additions.

The only change in the text of the last three parts of the regulations appears at

§ 51–8.14(c), where the threshold for charging fees for requests under the Freedom of Information Act is lowered from $20 to $10, the threshold used by the General Services Administration, and the rationale for the threshold is stated in terms consistent with that Act.

Public Comments on the Proposed Rule

The Committee published the proposed rule in the **Federal Register** of June 28, 1991 (56 FR 29760). Thirty-one comments were received. Nearly all supported the proposed rule.

One commenter suggested that § 51–3.5, which authorizes CNAs to charge fees to nonprofit agencies for facilitating their participation in the JWOD Program, be amended to stipulate that such fees are determined as a percentage of JWOD Program sales. This stipulation describes the manner in which CNA fees have traditionally been calculated. The proposed § 51–3.5 was not intended to change the manner in which CNA fees are calculated. The Committee agrees, however, that the fee authority provisions could be more clearly worded. Accordingly, § 51–3.5 and § 51–4.3(b)(10), which requires the nonprofit agencies to pay the fees, have been reworded to state more clearly the manner in which fees are assessed and paid.

The same commenter, in expressing support for the provision in § 51–5.1(a) encouraging contracting activities to assist the Committee in identifying suitable commodities and services to be added to the Procurement List, suggested that these activities be required to provide samples of commodities being considered for addition to the Procurement List. The commenter also suggested that commodities which are closely related in use to those on the Procurement List be automatically added to the List in the same manner as replacement commodities as specified in § 51–6.13.

The Committee supports these suggestions and has added language to § 51–5.1(a) encouraging contracting activities to identify all suitable related commodities to the Committee for consideration for addition to the Procurement List. However, because these suggestions involve actions which would be required of other Federal agencies, the Committee is reluctant to make either of these suggestions a mandatory provision of its regulations without a clear statutory mandate in the JWOD Act to do so.

Four commenters expressed concern over the wording of § 51–4.3(b)(3), which requires nonprofit agencies participating in the JWOD Program to comply with Committee directives or requests in furtherance of the objectives of the JWOD Act or its implementing regulations. The commenters requested that this provision be amended to state that these communications will be in writing and issued through the CNAs, and will be in accordance with the JWOD Act or its implementing regulations.

The Committee does not intend to change its traditional practice of issuing policy statements and directives of general effect for the JWOD Program in writing and distributing them through the CNAs or in coordination with them. Effective administration of the JWOD Program, however, does require the Committee on occasion to communicate with the nonprofit agencies directly and by means other than writing. While the Committee is careful to conduct its operations in accordance with the JWOD Act and its implementing regulations, it considers that the amendment proposed by the commenters would overly limit its discretion to interpret these authorities as needed to perform its functions in connection with the JWOD Program. Accordingly, the Committee has not adopted the changes to § 51–4.3(b)(3) proposed by the commenters.

One commenter objected to the requirement in § 51–5.2 that Federal agencies and other persons acting for these agencies purchase certain commodities on the Procurement List from designated Federal agencies which serve as distributors of the commodities for the JWOD Program. The commenter suggests that the requirement is a result of a lack of private sector representation on the Committee.

Section 3 of the JWOD Act, 41 U.S.C. 48, which mandates that Federal agencies procuring commodities or services on the Procurement List do so from a qualified nonprofit agency, requires that the procurements be made "in accordance with rules and regulations of the Committee." The nonprofit agencies which participate in the JWOD Program are mainly small organizations which do not have the capacity to handle economically a large number of orders for relatively small quantities from many different Federal agencies. Accordingly, the Committee has long required by regulation that Federal agencies procure certain commodities on the Procurement List from the Federal agencies which serve as distributors for the JWOD Program. The proposed regulation merely extends the requirement to other persons through which Federal agencies procure Procurement List commodities for their use.

The Committee is not aware of any reasonable alternatives to its distribution system at this time. Accordingly, the Committee has decided to retain this requirement.

The private sector is represented on the Committee, which has four private citizen members. Committee membership is set by law, so the Committee cannot alter it in its regulations.

In addition to the changes to the proposed rule made in response to public comments, the Committee made a few minor editorial changes to the text of the proposed rule. To assure more consistent use of the term "JWOD Program," which was introduced in the proposed rule, several references to nonprofit agencies as "participating under the JWOD Act" or "participating in the program established by the JWOD Act" were changed to "participating in the JWOD Program." The CNA symbols in the table at the end of § 51–6.2(a) were changed from IB and SH to NIB and NISH to reflect current usage in the Procurement List. Two references to the JWOD Act in § 51–2.2(g) which omitted the acronym JWOD were corrected.

Regulatory Flexibility Act

I certify that this revision of the Committee regulations will not have a significant economic impact on a substantial number of small entities because the revisions basically update and clarify program policies and procedures and do not essentially change the impact of the regulations upon small entities.

Paperwork Reduction Act

Sections 51–4.2 and 51–4.3 contain information collection and record keeping requirements. Although these requirements are unchanged from those in the current Committee regulations, which have been approved by the Office of Management and Budget (OMB), the Committee submitted a copy of these sections to OMB for its review as required by the Paperwork Reduction Act, 44 U.S.C. 3504(h), and received OMB approval of the recordkeeping requirements. OMB control numbers appear in the text of these sections.

List of Subjects

41 CFR Part 51–1

Government procurement, Handicapped.

41 CFR Part 51–2

Organization and functions (Government agencies).

41 CFR Part 51–3

Government procurement, Handicapped.

41 CFR Part 51–4

Reporting and recordkeeping requirements.

41 CFR Part 51–5

Government procurement, Handicapped.

41 CFR Parts 51–6 and 51–7

Environmental impact statements.

41 CFR Part 51–8

Freedom of information.

41 CFR Part 51–9

Privacy.

41 CFR Part 51–10

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Handicapped.

Chapter 51 of title 41 of the Code of Federal Regulations is amended as follows:

1. Parts 51–1 through 51–5 are revised to read as follows:

PART 51–1—GENERAL

Sec.

51–1.1 Policy.
51–1.2 Mandatory source priorities.
51–1.3 Definitions.

Authority: 41 U.S.C. 46–48c.

§ 51–1.1 Policy.

(a) It is the policy of the Government to increase employment and training opportunities for persons who are blind or have other severe disabilities through the purchase of commodities and services from qualified nonprofit agencies employing persons who are blind or have other severe disabilities. The Committee for Purchase from the Blind and Other Severely Handicapped (hereinafter the Committee) was established by the Javits-Wagner—O'Day Act, Public Law 92–28, 85 Stat. 77 (1971), as amended, 42 U.S.C. 46–48c (hereinafter the JWOD Act). The Committee is responsible for implementation of a comprehensive program designed to enforce this policy.

(b) It is the policy of the Committee to encourage all Federal entities and employees to provide the necessary support to ensure that the JWOD Act is implemented in an effective manner. This support includes purchase of products and services published on the Committee's Procurement List through appropriate channels from nonprofit agencies employing persons who are blind or have other severe disabilities designated by the Committee; recommendations to the Committee of new commodities and services suitable for addition to the Procurement List; and cooperation with the Committee and the central nonprofit agencies in the provision of such data as the Committee may decide is necessary to determine suitability for addition to the Procurement List.

§ 51–1.2 Mandatory source priorities.

(a) The JWOD Act mandates that commodities or services on the Procurement List required by Government entities be procured, as prescribed in this regulation, from a nonprofit agency employing persons who are blind or have other severe disabilities, at a price established by the Committee, if that commodity or service is available within the normal period required by that Government entity. Except as provided in paragraph (b) of this section, the JWOD Act has priority, under the provisions of 41 U.S.C. 48, over any other supplier of the Government's requirements for commodities and services on the Committee's Procurement List.

(b) Federal Prison Industries, Inc. has priority, under the provisions of 18 U.S.C. 4124, over nonprofit agencies employing persons who are blind or have other severe disabilities in furnishing commodities for sale to the Government. All or a portion of the Government's requirement for a commodity for which Federal Prison Industries, Inc. has exercised its priority may be added to the Procurement List. However, such addition is made with the understanding that procurement under the JWOD Act shall be limited to that portion of the Government's requirement for the commodity which is not available or not required to be procured from Federal Prison Industries, Inc.

(c) The JWOD Act requires the Committee to prescribe regulations providing that, in the purchase by the Government of commodities produced and offered for sale by qualified nonprofit agencies employing persons who are blind and nonprofit agencies employing persons who have other severe disabilities, priority shall be accorded to commodities produced and offered for sale by qualified nonprofit agencies for the blind. In approving the addition of commodities, to the Procurement List, the Committee accords priority to nonprofit agencies for the blind. Nonprofit agencies for the blind and nonprofit agencies employing persons with severe disabilities have equal priority for services.

§ 51–1.3 Definitions.

As used in this chapter:

Agency and *Federal agency* mean *Entity of the Government*, as defined herein.

Blind means an individual or class of individuals whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle no greater than 20 degrees.

Central nonprofit agency means an agency organized under the laws of the United States or of any State, operated in the interest of the blind or persons with other severe disabilities, the net income of which does not incur in whole or in part to the benefit of any shareholder or other individual, and designated by the Committee to facilitate the distribution (by direct allocation, subcontract, or any other means) of orders of the Government for commodities and services on the Procurement List among nonprofit agencies employing persons who are blind or have other severe disabilities, to provide information required by the Committee to implement the JWOD Program, and to otherwise assist the Committee in administering these regulations as set forth herein by the Committee.

Committee means the Committee for Purchase from the Blind and Other Severely Handicapped.

Contracting activity means any element of an entity of the Government that has responsibility for identifying and/or procuring Government requirements for commodities or services. Components of a contracting activity, such as a contracting office and an ordering office, are incorporated in this definition, which includes all offices within the definitions of "contracting activity," "contracting office," and "contract administration office" contained in the Federal Acquisition Regulation, 48 CFR 2.101.

Direct labor means all work required for preparation, processing, and packing of a commodity or work directly related to the performance of a service, but not supervision, administration, inspection or shipping.

Fiscal year means the 12-month period beginning on October 1 of each year.

Government and *Entity of the Government* mean any entity of the legislative branch or the judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S.

Postal Service, and any nonappropriated fund instrumentality under the jurisdiction of the Armed Forces.

Interested person means an individual or legal entity affected by a proposed addition of a commodity or service to the Procurement List or a deletion from it.

JWOD Program means the program authorized by the JWOD Act to increase employment and training opportunities for persons who are blind or have other severe disabilities through Government purchasing of commodities and services from nonprofit agencies employing these persons.

Military resale commodities means commodities on the Procurement List sold for the private, individual use of authorized patrons of Armed Forces commissaries and exchanges, or like activities of other Government departments and agencies.

Nonprofit agency (formerly workshop) means a nonprofit agency for the blind or a nonprofit agency employing persons with severe disabilities, as appropriate.

Other severely handicapped and *severely handicapped individuals* (hereinafter persons with severe disabilities) mean a person other than a blind person who has a severe physical or mental impairment (a residual, limiting condition resulting from an injury, disease, or congenital defect) which so limits the person's functional capabilities (mobility, communication, self-care, self-direction, work tolerance or work skills) that the individual is unable to engage in normal competitive employment over an extended period of time.

(1) Capability for normal competitive employment shall be determined from information developed by an ongoing evaluation program conducted by or for the nonprofit agency and shall include as a minimum, a preadmission evaluation and a reevaluation at least annually of each individual's capability for normal competitive employment.

(2) A person with a severe mental or physical impairment who is able to engage in normal competitive employment because the impairment has been overcome or the condition has been substantially corrected is not "other severely handicapped" within the meaning of the definition.

Participating nonprofit agency (formerly participating workshop) means any nonprofit agency which has been authorized by the Committee to furnish a commodity or service to the Government under the JWOD Act.

Procurement List means a list of commodities (including military resale commodities) and services which the Committee has determined to be suitable to be furnished to the Government by nonprofit agencies for the blind or nonprofit agencies employing persons with severe disabilities pursuant to the JWOD Act and these regulations.

Qualified nonprofit agency for other severely handicapped (hereinafter nonprofit agency employing persons with severe disabilities) (formerly workshop for other severely handicapped) means an agency organized under the laws of the United States or any State, operated in the interests of persons with severe disabilities who are not blind, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing commodities and services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs persons with severe disabilities (including blind) for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services.

Qualified nonprofit agency for the blind (hereinafter nonprofit agency for the blind) (formerly workshop for the blind) means an agency organized under the laws of the United States or of any State, operated in the interest of blind individuals, and the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; which complies with applicable occupational health and safety standards prescribed by the Secretary of Labor; and which in furnishing commodities and services (whether or not the commodities or services are procured under these regulations) during the fiscal year employs blind individuals for not less than 75 percent of the work-hours of direct labor required to furnish such commodities or services.

State means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any territory remaining under the jurisdiction of the Trust Territory of the Pacific Islands.

PART 51–2—COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Sec.

51–2.1 Membership.
51–2.2 Powers and responsibilities.
51–2.3 Notice of proposed addition.
51–2.4 Determination of suitability.
51–2.5 Committee decision.
51–2.6 Reconsideration of Committee decision.
51–2.7 Fair market price.
51–2.8 Procurement list.
51–2.9 Oral presentations by interested persons at Committee meetings.

Authority: 41 U.S.C. 46–48c.

§ 51–2.1 Membership.

Under the JWOD Act, the Committee is composed of 15 members appointed by the President. There is one representative from each of the following departments or agencies of the Government: The Department of Agriculture, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the Department of Education, the Department of Commerce, the Department of Justice, the Department of Labor, the Department of Veterans Affairs, and the General Services Administration. Four members are private citizens: One who is conversant with the problems incident to the employment of blind individuals; one who is conversant with the problems incident to the employment of persons with other severe disabilities; one who represents blind individuals employed in qualified nonprofit agencies for the blind; and one who represents persons with severe disabilities (other than blindness) employed in qualified nonprofit agencies employing persons with severe disabilities.

§ 51–2.2 Powers and responsibilities.

The Committee is responsible for carrying out the following functions in support of its mission of providing employment and training opportunities for persons who are blind or have other severe disabilities and, whenever possible, preparing those individuals to engage in competitive employment:

(a) Establish rules, regulations, and policies to assure effective implementation of the JWOD Act.

(b) Determine which commodities and services procured by the Federal Government are suitable to be furnished by qualified nonprofit agencies employing persons who are blind or have other severe disabilities and add those items to the Committee's Procurement List. Publish notices of addition to the Procurement List in the **Federal Register**. Disseminate information on Procurement List items to Federal agencies. Delete items no longer suitable to be furnished by nonprofit agencies.

(c) Determine fair market prices for items added to the Procurement List and

revise those prices in accordance with changing market conditions to assure that the prices established are reflective of the market.

(d) Monitor nonprofit agency compliance with Committee regulations and procedures.

(e) Inform Federal agencies about the JWOD Program and the statutory mandate that items on the Procurement List be purchased from qualified nonprofit agencies, and encourage and assist entities of the Federal Government to identify additional commodities and services that can be purchased from qualified nonprofit agencies. To the extent possible, monitor Federal agencies' compliance with JWOD requirements.

(f) Designate, set appropriate ceilings on fee paid to these central nonprofit agencies by nonprofit agencies selling items under the JWOD Program, and provide guidance to central nonprofit agencies engaged in facilitating the distribution of Government orders and helping State and private nonprofit agencies participate in the JWOD Program.

(g) Conduct a continuing study and evaluation of its activities under the JWOD Act for the purpose of assuring effective and efficient administration of the JWOD Act. The Committee may study, independently, or in cooperation with other public or nonprofit private agencies, problems relating to:

(1) The employment of the blind or individuals with other severe disabilities.

(2) The development and adaptation of production methods which would enable a greater utilization of these individuals.

(h) Provide technical assistance to the central nonprofit agencies and the nonprofit agencies to contribute to the successful implementation of the JWOD Act.

(i) Assure that nonprofit agencies employing persons who are blind will have priority over nonprofit agencies employing persons with severe disabilities in furnishing commodities.

§ 51-2.3 Notice of proposed addition.

At least 30 days prior to the Committee's consideration of the addition of a commodity or service to the Procurement List, the Committee publishes a notice in the **Federal Register** announcing the proposed addition and providing interested persons an opportunity to submit written data or comments on the proposed addition.

§ 51-2.4 Determination of suitability.

The Committee has established the following criteria, each of which must be satisfied, for determining if a commodity or service is suitable for addition to the Procurement List:

(a) *Employment potential.* The proposed addition must demonstrate a potential to generate employment for persons who are blind or have other severe disabilities.

(b) *Nonprofit agency qualifications.* The nonprofit agency (or agencies) proposing to furnish the item must qualify as a nonprofit agency serving persons who are blind or have other severe disabilities, as set forth in part 51–4 of this chapter.

(c) *Capability.* The nonprofit agency (or agencies) desiring to furnish a commodity or service under the JWOD Program must satisfy the Committee as to the extent of the labor operations to be performed and that it will have the capability to meet Government quality standards and delivery schedules by the time it assumes responsibility for supplying the Government.

(d) *Fair market price.* The commodity or service will be provided at a fair market price under the procedures established by § 51–2.7.

(e) *Level of impact on the current or most recent contractor for the commodity or service.* In deciding whether or not a proposed addition to the Procurement List would have a severe adverse impact on the current or most recent contractor for the specific commodity or service, the Committee gives particular attention to:

(1) The possible impact on the contractor's sales. In addition, the Committee considers the effects of previous Committee actions.

(2) Whether that contractor has been a continuous supplier to the Government of the specific commodity or service proposed for addition and is, therefore, more dependent on the income from such sales to the Government.

(3) Any substantive comments received as the result of the notice of the proposed addition in the **Federal Register.**

§ 51-2.5 Committee decision.

The Committee considers the particular facts and circumstances in each case in determining if a commodity or service is suitable for addition to the Procurement List. When the Committee determines that a proposed addition to the Procurement List would have a severe adverse impact on a particular company, it takes this fact into consideration in deciding whether or not the commodity or service in question, or a portion of the Government requirement for it, should be added to the Procurement List. If the Committee decides to add a commodity or service to the Procurement List, that decision is announced in the **Federal Register** with a notice that includes information on the effective date of the addition.

§ 51-2.6 Reconsideration of Committee decision.

The Committee may reconsider its decision to add items to the Procurement List if it receives pertinent information which was not before it when it initially made the decision. Unless otherwise provided by the Committee, requests for reconsideration from interested persons must be received by the Committee within 60 days following the effective date of the addition in question. A request for reconsideration must include the specific facts believed by the interested person to justify a decision by the Committee to modify or reverse its earlier action.

§ 51-2.7 Fair market price.

The Committee is responsible for determining the fair market prices, and changes thereto, for commodities or services on the Procurement List. The Committee considers recommendations from the contracting activities and the central nonprofit agency concerned. Recommendations for fair market prices or changes thereto shall be submitted by the nonprofit agencies to the central nonprofit agency representing the nonprofit agency. Contracting activities should submit recommendations directly to the Committee. The central nonprofit agency shall analyze the data and submit a recommended fair market price to the Committee along with the detailed justification necessary to support the recommended price.

§ 51-2.8 Procurement list.

(a) The Committee maintains a Procurement List which includes the commodities and services which shall be procured by Government departments and agencies under the JWOD Act from the nonprofit agency(ies) designated by the Committee. Copies of the Procurement List, together with information on procurement requirements and procedures, are available to contracting activities upon request.

(b) For commodities, including military resale commodities, the Procurement List identifies the name and national stock number or item designation for each commodity, and where appropriate, any limitation on the

portion of the commodity which must be procured under the JWOD Act.

(c) For services, the Procurement List identifies the type of service to be furnished, the Government department or agency responsible for procuring the service, and, where appropriate, the activity or item to be serviced.

(d) Additions to and deletions from the Procurement List are published in the **Federal Register** as they are approved by the Committee.

§ 51-2.9 Oral presentations by interested persons at Committee meetings.

(a) Upon written request from an interested person, that person may, at the discretion of the Committee Chair, be permitted to appear before the Committee to present views orally. Generally, only those persons who have raised significant issues which, if valid, could influence the Committee's decision in the matter under consideration will be permitted to appear.

(b) When the Chair has approved the appearance before the Committee of an interested person who has made a written request:

(1) The name of the spokesperson and the names of any other persons planning to appear shall be provided to the Committee staff by telephone at least three working days before the meeting.

(2) In the absence of prior authorization by the Chair, only one person representing a particular agency or organization will be permitted to speak.

(3) Oral statements to the Committee and written material provided in conjunction with the oral statements shall be limited to issues addressed in written comments which have previously been submitted to the Committee as the result of notice of proposed rulemaking in the **Federal Register**.

(4) Written material to be provided in conjunction with the oral presentation and an outline of the presentation shall be submitted to the Committee staff at least three working days before the meeting.

(c) The Committee may also invite other interested persons to make oral presentations at Committee meetings when it determines that these persons can provide information which will assist the Committee in making a decision on a proposed addition to the Procurement List. Terms of appearance of such persons shall be determined by the Chair.

PART 51-3—CENTRAL NONPROFIT AGENCIES

Sec.

51-3.1 General.
51-3.2 Responsibilities under the JWOD Program.
51-3.3 Assignment of commodity or service.
51-3.4 Distribution of orders.
51-3.5 Fees.
51-3.6 Reports to central nonprofit agencies.

Authority: 41 U.S.C. 46-48c.

§ 51-3.1 General.

Under the provisions of section 2(c) of the JWOD Act, the following are currently designated central nonprofit agencies:

(a) To represent nonprofit agencies for the blind: National Industries for the Blind.

(b) To represent nonprofit agencies employing persons with other severe disabilities: NISH.

§ 51-3.2 Responsibilities under the JWOD Program.

Each central nonprofit agency shall:

(a) Represent its participating nonprofit agencies in dealing with the Committee under the JWOD Act.

(b) Evaluate the qualifications and capabilities of its nonprofit agencies and provide the Committee with pertinent data concerning its nonprofit agencies, their status as qualified nonprofit agencies, their manufacturing or service capabilities, and other information concerning them required by the Committee.

(c) Obtain from Federal contracting activities such procurement information as is required by the Committee to determine the suitability of a commodity or service being recommended to the Committee for addition to the Procurement List.

(d) Recommend to the Committee, with appropriate justification including recommended prices, suitable commodities or services for procurement from its nonprofit agencies.

(e) Distribute within the policy guidelines of the Committee (by direct allocation, subcontract, or any other means) orders from Government activities among its nonprofit agencies.

(f) Maintain the necessary records and data on its nonprofit agencies to enable it to allocate orders equitably.

(g) Oversee and assist its nonprofit agencies to insure contract compliance in furnishing a commodity or a service.

(h) As market conditions change, recommend price changes with appropriate justification for assigned commodities or services on the Procurement List.

(i) Monitor and inspect the activities of its nonprofit agencies to ensure compliance with the JWOD Act and appropriate regulations.

(j) When authorized by the Committee, enter into contracts with Federal contracting activities for the furnishing of commodities or services provided by its nonprofit agencies.

(k) At the time designated by the Committee, submit a completed, original copy of the appropriate Initial Certification (Committee Form 401 or 402) for the nonprofit agency concerned. This requirement does not apply to a nonprofit agency that is already authorized to furnish a commodity or service under the JWOD Act.

(l) Review and forward to the Committee by December 15 of each year a completed, original copy of the appropriate Annual Certification (Committee Form 403 or 404) for each of its participating nonprofit agencies covering the fiscal year ending the preceding September 30.

(m) Perform other JWOD administrative functions, including activities to increase Government and public awareness of the JWOD Act subject to the oversight of the Committee.

§ 51-3.3 Assignment of commodity or service.

(a) The assignment of a commodity or service to a central nonprofit agency for the purpose of evaluating its potential for possible future addition to the Procurement List shall be as agreed between the two central nonprofit agencies, except for commodities proposed by NISH when the National Industries for the Blind has exercised its priority. The Committee shall initially assign these commodities to the National Industries for the Blind.

(b) NISH, at the time it requests a decision from the National Industries for the Blind on the waiver or exercise of the blind priority for a commodity, shall provide to the National Industries for the Blind the procurement information necessary for the National Industries for the Blind to make a determination on the waiver or exercise of its priority. The National Industries for the Blind shall normally provide its decision within 30 days, but not later than 60 days after receipt of the essential procurement information it requires. The time for this decision may be extended beyond 60 days by mutual agreement between the two central nonprofit agencies. Disagreements on extensions shall be referred to the Committee for resolution.

(c) The National Industries for the Blind shall notify NISH and the committee of its decision to exercise the

blind priority and shall complete the essential steps to place the commodity on the Procurement List within nine months after the Committee is notified. The Committee may extend the nine-month period when the National Industries for the Blind has been delayed by conditions beyond its control. Upon expiration of the assignment period, the Committee shall reassign the commodity to NISH for development by its nonprofit agencies.

(d) The appropriate central nonprofit agency shall obtain a decision from the Federal Prison Industries on the waiver or exercise of its priority for commodities. Procurement information required by the Federal Prison Industries to make a determination on the waiver or exercise of its priority shall be provided by the central nonprofit agency at the time it requests the waiver. The Federal Prison Industries shall provide its decision to the central nonprofit agency within 30 days, but not later than 60 days after it receives the essential procurement information. The period for the decision may be extended beyond 60 days by mutual agreement between the Federal Prison Industries and the central nonprofit agency. Disagreements on extensions shall be referred by the central nonprofit agency to the Committee for resolution with the Federal Prison Industries.

(e) The central nonprofit agency shall provide to the Committee written documentation from the Federal Prison Industries indicating its decision on the waiver or exercise of its priority at the time it requests the addition of the commodity to the Procurement List. NISH shall also include the written decision from the National Industries for the Blind indicating its waiver of the blind priority.

§ 51-3.4 Distribution of orders.

Central nonprofit agencies shall distribute orders from the Government only to nonprofit agencies which the Committee has approved to furnish the specific commodity or service. When the Committee has approved two or more nonprofit agencies to furnish a specific commodity or service, the central nonprofit agency shall distribute orders among those nonprofit agencies in a fair and equitable manner.

§ 51-3.5 Fees.

A central nonprofit agency may charge fees to nonprofit agencies for facilitating their participation in the JWOD Program. Fees shall be calculated based on nonprofit agency sales to the Government under the JWOD Program. Fees shall not exceed the fee limit approved by the Committee.

§ 51-3.6 Reports to central nonprofit agencies.

Any information, other than that contained in the Annual Certification required by § 51-4.3(a) of this chapter, which a central nonprofit agency requires its nonprofit agencies to submit on an annual basis, shall be requested separately from the Annual Certification. If the information is being sought in response to a request by the Committee, nonprofit agencies shall be advised of that fact and the central nonprofit agency shall, prior to distribution, provide to the Committee a copy of each form which it plans to use to obtain such information from its nonprofit agencies.

PART 51-4—NONPROFIT AGENCIES

Sec.

§ 51-4.1 General.
§ 51-4.2 Initial qualification.
51-4.3 Maintaining qualification.
51-4.4 Subcontracting.
51-4.5 Violations.

Authority: 41 U.S.C. 46-48c.

§ 51-4.1 General.

To participate in the JWOD Program, a nonprofit agency shall be represented by the central nonprofit agency assigned by the Committee on the basis of the nonprofit agency's articles of incorporation and bylaws.

§ 51-4.2 Initial qualification.

(a) To qualify for participation in the JWOD Program:

(1) Except as provided in paragraph (a)(2) of this section, a nonprofit agency shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a letter signed by an officer of the corporation or chief executive:

(i) A legible copy (preferably a photocopy) of the articles of incorporation showing the date of filing and the signature of an appropriate State official.

(ii) A copy of the bylaws certified by an officer of the corporation.

(iii) If the articles of incorporation or bylaws do not include a statement to the effect that no part of the net income of the nonprofit agency may inure to the benefit of any shareholder or other individual, one of the following shall be submitted:

(A) A certified true copy of the State statute under which the nonprofit agency was incorporated which includes wording to the effect that no part of the net income of the nonprofit agency may inure to the benefit of any shareholder or other individual.

(B) A copy of a resolution approved by the governing body of the corporation, certified by an officer of the corporation, to the effect that no part of the net income of the nonprofit agency may inure to the benefit of any shareholder or other individual.

(2) A State-owned or State-operated nonprofit agency for persons who are blind or have other severe disabilities, or a nonprofit agency established or authorized by a State statute other than the State corporation laws and not privately incorporated, shall submit to the Committee through its central nonprofit agency the following documents, transmitted by a letter signed by an officer of the wholly-owned State corporation or an official of the agency that directs the operations of the nonprofit agency, as applicable:

(i) A certified true copy of the State statute establishing or authorizing the establishment of nonprofit agency(ies) for persons who are blind or have other severe disabilities.

(ii) In the case of a wholly-owned State corporation, a certified true copy of the corporation bylaws; and, in the case of a State or local government agency, a certified true copy of implementing regulations, operating procedures, notice of establishment of the nonprofit agency, or other similar documents.

(b) The Committee shall review the documents submitted and, if they are acceptable, notify the nonprofit agency by letter, with a copy to its central nonprofit agency, that the Committee has verified its nonprofit status under the JWOD Act.

(c) A nonprofit agency shall submit two completed copies of the appropriate Initial Certification (Committee Form 401 or 402) to its central nonprofit agency at the time designated by the Committee. This requirement does not apply if a nonprofit agency is already authorized to furnish a commodity or service under the JWOD Act.

§ 51-4.3 Maintianing qualification.

(a) To maintain its qualification under the JWOD Act, each nonprofit agency authorized to furnish a commodity or a service shall continue to comply with the requirements of a "nonprofit agency for other severely handicapped" or a "nonprofit agency for the blind" as defined in § 51-1.3 of this chapter. In addition, each such nonprofit agency must submit to its central nonprofit agency by November 15 of each year, two completed copies of the appropriate

Annual Certification covering the fiscal year ending the preceding September 30.

(b) In addition to paragraph (a) of this section, each nonprofit agency participating in the JWOD Program shall:

(1) Furnish commodities or services in strict accordance with Government orders.

(2) Comply with the applicable compensation, employment, and occupational health and safety standards prescribed by the Secretary of Labor.

(3) Comply with directives or requests issued by the Committee in furtherance of the objectives of the JWOD Act or its implementing regulations.

(4) Make its records available for inspection at any reasonable time to representatives of the Committee or the central nonprofit agency representing the nonprofit agency.

(5) Maintain records of direct labor hours performed in the nonprofit agency by each worker.

(6) Maintain a file on each blind individual performing direct labor which contains a written report reflecting visual acuity and field of vision of each eye, with best correction, signed by a person licensed to make such an evaluation.

(7) Maintain in the file for each blind individual performing direct labor annual reviews of ability to engage in normal competitive employment. These reviews must be signed by an individual qualified by training and/or experience to make this determination.

(8) Maintain an ongoing placement program operated by or for the nonprofit agency to include liaison with appropriate community services such as the State employment service, employer groups and others. Those individuals determined capable and desirous of normal competitive employment shall be assisted in obtaining such employment.

(9) Establish written procedures to encourage, where appropriate, filling of vacancies within the nonprofit agency by promotion of qualified employees who are blind or have other severe disabilities.

(10) Upon receipt of payment by the Government for commodities or services furnished under the JWOD Program, pay to the central nonprofit agency a fee which meets the requirements of § 51–3.5 of this chapter.

(c) Each nonprofit agency employing persons with severe disabilities participating in the JWOD Program shall, in addition to the requirements of paragraphs (a) and (b) of this section, maintain in each individual with a severe disability's file:

(1) A written report signed by a licensed physician, psychiatrist, or qualified psychologist, as appropriate, reflecting the nature and extent of the disability or disabilities that cause such person to qualify as a person with a severe disability.

(2) Reports which state whether that individual is capable of engaging in normal competitive employment. These reports shall be signed by a person or persons qualified by training and experience to evaluate the work potential, interests, aptitudes, and abilities of persons with disabilities and shall normally consist of preadmission evaluations and reevaluations prepared at least annually. The file on individuals who have been in the nonprofit agency for less than two years shall contain the preadmission report and, where appropriate, the next annual reevaluation. The file on individuals who have been in the nonprofit agency for two or more years shall contain, as a minimum, the reports of the two most recent annual reevaluations.

(d) The information collection requirements of § 51–4.2 and § 51–4.3 and the record keeping requirements of § 51–4.3 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Public Law 96–511). The information collection requirements have been assigned the following OMB control numbers:

Committee form	OMB control No.
Committee form 401	3037–0004
Committee form 402	3037–0003
Committee form 403	3037–0001
Committee form 404	3037–0002

The record keeping requirements have been assigned OMB control number 3037–0005.

§ 51–4.4 Subcontracting.

(a) Nonprofit agencies shall seek broad competition in the purchase of materials and components used in the commodities and services furnished to the Government under the JWOD Act. Nonprofit agencies shall inform the Committee, through their central nonprofit agency, before entering into multiyear contracts for materials or components used in the commodities and services furnished to the Government under the JWOD Act.

(b) Each nonprofit agency shall accomplish the maximum amount of subcontracting with other nonprofit agencies and small business concerns that the nonprofit agency finds to be consistent both with efficient performance in furnishing commodities or services under the JWOD Act and maximizing employment for persons who are blind or have other severe disabilities.

(c) Nonprofit agencies may subcontract a portion of the process for producing a commodity on the Procurement List provided that the portion of the process retained by the prime nonprofit agency generates employment for persons who are blind or have other severe disabilities.

(d) A nonprofit agency may not subcontract the entire production process for all or a portion of an order without the Committee's prior approval.

§ 51–4.5 Violations.

(a) Any alleged violations of these regulations by a nonprofit agency shall be investigated by the appropriate central nonprofit agency which shall notify the nonprofit agency concerned and afford it an opportunity to submit a statement of facts and evidence. The central nonprofit agency shall report its findings to the Committee, together with its recommendation. In reviewing the case, the Committee may request the submission of additional evidence or may conduct its own investigation of the matter. Pending a decision by the Committee, the central nonprofit agency concerned may be directed by the Committee to temporarily suspend allocations to the nonprofit agency.

(b) If a nonprofit agency fails to correct its violations of these regulations, the Committee, after affording the nonprofit agency an opportunity to address the Committee on the matter, may terminate the nonprofit agency's eligibility to participate in the JWOD Program.

PART 51–5—CONTRACTING REQUIREMENTS

Sec.

51–5.1 General.
51–5.2 Mandatory procurement.
51–5.3 Scope of requirement.
51–5.4 Purchase exceptions.
51–5.5 Prices.
51–5.6 Shipping and packing.
51–5.7 Payments.
51–5.8 Violations.

Authority: 41 U.S.C. 46–48c.

§ 51–5.1 General.

(a) Contracting activities are encouraged to assist the Committee and the central nonprofit agencies in identifying suitable commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities so that the Committee can attain its

objective of increasing employment and training opportunities for individuals who are blind or have other severe disabilities. For items which appear to be suitable to be furnished by nonprofit agencies, the contracting activity should refer the candidate commodities and services to the Committee or a central nonprofit agency. If a contracting activity decides to procure one or more commodities which are similar to a commodity or commodities on the Procurement List, the contracting activity should refer the commodities it intends to procure to the Committee or a central nonprofit agency.

(b) Contracting activities shall provide the Committee and designated central nonprofit agencies with information needed to enable the Committee to determine whether a commodity or service is suitable to be furnished by a nonprofit agency. For commodities, information such as the latest solicitation and amendments, bid abstracts, procurement history, estimated annual usage quantities, and anticipated date of next solicitation issuance and opening may be needed. For services, similar information including the statement of work and applicable wage determination may be required. In order to assist in evaluating the suitability of an Office of Management and Budget Circular No. A–76 conversion, contracting activities should provide a copy of the draft statement of work and applicable wage determination to the central nonprofit agency upon its request.

§ 51–5.2 Mandatory procurement.

(a) Nonprofit agencies designated by the Committee are mandatory sources of supply for all Federal entities for commodities and services listed on the Procurement List, as provided in § 51–1.2 of this chapter.

(b) Purchases by Federal agencies shall be accomplished from sources listed in the Procurement List unless exception is authorized by the Committee.

(c) The Defense Logistics Agency (DLA), the General Services Administration (GSA), and the Department of Veterans Affairs (VA) are responsible for buying broad categories of common commodities from a central nonprofit agency or nonprofit agency(ies) and serve as the distribution agents thereof. Unless otherwise provided by the Committee, when a commodity is identified on the Procurement List as being available from DLA, GSA, or VA, Federal agencies shall order, and shall require other persons providing such commodities to them by contract to order, those commodities from the appropriate contracting agency in accordance with the requisitioning procedures of their agency.

(d) The Procurement List also identifies other Federal agencies with responsibility for purchasing commodities for contracting activities in their own agencies and, in some cases, contracting activities in other agencies and serving as the distribution agent thereof. In cases, these contracting activities shall order, and shall require other persons providing such commodities to them by contract to order, the commodities from the appropriate contracting agency in accordance with the requisition procedures of their agency(ies).

(e) Commodities not available through paragraphs (c) or (d) of this section shall be ordered from the designated central nonprofit agency or nonprofit agency(ies).

(f) Procedures for obtaining military resale commodities are contained in § 51–6.4 of this chapter.

§ 51–5.3 Scope of requirement.

(a) When a commodity is included on the Procurement List, only the National Stock Number or item designation listed is covered by the mandatory requirement. In some instances, only a portion of the Government requirement for a National Stock Number or item designation is specified by the Procurement List. Where geographic areas, quantities, percentages or specific supply locations for a commodity are listed, the mandatory provisions of the JWOD Act apply only to the portion or portions of the commodity indicated by the Procurement List.

(b) For services, where an agency and location or geographic area are listed on the Procurement List, only the service for the location or geographic area listed must be procured from the nonprofit agency. When no location or geographic area is indicated by the Procurement List, it is mandatory that the total Government requirement for that service be procured from a nonprofit agency.

§ 51–5.4 Purchase exceptions.

(a) A central nonprofit agency will normally grant a purchase exception for a contracting activity to procure from commercial sources commodities or services on the Procurement List when both of the following conditions are met:

(1) The central nonprofit agency or its nonprofit agency(ies) cannot furnish a commodity or service within the period specified, and

(2) The commodity or service is available from commercial sources in the quantities needed and significantly sooner than it will be available from the nonprofit agency(ies).

(b) The central nonprofit agency may grant a purchase exception when the quantity involved is not sufficient to be furnished economically by the nonprofit agency(ies)

(c) The Committee may also grant a purchase exception for the reasons set forth in paragraphs (a) and (b) of this section.

(d) The central nonprofit agency shall obtain approval of the Committee before granting a purchase exception when the value of the procurement is $25,000 or more.

(e) When the central nonprofit agency grants a purchase exception under the above conditions, it shall do so promptly and shall specify the quantities and delivery period covered by the exception.

(f) When a purchase exception is granted under paragraph (a) of this section:

(1) Contracting activities shall initiate purchase actions within 15 days following the date of the purchase exception. The deadline may be extended by the central nonprofit agency with, in cases of procurements of $25,000 or more, the concurrence of the Committee.

(2) Contracting activities shall furnish a copy of the solicitation to the appropriate central nonprofit agency at the time it is issued, and a copy of the annotated bid abstract upon awarding of the commercial contract.

(g) Any decision by a central nonprofit agency regarding a purchase exception may be appealed to the Committee by the contracting activity.

§ 51–5.5 Prices.

(a) The prices for items on the Procurement List are fair market prices established by the Committee.

(b) Prices for commodities, except for military resale commodities, are for delivery aboard the vehicle of the initial carrier at point of production (f.o.b. origin), and include applicable packaging, packing, and marking.

(c) Price changes for commodities and services shall usually apply to orders received by the nonprofit agency on or after the effective date of the change. In special cases, after considering the views of the contracting activity, the Committee may make price changes applicable to orders received by the nonprofit agency prior to the effective date of the change.

(d) To assist the Committee in revising the fair market prices for services on the Procurement List, upon request from the nonprofit agency, the contracting

activity should take the following actions:

(1) Submit to the Department of Labor in a timely fashion a request for wage determination rate.

(2) Provide a copy of the new wage determination rate or the Department of Labor document stating that the wage determination rate is unchanged and a completed Standard Form 98, "Notice of Intention to Make a Service Contract and Response to Notice," to the central nonprofit agency at least 90 days before the beginning of the new service period.

(3) Provide to the central nonprofit agency at least 90 days before the beginning of the new service period a copy of the statement of work applicable to the new service period.

(e) If a contracting activity desires packing, packaging, or marking of products other than the standard pack or as provided in the Procurement List, the difference in cost thereof, if any, shall be added as a separate item on the purchase order.

§ 51-5.6 Shipping and packing.

For commodities, except for military resale commodities, delivery is accomplished when a shipment is placed aboard the vehicle of the initial carrier. Time of delivery is the date shipment is released to and accepted by the initial carrier. Method of transportation to destination shall normally be by Government bills of lading. However, for small shipments, the contracting activity may designate another method of transportation on its order. When shipments are under Government bills of lading, the bills of lading may accompany orders or be otherwise furnished, but they shall be supplied promptly. Failure by a contracting activity to furnish bills of landing promptly, or to designate a method of transportation, may result in an excusable cause for delay in delivery. When the nonprofit agency pays for transportation to destination, these costs shall be included as a separate item on the nonprofit agency's invoice and the nonprofit agency shall be reimbursed by the contracting activity for these costs.

§ 51-5.7 Payments.

Payments for products or services of persons who are blind or have other severe disabilities shall be made within 30 days after shipment or receipt of a proper invoice or voucher.

§ 51-5.8 Violations.

Any alleged violations of the JWOD Act or these regulations by entities of the Government shall be investigated by the Committee, which shall notify the entity and afford it an opportunity to submit a statement.

PARTS 51-7—51-10—[REDESIGNATED FROM PARTS 51-6—51-9]

2. Parts 51–6 through 51–9 are redesignated as parts 51–7 through 51–10 and the cross references revised accordingly.

3. A new part 51–6 is added to read as follows:

PART 51-6—PROCUREMENT PROCEDURES

Sec.

51–6.1 Direct order process.
51–6.2 Allocation process.
51–6.3 Long-Term Ordering Agreements.
51–6.4 Military resale commodities.
51–6.5 Adjustment and cancellation of orders.
51–6.6 Request for waiver of specification requirement.
51–6.7 Orders in excess of nonprofit agency capability.
51–6.8 Deletion of items from the Procurement List.
51–6.9 Correspondence and inquiries.
51–6.10 Quality of merchandise.
51–6.11 Quality complaints.
51–6.12 Specification changes and similar actions.
51–6.13 Replacement commodities.
51–6.14 Disputes.

Authority: 41 U.S.C. 46–48c.

§ 51-6.1 Direct order process.

(a) Once a commodity or service is added to the Procurement List, the central nonprofit agency may authorize the contracting activity to issue orders directly to a nonprofit agency without requesting an allocation for each order. This procedure is known as the direct order process.

(b) In these cases, the central nonprofit agency shall specify the normal leadtime required for orders transmitted directly to the nonprofit agencies. This method shall be used whenever possible since it eliminates double handling and decreases the time required for processing orders.

(c) An order for commodities or services shall provide leadtime sufficient for purchase of materials, production or preparation, and delivery or completion.

(d) The central nonprofit agency shall keep the contracting activity informed of any changes in leadtime experienced by its nonprofit agencies in order to keep to a minimum requests for extensions once an order is placed. Where, due to unusual conditions, an order does not provide sufficient leadtime, the central nonprofit agency or the individual nonprofit agency may request an extension of delivery or completion date which should be granted, if feasible. If extension of delivery or completion date is not feasible, the contracting activity shall:

(1) Notify the central nonprofit agency and the individual nonprofit agency(ies) as appropriate.

(2) Request the central nonprofit agency to reallocate or to issue a purchase exception authorizing procurement from commercial sources as provided in § 51–5.4 of this chapter.

(e) The contracting activity shall promptly provide to the central nonprofit agency concerned a copy of all orders issued to nonprofit agencies.

(f) The written direct order authorization remains valid until it is revoked by the central nonprofit agency.

§ 51-6.2 Allocation process.

(a) In those cases where a direct order authorization has not been issued as described in § 51–6.1, the contracting activity shall submit written requests for allocation to the appropriate central nonprofit agency indicated by the Procurement List at the address listed below:

Agency	Agency symbol
National Industries for the Blind, 1901 North Beauregard Street, Suite 200, Alexandria, Virginia 22311-1727.	NIB
NISH, 2235 Cedar Lane, Vienna, Virginia 22182-5200.	NISH

(b) Requests for allocations shall contain, as a minimum:

(1) For commodities. Name, stock number, latest specification, quantity, unit price, and place and time of delivery.

(2) For services. Type and location of service required, latest specification, work to be performed, estimated volume, and time for completion.

(c) Contracting activities shall request allocations in sufficient time for the central nonprofit agency to reply, for the order(s) to be placed, and for the nonprofit agencies to furnish the commodity or service (see paragraph (i) of this section).

(d) When a commodity on the Procurement List also appears on the Federal Prison Industries' "Schedule of Products," the contracting activity shall obtain clearance from the Federal Prison Industries prior to requesting an allocation or placing an order directly to the nonprofit agency(ies).

(e) The central nonprofit agency shall make allocations to the appropriate nonprofit agency(ies) upon receipt of a request from the contracting activity and

instruct that the orders be forwarded to the central nonprofit agency or direct to the nonprofit agency(ies) with a copy provided promptly to the central nonprofit agency.

(f) Central nonprofit agencies shall reply promptly to requests for allocation. When a request for allocation provides a delivery schedule (based on established lead times and time required for processing the allocation request) which cannot be met, the central nonprofit agency shall request) which cannot be met, the central nonprofit agency shall request a revision, which the contracting activity should grant, if feasible, or the central nonprofit agency shall issue a purchase exception authorizing procurement from commercial sources as provided in § 51–5.4 of this chapter.

(g) An allocation is not an obligation to supply a commodity or service, or an obligation for the contracting activity to issue an order. Nonprofit agencies are not authorized to commence production until receipt of an order.

(h) Upon receipt of an allocation, the contracting activity shall promptly submit an order to the appropriate central nonprofit agency or designated nonprofit agency(ies). Where this cannot be done promptly, the contracting activity shall advise the central nonprofit agency and the nonprofit agency(ies) immediately.

(i) An order for commodities or services shall provide leadtime sufficient for purchase of materials, production or preparation, and delivery or completion.

(j) The Central nonprofit agency shall keep the contracting activity informed of any changes in leadtime experienced by its nonprofit agency(ies) in order to keep to a minimum requests for extensions once an order is placed. Where, due to unusual conditions, an order does not provide sufficient leadtime, the central nonprofit agency or nonprofit agency may request an extension of delivery or completion date which should be granted, if feasible. If extension of delivery or completion date is not feasible, the contracting activity shall:

(1) Notify the central nonprofit agency and nonprofit agency(ies) as appropriate.

(2) Request the central nonprofit agency to reallocate or to issue a purchase exception authorizing procurement from commercial sources as provided in § 51–5.4 of this chapter.

(k) In those instances where the central nonprofit agency is the prime contractor rather than the nonprofit agency, the central nonprofit agency will designate the nonprofit agency(ies) authorized by the Committee to furnish definite quantities of commodities or specific services upon receipt of an order from the contracting activity.

§ 51–6.3 Long-Term Ordering Agreements.

Contracting activities are encouraged to investigate long-term ordering agreements for commodities listed on the Procurement List to level off demand, thereby helping ensure stability of employment and development of job skills for persons who are blind or have other severe disabilities.

§ 51–6.4 Military resale commodities.

(a) Purchase procedures for ordering military resale commodities are contained in instructions issued by the designated central nonprofit agency and are available upon request from the agency. Military commissary stores, Armed Forces exchanges and like activities of other Government departments and agencies (authorized resale outlets) shall request the central nonprofit agency to designate the nonprofit agency to which orders will be forwarded.

(b) Authorized resale outlets shall stock military resale commodities in as broad a range as is practicable. Authorized resale outlets may stock items procured from commercial sources which are comparable to a military resale commodity, provided the military resale commodity is also stocked, except that in military commissary stores military resale commodities in the 900-series normally shall be stocked exclusively. The stocking of commercial items in military commissary stores which are comparable to 900-series military resale commodities shall be restricted to those individual items, on a store-by-store basis, for which there is a significant customer demand.

(c) The Defense Commissary Agency shall, after consultation with the Committee:

(1) Establish mandatory lists of military resale commodities to be stocked in commissary stores.

(2) Require the stocking in commissary stores of military resale commodities in both the 500-, 800- and 900-series in as broad a range as is practicable.

(3) Issue guidance to commissary store personnel to take those actions required to achieve the maximum sales potential of military resale commodities.

(4) Establish policies and procedures which reserve at a level not lower than its military commissary headquarters the authority to grant exceptions to the exclusive stocking of 900-series military resale commodities.

(d) The Defense Commissary Agency shall provide the Committee a copy of each directive which relates to the stocking of military resale commodities in commissary stores, including exceptions authorizing the stocking of commercial items in competition with 900-series military resale commodities.

(e) The prices of military resale commodities include delivery to destination or, in the case of destinations overseas, to designated depots at ports of embarkation. Zone pricing is used for delivery to Alaska, Hawaii and Puerto Rico.

§ 51–6.5 Adjustment and cancellation of orders.

When the central nonprofit agency or an individual nonprofit agency fails to comply with the terms of a Government order, the contracting activity shall make every effort to negotiate an adjustment before taking action to cancel the order. When a Government order is canceled for failure to comply with its terms, the central nonprofit agency shall be notified, and, if practicable, requested to reallocate the order. The central nonprofit agency shall notify the Committee of any cancellation of an order and the reasons for that cancellation.

§ 51–6.6 Request for waiver of specification requirement.

(a) Nonprofit agencies and central nonprofit agencies are encouraged to recommend changes to specification requirements or request waivers where there are opportunities to provide equal or improved products at a lower cost to the Government.

(b) A nonprofit agency shall not request a waiver of a specification requirement except when it is not possible to obtain the material meeting the specification or when other requirements contained in the specification cannot be met.

(c) Requests for waiver of specification shall be transmitted by the nonprofit agency to its central nonprofit agency.

(d) The central nonprofit agency shall review the request and the specification to determine if the request is valid and shall submit to the contracting activity only those requests which it has determined are necessary to enable the nonprofit agency to furnish the item.

(e) The central nonprofit agency request for waiver shall be transmitted in writing to the contracting activity. In addition, a copy of the request shall be transmitted to the Committee, annotated to include a statement concerning the impact on the cost of producing the item if the waiver is approved.

§ 51-6.7 Orders in excess of nonprofit agency capability.

(a) Nonprofit agencies are expected to furnish commodities on the Procurement List within the time frames specified by the Government. The nonprofit agency must have the necessary production facilities to meet normal fluctuations in demand.

(b) Nonprofit agencies shall take those actions necessary to ensure that they can ship commodities within the time frames specified by the Government. In instances where the nonprofit agency determines that it cannot ship the commodity in the quantities specified by the required shipping date, it shall notify the central nonprofit agency and the contracting activity. The central nonprofit agency shall request a revision of the shipping schedule which the contracting activity should grant, if feasible, or the central nonprofit agency shall issue a purchase exception authorizing procurement from commercial sources as provided in § 51-5.4 of this chapter.

§ 51-6.8 Deletion of items from the Procurement List.

(a) When a central nonprofit agency decides to request that the Committee delete a commodity or serve from the Procurement List, it shall notify the Committee staff immediately. Before reaching a decision to request a deletion of an item from the Procurement List, the central nonprofit agency shall determine that none of its nonprofit agencies is capable and desirous of furnishing the commodity or service involved.

(b) Except in cases where the Government is no longer procuring the item in question, the Committee shall, prior to deleting an item from the Procurement List, determine that none of the nonprofit agencies of the other central nonprofit agency is desirous and capable of furnishing the commodity or service involved.

(c) Nonprofit agencies will normally be required to complete production of any orders for commodities on hand regardless of the decision to delete the item. Nonprofit agencies shall obtain concurrence of the contracting activity and the Committee prior to returning a purchase order to the contracting activity.

(d) For services, a nonprofit agency shall notify the contracting activity of its intent to discontinue performance of the service 90 days in advance of the termination date to enable the contracting activity to assure continuity of the service after the nonprofit agency's discontinuance.

§ 51-6.9 Correspondence and inquiries.

Routine contracting activity correspondence or inquiries concerning deliveries of commodities being shipped from or performance of services by nonprofit agencies employing persons who are blind or have other severe disabilities shall be with the nonprofit agency involved. Major problems shall be referred to the appropriate central nonprofit agency. In those instances where the problem cannot be resolved by the central nonprofit agency and the contracting activity involved, the contracting activity or central nonprofit agency shall notify the Committee of the problem so that action can be taken by the Committee to resolve it.

§ 51-6.10 Quality of merchandise.

(a) Commodities furnished under Government specification by nonprofit agencies employing persons who are blind or have other severe disabilities shall be manufactured in strict compliance with such specifications. Where no specifications exist, commodities furnished shall be of a quality equal to or higher than similar items available on the commercial market. Commodities shall be inspected utilizing nationally recognized test methods and procedures for sampling and inspection.

(b) Services furnished by nonprofit agencies employing persons who are blind or have other severe disabilities shall be performed in accordance with Government specifications and standards. Where no Government specifications and standards exist, the services shall be performed in accordance with commercial practices.

§ 51-6.11 Quality complaints.

(a) When the quality of a commodity received is not considered satisfactory by the using activity, the activity shall take the following actions as appropriate:

(1) For commodities received from Defense Logistics Agency supply centers, General Services Administration supply distribution facilities, Department of Veterans Affairs distribution division or other central stockage depots, or specifically authorized supply source, notify the supplying agency in writing in accordance with that agency's procedures. The supplying agency shall, in turn, provide copies of the notice to the nonprofit agency involved and its central nonprofit agency.

(2) For commodities received directly from nonprofit agencies employing persons who are blind or have other severe disabilities, address complaints to the nonprofit agency involved with a copy to the central nonprofit agency with which it is affiliated.

(b) When the quality of a service is not considered satisfactory by the contracting activity, it shall address complaints to the nonprofit agency involved with a copy to the central nonprofit agency with which it is affiliated.

§ 51-6.12 Specification changes and similar actions.

(a) Specifications or other descriptions for commodities on the Procurement List may undergo a series of changes to keep current with industry changes and agency needs. Since it is not feasible to show the latest revision as of the publication date, only the basic specification or description is referenced in the Procurement List. Contracting activities shall notify the nonprofit agency and the central nonprofit agency concerned of any change to the applicable specification or description.

(b) When a Government entity is changing the specification or description of a commodity on the Procurement List, including a change that involves the assignment of a new national stock number or item designation, the office assigned responsibility for the action shall obtain the comments of the Committee and the central nonprofit agency concerned on the proposed change and shall notify the nonprofit agency and the central nonprofit agency concerned at least 90 days prior to placing an order for a commodity covered by the new specification or description.

(c) Similarly for services, the contracting activity shall notify the nonprofit agency and the central nonprofit agency concerned at least 90 days prior to the date that any changes in the statement of work or other conditions will be required.

(d) When, in order to meet emergency needs, a contracting activity is unable to give the 90-day notification required in paragraphs (b) and (c) of this section, the contracting activity shall, at the time it places the order or change notice, inform the nonprofit agency and the central nonprofit agency in writing of the reasons it cannot meet the 90-day notification requirement.

§ 51-6.13 Replacement commodities.

When a commodity on the Procurement List is replaced by another commodity which has not been previously procured, and a qualified nonprofit agency can furnish the replacement commodity in accordance with the Government's quality standards and delivery schedules at a

fair market price, the replacement commodity is automatically considered to be on the Procurement List and shall be procured from the nonprofit agency designated by the Committee. The commodity being replaced shall continue to be included on the Procurement List until there is no longer a requirement for that commodity.

§ 51-6.14 Disputes.

Disputes between a nonprofit agency and a contracting activity arising out of matters covered by this part 51-6 should be resolved, where possible, by the contracting activity and the nonprofit agency, with assistance from the appropriate central nonprofit agency. Disputes which cannot be resolved by these parties shall be referred to the Committee for resolution.

4. Newly redesignated part 51-7 is revised to read as follows:

PART 51-7—PROCEDURES FOR ENVIRONMENTAL ANALYSIS

Sec.

51-7.1 Purpose and scope.
51-7.2 Early involvement in private, State, and local activities requiring Federal approval.
51-7.3 Ensuring environmental documents are actually considered in agency determinations.
51-7.4 Typical classes of action.
51-7.5 Environmental information.

Authority: 42 U.S.C. 4321 et seq.

§ 51-7.1 Purpose and scope.

(a) *Purpose.* This part implements the National Environmental Policy Act of 1969 (NEPA) and provides for the implementation of those provisions identified in 40 CFR 1507.3(b) of the regulations issued by the Council on Environmental Quality (CEQ) (40 CFR parts 1500-1508) published pursuant to NEPA.

(b) *Scope.* This part applies to all actions of the Committee for Purchase from the Blind and Other Severely Handicapped which may affect environmental quality in the United States.

§ 51-7.2 Early involvement in private, State, and local activities requiring Federal approval.

(a) 40 CFR 1501.2(d) requires agencies to provide for early involvement in actions which, while planned by private applicants or other non-Federal entities, require some sort of Federal approval. Pursuant to the JWOD Act (41 U.S.C. 46-48c), the Committee for Purchase from the Blind and Other Severely Handicapped makes the determination as to which qualified nonprofit agency serving persons who are blind or have other severe disabilities will furnish designated products and services to the Government.

(b) To implement the requirements of 40 CFR 1501.2(d) with respect to these actions, the Committee staff shall consult as required with other appropriate parties to initiate and coordinate the necessary environmental analysis. The Executive Director shall determine on the basis of information submitted by private agencies and other non-Federal entities or generated by the Committee whether the proposed action is one that normally does not require an environmental assessment or environmental impact statement (EIS) as set forth in § 51-7.4, or is one that requires an environmental assessment as set forth in 40 CFR 1501.4.

(c) To facilitate compliance with these requirements, private agencies and other non-Federal entities are expected to:

(1) Contact the Committee staff as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their request;

(2) Conduct any studies which are deemed necessary and appropriate by the Committee to determine the impact of the proposed action on the human environment;

(3) Consult with appropriate Federal, regional, State and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;

(4) Submit applications for all Federal, regional, State and local approvals as early as possible in the planning process;

(5) Notify the Committee as early as possible of all other Federal, regional, State, local and Indian tribe actions required for project completion so that the Committee may coordinate all Federal environmental reviews; and

(6) Notify the Committee of all known parties potentially affected by or interested in the proposed action.

§ 51-7.3 Ensuring environmental documents are actually considered in agency determinations.

(a) 40 CFR 1505.1 of the NEPA regulations contains requirements to ensure adequate consideration of environmental documents in agency decision-making. To implement these requirements, the Committee staff shall:

(1) Consider all relevant environmental documents in evaluating proposals for agency action;

(2) Ensure that all relevant environmental documents, comments and responses accompany the proposal through the agency review processes;

(3) Consider only those alternatives discussed in the relevant environmental documents when evaluating proposals for agency action; and

(4) Where an EIS has been prepared, consider the specific alternative analysis in the EIS when evaluating the proposal which is the subject of the EIS.

(b) For each of the Committee's actions authorized by the JWOD Act, the following list identifies the point at which the NEPA process begins, the point at which it ends, and the key agency official or office required to consider the relevant environmental documents as a part of their decision-making:

(1) Action: Request.

(2) Start of NEPA process: Upon receipt of request.

(3) Completion of NEPA process: When the deciding official reviews the proposal and makes a determination.

(4) Key official or office required to consider environmental document: When a positive determination is made under § 51-7.2(b), the applicant in conjunction with the Committee staff will prepare the necessary papers.

§ 51-7.4 Typical classes of action.

(a) 40 CFR 1507.3(b)(2) in conjunction with 40 CFR 1508.4 requires agencies to establish three typical classes of action for similar treatment under NEPA. These typical classes of action are set forth below:

(1) Actions normally requiring EIS: None.

(2) Actions normally requiring assessments but not necessarily EISs: Requests for actions for which determinations under § 51-7.2(b) are found to be affirmative.

(3) Actions normally not requiring assessments or EISs: Request for actions by nonprofit agencies through the central nonprofit agencies to add a commodity or service to the Committee's Procurement List.

(b) The Committee shall independently determine, by referring to 40 CFR 1508.27, whether an EIS or an environmental assessment is required where:

(1) A proposal for agency action is not covered by one of the typical classes of action above; or

(2) For actions which are covered, but where the presence of extraordinary circumstances indicates that some other level of environmental review may be appropriate.

§ 51-7.5 Environmental information.

Interested parties may contact the Executive Director at (703) 557-1145 for

information regarding the Committee's compliance with NEPA.

PART 51-8—PUBLIC AVAILABILITY OF AGENCY MATERIALS

5. The authority citation for newly redesignated part 51–8 continues to read as follows:

Authority: 5 U.S.C. 552.

6. Newly redesignated § 51–8.14 is amended by revising paragraph (c) to read as follows:

§ 51-8.14. Fee waivers and reductions.

* * * * *

(c) Fees shall be waived in all circumstances where the amount of the fee is $10 or less as the cost of collection would be greater than the fee.

Dated: September 23, 1991.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–23186 Filed 9–25–91; 8:45 am]

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Part VII

Department of Education

34 CFR Part 682

Guaranteed Student Loan and PLUS Programs; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840-AB32

Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the Guaranteed Student Loan (GSL) and PLUS programs (34 CFR part 682). The final regulations are needed to further implement the Secretary's default reduction initiative.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. The amendments to section 682.208 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. A document announcing the effective date will be published in the **Federal Register**. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Pat Newcombe or Ronald Streets, Guaranteed Student Loan Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Department of Education, room 4310, 7th and D Sts. SW., Washington, DC 20202–5449, telephone number (202) 708–8242. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On June 5, 1989, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (54 FR 24128). The NPRM incuded a detailed discussion of the proposed changes to sections 682.208 and 682.610(h), and that discussion will not be repeated here.

The regulations are needed to implement an element of the Default Reduction Initiative for the GSL programs. The Default Reduction Initiative was prompted by the fact that the costs of GSL defaults in fiscal year (FY) 1988 totalled almost $1.4 billion, representing a 200 percent increase over the last five years and approximately 40 percent of the Department's FY 1988 expenditures for the GSL programs. The problem continues to exist with costs of GSL defaults expected to reach $3.5 billion in FY 1991. Commenters have indicated that defaults may be caused by confusion on the part of the borrower as to where loan payments are to be sent. The result of this regulatory change would be that a borrower would always know where to send a loan payment.

The public comments received in response to the NPRM have resulted in a number of changes to the NPRM. A discussion of those changes follows:

Revisions to the Notice of Proposed Rulemaking

§ 682.208 Due diligence in servicing a loan.

The Secretary has revised proposed § 682.208, which would have required an assignee of a GSL, PLUS, or Supplemental Loans for Students (SLS) loan to provide notification to a borrower if the transaction resulted in a change in the identity of the party to whom the borrower must send subsequent payments. The Department believes that the final regulations will cover the vast majority of loan assignments. However, the Secretary notes that the Department's requirements are not the only required disclosures. Federal or State laws or regulations or a bank's own procedures may provide for notices to borrowers in situations other than those covered by the new regulations.

As proposed, § 682.208 provided that notification be sent to the borrower prior to or simultaneously with the assignee's receipt of a legal interest in the assigned loan. The revised regulations require that the assignor and the assignee must notify the borrower no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan if the assignment results in a change in the identity of the party to whom a borrower must send subsequent payments. The revised regulations also provide that the notice to the borrower of the change of holder must include the name and address of the party to whom subsequent payments should be sent, as well as the telephone number of both the assignor and the assignee. This notification of the borrower by both parties, which may be sent jointly, is a requirement for payment of reinsurance on the assigned loan. In the case of the assignor and the assignee providing separate notices, each notice must indicate that a corresponding notice will be sent by the other party to the assignment. The regulation also permits the assignee to act as the agent of the assignor in satisfying the notice requirement. This approach reflects current business practice in the consumer banking industry where it is common for both the seller and purchaser to send a notice to prevent borrower confusion and to protect borrowers from fraudulent notifications. Comments received by the Department indicate that several large student loan secondary markets already ensure notice by both the assignor and assignee. Thus, it appears that this practice is already being used by a large number of GSL lenders.

§ 682.610 Records, reports, and inspection requirements for participating schools.

The Secretary has decided not to publish as final regulations § 682.610(h), as proposed in the NPRM, until the Department has had the opportunity to consider additional public comment on the alternatives to the teachout provision that were identified during the comment period on the NPRM. The Secretary will be soliciting additional public comment on these alternatives in a separate NPRM to ensure that the final regulations provide for an administratively feasible solution to dealing with school closings that protects students and the Federal fiscal interest.

Analysis of Comments and Changes

In response to the NPRM, 120 parties submitted comments on the proposed regulations. Substantive issues raised by commenters respecting proposed § 682.208 of the regulations are discussed below. Technical and other minor comments and changes are not addressed.

§ 682.208 Due diligence in servicing a loan.

Comment: The overwhelming majority of comments received favored the Secretary's proposal to require that the borrower to be notified when his or her GSL, PLUS or SLS loan is assigned and the identity of the party to whom payment must be sent changes. However, several of the commenters recommended that the Secretary revise the provision to require that the assignor, rather than the assignee, notify the borrower of the loan assignment.

Discussion: The commenters argued that since the borrower is familiar with the assignor, notification of the borrower by the assignor, rather than the assignee, would ensure a smoother transfer of the borrower's loan to the assignee by minimizing any confusion that may otherwise result from receipt by the borrower of a notice from an

unfamiliar third party requesting that future payments be made to that third party. The commenters also stated that prior experience of major lenders indicates that unless the assignor provides some notice, the notice from the assignee causes confusion and frequently requires additional contact to ensure that the borrower understands the nature of the transfer and the validity of the request for payment by the assignee. Commenters also indicated that New York State law requires notification by the assignor. In addition, a major organization representing lenders stated that it is common for the seller to send a notice after the consummation of the sale and that most purchasers send the borrower an account statement and notice of the sale following the sale.

Changes: The Secretary agrees with the commenters and has revised the final regulations to require, as a condition for payment of reinsurance on the assigned loan, that both the assignor and the assignee provide the notification to the borrower when a loan assignment results in a change in the identity of the party to whom subsequent payments of the loan are to be made. By retaining the notice to the borrower from the assignee and permitting joint notification from both parties and the use of the assignee for this purpose as agent of the assignor, the Secretary believes that the potential for borrower confusion of fraudulent notification is reduced significantly without requiring undue additional administrative costs by the assignee or assignor.

Comments: Many commenters suggested that a borrower be notified whenever there is a change in the holder of the note, even if the borrower is not yet in repayment status, rather than only when that change results in a change in the identity of the party to whom subsequent payments of the loan are to be made.

Discussion: The Secretary's goal is to assure that borrowers receive timely notice of any change in the identity of the party to whom subsequent payments are to be made. The issue in these regulations is not one of providing full and accurate information. The borrower should always be provided full and accurate information in response to questions or where the borrower requests information. The issue here is what information the borrower must have to fulfill his/her obligations. The final regulations are designed to keep the borrower informed of any changes in the holder or servicer of his/her loan(s) at the point in time that such changes are critical to the repayment of the borrower's loan(s) in order to avoid student loan defaults. Many of the comments received supported the Secretary's belief that borrower confusion about the identity of the party to whom subsequent payments are to be made often adversely affects repayment. The Secretary believes that restricting the notification requirement to loan assignment situations in which there is a change in the party to whom future payments must be made is sufficient to meet his goal.

Changes: None.

Comments: Several commenters argued that the time frame provided for borrower notification was unrealistic given the complexity of loan transfers. These commenters stated that most loan transfers are contractually conditioned upon the assignee's determination that a loan has been properly serviced and has retained its insurance and reinsurance coverage. The commenters pointed out that any notification to a borrower prior to or simultaneous with the assignee's receipt of legal interest in the assigned loan could cause confusion if the loan is returned to the original holder following the assignee's review. These commenters suggested that the Secretary adopt in the guarantee agency programs the requirement for "prompt" notification in 34 CFR 682.508(b)(2)(ii). Other commenters suggested that a time frame of ten to 30 days following the date the loan assignment is completed should be provided to allow sufficient time to notify the borrower.

Discussion: The Secretary agrees that premature notifications to borrowers regarding the assignment of a loan may cause a great deal of confusion for borrowers. He also agrees with the commenter's belief that an adequate time frame must be allowed for notification of the borrower after the loan assignment has been completed.

Changes: The Secretary has revised the final regulations to require borrower notification to take place no later then 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned GSL, PLUS, or SLS loan. The Secretary has provided for the notification to be done separately or jointly by the assignor and assignee. Alternatively, the assignee can act as the assignor's agent in providing the required notices. The 45 day time frame, which is consistent with the current business practice of some student loan secondary markets, will encourage an assignee to complete assignment of the loan in a timely manner, while providing sufficient processing time to add the loans to the new holder's servicing system. Further, this time frame assures that notification of the borrower will also occur in a timely manner.

Comment: Several commenters recommended that the proposed regulation be expanded to also require that the borrower be notified if the assignment involves a change in the guarantor or the servicer of the loan.

Discussion: The Secretary believes that notification to a borrower when a loan assignment results in a change in the identity of the party to whom subsequent payments are to be made is sufficient to ensure that there is little or no disruption in the borrower's repayment of the loan.

Changes: None.

Comment: Several commenters recommended that the assignor also be required to simultaneously notify the school or schools attended by the borrower of the loan assignment so that the school can assist the borrower if repayment problems arise.

Discussion: The Secretary believes that an additional requirement is unnecessary given the revision of the final regulations to require notification of the borrower by both the assignor and the assignee when a loan transfer occurs. The Secretary believes that the notice will ensure that the borrower understands that his or her loan has been transferred, and knows the identity of the new holder and the address to which future payments must be sent. Therefore, the borrower will not require the assistance of the school. In addition, he believes that the regulatory requirement under § 682.411(h), which requires the lender to notify the school when preclaims assistance is requested for a former student, offers the school the opportunity to take action to help prevent a former student from defaulting on a GSL program loan.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department 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 in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: September 20, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 682 of title 34 of the Code of Federal Regulations as follows:

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.208 is amended by adding a new paragraph (e) to read as follows:

§ 682.208 Due diligence in servicing a loan.

* * * * *

(e)(1) If the assignment of a GSL, PLUS, or SLS loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignor and the assignee of the loan shall, no later than 45 days from the date the assignee acquires a legally enforceable right to receive payment from the borrower on the assigned loan, provide notice to the borrower of—

(i) The assignment;

(ii) The identity of the assignee;

(iii) The name and address of the party to whom subsequent payments must be sent; and

(iv) The telephone numbers of both the assignor and the assignee.

(2) The assignor and assignee may provide the notice required by paragraph (e)(1) of this section separately or jointly. If the assignor and assignee provide separate notices, each notice must indicate that a corresponding notice will be sent by the other party to the assignment. The assignee may act as the assignor's agent in providing the notice required by paragraph (e)(1) of this section.

(3) For purposes of this paragraph, the term "assigned" is defined in § 682.401(b)(9)(ii).

* * * * *

[FR Doc. 91–23163 Filed 9–25–91; 8:45 am]

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Thursday
September 26, 1991

Part VIII

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Proposed Comprehensive Plan for Fiscal Year 1992; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Proposed Comprehensive Plan for Fiscal Year 1992

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of Proposed Comprehensive Plan for Fiscal Year 1992.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention is publishing for public comment this Notice of its Proposed Comprehensive Plan for Fiscal Year 1992.

DATES: Comments must be submitted on or before November 12, 1991.

ADDRESSES: Comments may be mailed to Robert W. Sweet, Jr., Administrator, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Marilyn Silver, Information Dissemination Unit (202) 307–0751. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 204(b)(5)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, [hereinafter called the JJDP Act], 42 U.S.C. 5614(b)(5)(A), the Administrator of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is publishing for public comment a Proposed Comprehensive Plan describing the funding activities which OJJDP intends to carry out during Fiscal Year 1992. The Proposed Comprehensive Plan includes activities specified in part C and part D of title II of the JJDP Act (42 U.S.C. 5651–5665a and 42 U.S.C. 5667–5667a). Taking into consideration comments received on this Proposed Comprehensive Plan, the Administrator will develop and publish a Final Comprehensive Plan describing the particular funding activities which OJJDP intends to carry out during Fiscal Year 1992, under parts C and D of title II of said Act.

The 1984 Amendments to the JJDP Act established in OJJDP a Missing and Exploited Children's Program (title IV, Missing Children's Assistance Act). Programs and activities proposed for funding under the Missing and Exploited Children's Program are not included in this Proposed Comprehensive Plan for Fiscal Year 1992. A statement of Missing Children's Program priorities will be published in the **Federal Register** for public comment as required by section 406(a) of the JJDP Act, 42 U.S.C. 5776(a).

The actual solicitations of grant applications will be published separately, at a later date, in the **Federal Register**. No proposals, concept papers, or other forms of application should be submitted at this time.

Introduction

Juvenile justice professionals face tough challenges in the 1990s. Based on an analysis of 1990 FBI arrest statistics, it is estimated that last year police made 2.2 million arrests of youth under the age of 18. Between 1986 and 1990 the number of juveniles arrested for violent crime increased nearly 38 percent. (Arrest of Youth 1990, OJJDP, forthcoming.) Offenders are younger, more violent and often involved with drugs. Gangs terrorize communities large and small with little sign of abatement on the horizon. During the past decade, our youth population declined by 11 percent, while the number of juvenile custody admissions climbed 19.2 percent. (National Juvenile Custody Trends: 1978–1989, OJJDP, forthcoming.) The National Crime Survey report on teenage victimization prepared by the Bureau of Justice Statistics indicates that teenagers age 16 to 19 are almost three times more likely than adults to experience a violent crime. The family unit continues to falter, while the institutions that have served to sustain order and tranquility in society, e.g. schools, churches, and other community institutions, have been unable to slow the rising tide of lawlessness.

Despite these alarming statistics, the war on drugs is being waged effectively. We see refreshing evidence of a decline in adolescent cocaine use by 49 percent over the past two years, and an overall reduction of drug use by 11 percent during the same period of time. (See pages 5 and 11 of the National Drug Control Strategy, published in February, 1991, by the Federal Office of National Drug Control Policy.)

The primary responsibility for the juvenile justice system rests with State and local governments. However, there is an appropriate Federal role in juvenile justice matters as defined by Congress in the JJDP Act of 1974. The juvenile justice system can be strengthened, special projects or innovative solutions to problems advanced, training and technical assistance provided, and research undertaken.

It is with this role in mind that the 1992 Program Plan is proposed. We deliberately focus our resources on a wide variety of program objectives including schools, youth services, community-based programs, law enforcement, courts, prosecution, alternative sanctions, corrections, detention, and probation, for the purpose of strengthening and improving the juvenile justice system.

However, regardless of the improvements we make in the system, the tide of delinquency will not abate until the American family is rebuilt and restored. To do this will require the dedicated efforts of everyone. It is only when we make progress as a society in this area that we will make progress in diminishing juvenile delinquency and the victimization of our children.

The basic premise of the juvenile justice system remains sound. When the first juvenile court was established in 1899, its founders were clear in its purpose. "The care, trust, custody and discipline of a child shall approximate as nearly as may be that which should be given by its parents," a tall order for the 1990s. The OJJDP Program Plan seeks to help professionals in every part of the juvenile justice system to improve their methods, techniques and theories while at the same time encouraging Americans everywhere to come together as families and communities in a united effort to instill solid principles of right and wrong, discipline, character and a right approach to living. In this way we can each do our part in reversing the moral disintegration that makes us a "Culture at Risk."

Fiscal Year 1992 Program Planning Activities

The OJJDP program planning process for Fiscal Year 1992 is closely coordinated with the Assistant Attorney General and the Bureau components of Office of Justice Programs' (OJP). Currently the Office of Juvenile Justice and Delinquency Prevention is participating in the Office of Justice Program's agency-wide planning process. A product of this planning process will be an integrated OJP Comprehensive Program Plan that will be published at the end of the first quarter of Fiscal Year 1992. OJJDP's final program plan for Fiscal Year 1992 will be contained in this OJP document along with the plans of other OJP Bureaus: Bureau of Justice Assistance; National Institute of Justice; Bureau of Justice Statistics and Office for Victims of Crime. Also within the first quarter OJJDP, like the other OJP Bureaus, will publish a comprehensive application kit. Also, as part of OJP planning activities, OJJDP is currently participating in the following intra-agency task groups:

- Weed and Seed Strategy—Comprehensive System-Wide Response to Gang Violence and Gang Drug Trafficking

- Prevention and Control of Gangs in Public Housing
- Child Abuse and Neglect
- Community Policing
- Drug Testing

It is anticipated that each of these working groups will recommend a specific OJP-wide Fiscal Year 1992 initiative in which the majority of the component Bureaus will participate by dedicating new dollars or redirecting existing grant program efforts accordingly. As of this date, recommendations from the intra-agency working groups have not been finalized. The final OJJDP Fiscal Year 1992 Program Plan will describe this Office's involvement in the intra-agency initiatives. In addition in developing the final OJJDP Program Plan, the following steps are taken:

- Internal review of existing programs by OJJDP staff;
- Review of information and data from OJJDP grantees and contractors;
- Review of information contained in State comprehensive plans;
- Review of comments made by youth services providers, juvenile justice practitioners, and researchers.
- Consideration of suggestions made by juvenile justice policymakers concerning State and local needs;
- Consideration of all comments received during the period of public comment on the Proposed Comprehensive Plan; and
- Coordination with the other four OJP Bureaus.

Discretionary Program Activities

Discretionary Grant Continuation Policy

OJJDP has listed those part C and part D projects currently funded and eligible for continuation funding in Fiscal Year 1992. Continuation funding consideration for new project periods for previously funded discretionary grant programs will be based upon several factors. These include: Availability of funds, the extent to which the project responds to the applicable requirements of the JJDP Act, responsiveness to OJJDP and OJP Fiscal Year 1992 program priorities, compliance with performance requirements of prior grant years, compliance with OJP fiscal and regulatory requirements, and any special conditions of award. Continuation funding for a new budget period within an existing project period depends upon grantee compliance with established conditions of eligibility for additional budget period funding, and achievement of the prior year's objectives.

With the exception of part D of the JJDP Act (42 U.S.C. 5667–5667a) and training programs funded under Section 244 of the JJDP Act (42 U.S.C. 5654), all programs recommended for continuation funding for a new project period must be found to be of outstanding merit by a majority of peer reviewers in order to be eligible for an award without competition. Training programs otherwise eligible for continuation award without competition will require both peer review and a written determination by the Administrator that the applicant is uniquely qualified to provide the proposed training services and that other qualified sources are not as capable of providing such services.

Proposed Programs

The programs listed below are arranged in accordance with the proposed Fiscal Year 1992 OJP priorities:

—Intermediate Sanctions and User Accountability
—Gangs and Violent Offenders
—Evaluation
—Drug Prevention
—Money Laundering [1]
—Community-Based Policing and Police Effectiveness
—Drug Testing
—Victims
—Information Systems, Support and Statistics
—Prosecution and Adjudication

The following are brief summaries of each of the proposed new and continuation programs planned for Fiscal Year 1992. The specific programs to be funded within each category are proposed programs and are subject to change.

Intermediate Sanctions and User Accountability

$450,000

New Programs

Juvenile Restitution

OJJDP plans to support a juvenile restitution training and technical assistance program. The project design will be based on practitioner recommendations regarding the current needs in the field. A survey is being initiated by the Office to determine how best to expand and institutionalize restitution as a viable juvenile justice disposition. In addition to the survey, it is anticipated that a "working group" will be convened to map out the future course of OJJDP's support for optimum development of the various components of restitution. These components will include community service, victim reparation (also victim-offender mediation), offender employment and supervision, employment development, and possible new program elements designed to establish restitution as a major aspect in our efforts to improve the juvenile justice system.

Enhancing Enforcement Strategies for Juvenile Impaired Driving Due to Drug and Alcohol Abuse

The purpose of this program is to enhance the juvenile justice system's coordination and responsiveness to delinquent youth involved in drinking and driving. Based on documentation of low arrest and citation problems as they pertain to youth impaired driving, as well as information about enforcement obstacles and effective enforcement strategies, an award is being made to develop training and technical assistance materials for the various juvenile justice system components (e.g., police officers, judges, prosecutors, probations officers, etc.). The materials will address the issues related to effective enforcement of impaired driving laws as they pertain to juveniles and the juvenile justice system. The materials will be tested in five jurisdictions across the country. Based on practical use, they will then be edited and prepared for replication and dissemination. The National Highway Traffic Safety Administration within the Department of Transportation will join OJJDP in funding this program.

Continuations

Demonstration of Post Adjudication: Non-Residential Intensive Supervision Program

The National Council on Crime and Delinquency (NCCD) was funded to implement the Intensive Supervision Program which was designed to identify and assess effective intensive supervision programs; provide the capability of select jurisdictions to implement an effective program model; and to disseminate information about the initiative. The assessment report has been completed and the training and technical assistance materials have been completed in draft. Support for this program will supplement NCCD's current award and provide funds for technical assistance and training for six to eight jurisdictions that are interested in implementing the intensive supervision programs model developed by NCCD.

[1] No programs are listed herein under this priority, inasmuch as it does not pertain to juvenile justice issues.

Gangs and Violent Offenders

$2,892,000

New Programs

Juvenile Justice System Handling of Sex Offenses and Offenders

Research with adult sex offenders has shown that many began their offending behavior as juveniles. Within the past decade, the juvenile justice system has begun to address the problem of juvenile sex offenders. To understand and improve the system's ability to address effectively such offenses, OJJDP will begin a study of the juvenile justice system's response to juvenile sex offenders. This grant will assess the type and nature of these responses. This assessment will examine the flow of sex offenders through the system from initial contact to adjudication and disposition. In this regard, there is little known about the relationship between various types of sex offenses and the sanctions or treatment approaches employed by the justice system. The project will also assess the justice system's response to different types of offenses from voyeurism and exhibitionism to violent assault and rape. The results from this study will indicate the direction of future efforts to improve the juvenile justice system's response to the problem.

Gang Prevention and Intervention

The objective of this program is to reduce gang violence in a selected number of cities through legal suppression, community mobilization and early intervention with gangs. It is anticipated that awards would be made for programs in the selected cities. Each city would choose the particular model that best fits its needs from among the promising program models which OJJDP identifies. The specific models will represent an integration of the best approaches identified in the OJJDP sponsored programs: The Gang Suppression and Intervention program developed by the University of Chicago; the Los Angeles County Probation Department's Community Gang Reclamation Project; the Boys and Girls Clubs of America's Targeted Outreach with a Gang Component; the Serious Habitual Offender Comprehensive Action Program; and the Bureau of Justice Assistance's Comprehensive Gang Program that is under development at this time.

Continuations

Teens, Crime and the Community: Teens in Action in the 1990s

This is a continuation award to a national crime prevention agency. The initiative is designed to reduce teen victimization by actively engaging teens in helping improve their school environments. The program will be expanded to include teen victimization programs for rural and Native American populations and correctional institutions or for delinquent children in the juvenile justice system. The program will also provide training, technical assistance, program replication and dissemination materials to significantly increase the capacity of schools and other institutions to prevent juvenile victimization.

Youth Gang Intervention Training

The objectives of this training program are: (1) To provide a process for community leaders to recognize the benefits of cooperatively developing strategies to address the problems resulting from gang and drug activities; (2) to promote an awareness and recognition of (a) the problems of gangs and drugs, (b) justice system practices, (c) behavior patterns of gangs and gang members, and (d) current system practices and demonstration projects; (3) to provide strategies and techniques for public and private interagency partnerships dealing dynamically with community gang and drug related problems; (4) to clarify and document the legal roles, responsibilities and issues relating to an interagency approach to the prevention, intervention and suppression of these illegal activities of youth gangs; (5) to encourage leadership and innovation in the management and resolution of gang and drug problems; and (6) to develop or improve the response capacity to issues involving gangs and drugs through an effective interagency model which matches resources to demands.

National Youth Gang Clearinghouse

This award will provide funding for OJJDP's National Youth Gang Clearinghouse. The Gang Clearinghouse will (1) gather and disseminate current information on model programs for combating violent juvenile gangs; (2) gather and disseminate current statistical and descriptive information on violent juvenile gangs; and (3) assist in the coordination of Federal, State and local gang program development, and training and technical assistance efforts through providing information to the field on relevant programs and activities.

Private Sector Options for Juvenile Corrections

The American Correctional Association is currently implementing this private sector options program which is designed to help improve the quality of juvenile correctional services by providing technical assistance to corrections administrators in analyzing existing services, redesigning service delivery, and developing a competitive process for delivering services to private providers. Supplemental funds will be used to expand the number of sites receiving technical assistance from six to ten.

School Safety

The purpose of this program is to provide training and technical assistance on school safety to elementary and secondary schools, as well as to identify methods to diminish crime, violence, and illegal drug use in schools and on school campuses, with special emphasis on outreach to ethnic minorities and gang-related crime. The National School Safety Center (NSSC) maintains a library and clearinghouse with specialized information; provides research on school safety issues; and develops publications and training programs that are utilized by educators, law enforcement officers, lawyers, judges, and other juvenile and criminal justice personnel, as well as by key civic, professional, and governmental leaders throughout the nation. NSSC makes site visits to local schools and school districts to assist with a wide variety of problems from safety of the physical plant to determining whether gang activity exists at a location. School safety plans are also developed for sites. NSSC also maintains and directs a national school safety information network representing the 50 States and the District of Columbia. OJJDP will work with NSSC over the next year to facilitate transition of the Center toward self-sufficiency. The Department of Education is supporting this transition with a transfer of $400,000 of Fiscal Year 1991 funds for expenditure in Fiscal Year 1992. These funds will strengthen the focus on prevention of drug abuse and violence in schools.

Targeted Outreach With a Gang Prevention and Intervention Component

This program is designed to enable local Boys and Girls Clubs to prevent

youth from entering gangs and to intervene with gang members who are very early in their careers in an effort to divert them away from gangs toward more constructive programs. The National Office of Boys and Girls Clubs will continue to provide training and technical assistance to the 38 existing sites, and add six to eight new gang prevention and intervention sites throughout the country.

Schools and Jobs are Winners

This gang prevention program in Philadelphia focuses on high school students in grades 10 and 11 who are in gangs, have family members who belong to gangs, are involved with drugs or alcohol use, were abused or neglected, or were arrested by police. The project will also include funding by the Private Industry Council of Philadelphia. The goals of the project are to prevent high school students from dropping out of school and joining gangs by providing educational, recreational and social services, and by providing supportive services to families of at-risk youth and extremely disadvantaged youth. The objectives of the program are to prevent youth from being involved in gang-related, anti-social activities; to reduce the alcohol and drug use by these youth; to increase the potential for these youth to remain in school; to reduce the incidence of police involvement with these youth; and to provide supportive services to the youths' families so that they can succeed in school and in their jobs.

Serious Habitual Offender Comprehensive Action Program (SHOCAP)

SHOCAP is an information and case management program on the part of police, probation, prosecution, social service, school, and corrections authorities that enables the juvenile justice system to focus additional attention on juveniles who repeatedly commit serious crimes, with particular attention given to providing relevant case information for more informed sentencing dispositions. The training and technical assistance provider is assisting 20 jurisdictions with the implementation of this model by providing intensive training and follow-up technical assistance. In addition four new sites will be developed.

The provider also serves as a clearinghouse for information on the model, which non-participating jurisdictions can access.

Evaluation

$750,000

New Programs

Effectiveness of Juvenile Offender Treatment: What Works Best and for Whom?

OJJDP seeks to determine what forms of treatment are most effective for individual juvenile offenders. The initial project will determine the feasibility of a program of collection and review of data, previous studies, and current literature. Treatment, in this context, could range from release, restitution, community service, and probation to incarceration. The aim is to determine, insofar as possible, what forms of treatment and sanctions are most effective, and for which types of juvenile offenders. The resulting findings would be made available to the juvenile courts in order to provide officials with the necessary data to assist them in selecting treatment options for juvenile offenders.

Continuations

Independent Evaluations

The Office has initiated a contract to conduct independent evaluations of selected OJJDP-funded programs. This will establish a concerted, continuous effort to learn, in the following order of priority: efficacy, cost-effectiveness, and impact of the discretionary programs. Reported findings, including strengths, weaknesses and other assessment data, will be made available to all concerned. The following criteria will determine the priority of programs selected for evaluation: (1) Continuations in order of number of years of funding and total expenditures; (2) new action programs being tested to serve as possible models, and (3) new and continuing programs requiring decisions regarding continuation.

Fellowship Program

Acting through the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP will continue a Fellowship Program which will provide grants of varying amounts to individuals for independent scholarly study in the field of juvenile delinquency. The Fellowship Program includes: the Visiting Fellowship, the Graduate Research Fellowship, and the Summer (short term) Research Fellowship. Each fellowship program selection will be based on a competitive review and evaluation of proposals for independent study on policy-relevant issues in the juvenile justice field that are closely coordinated with the Office of Justice Programs priority areas. (See OJP priorities under *Proposed Programs* in earlier sections of this notice.) The OJJDP fellowships are open to juvenile justice practitioners, new Ph.D.s, graduate students, and senior researchers. Each fellowship application will be expected to meet the criteria specified in the procedures and requirements of the OJJDP Fellowship Program. Fellowships will vary in length and amount.

Drug Prevention

$6,015,000

New Programs

Professional Development for Youth Workers

The primary purpose of this initiative is to establish and promote professional development of youth and juvenile justice system providers through a formal and continued training program. The program will be designed to include an inventory of existing training programs and their effectiveness, a needs assessment survey of training, the development of several curricula areas, the design of a dissemination strategy, and finally, an implementation plan for the second year of a two-year program. The end product will be an expertly designed set of curricula which can be adapted for use in a broad range of juvenile justice and youth care training programs. The overall goal of the program will be to enhance professionalism for those persons to whom society has delegated responsibility in treating and caring for our nation's troubled youth. Such individuals include foster parents for "acting-out" adolescents, staff in a range of community based residential care facilities, juvenile correctional officers, probation officers, truant officers, and security personnel in youth facilities.

Native American Alternative Community-Based Program

The purpose of this program is to develop community-based alternative programs for Native American youth who have been adjudicated delinquent, and to develop a reentry program for Native American delinquent youth who are returning from institutional placement. The program will use the information being gathered by the American Indian Law Center in its study of Native American juvenile justice systems to develop this initiative. A multi-component design will be developed which will integrate the critical elements of the OJJDP Intensive Supervision and Aftercare programs with cultural elements that have

traditionally been utilized by the Native Americans to control and rehabilitate offending youth. As planned, the program would be tested in up to two sites. OJJDP will coordinate this program with the Administration on Native Americans in the Department of Health and Human Services, and with the Bureau of Indian Affairs in the Department of the Interior.

Program for Chronic Status Offenders

The grant will underwrite the replication in Philadelphia of the program for chronic status offenders conducted in West Milton, Pennsylvania. That program seeks to effect change in juvenile delinquent behavior (including addressing possible family dysfunction), stabilizing the offender's behavior at home and in the community, promoting positive substitutes for antisocial acts, and implementing individualized educational plans for those needing more than mainstream education can afford.

This program offers an efficient and effective alternative to the "too-little"/ too-much" syndrome as it applies to chronic status offenders and emergent delinquents. In lieu of probation alone or residential treatment, the day care program employs a broad spectrum of counseling techniques to enhance life skills and employment opportunities, while providing intensive treatment for pre- and post-adjudicatory delinquents and status offenders.

Continuations

Drug Abuse Prevention—Technical Assistance Voucher Project

This project will provide technical assistance to 15–25 neighborhood-based organizations which have established anti-drug abuse projects, and will enhance their capacity to serve high-risk youth and serious juvenile offenders. Neighborhood groups will apply to the grantee for vouchers ranging from $1,000 to $10,000, depending on their needs. They will present their own plans and designs for the requested technical assistance, which will be evaluated and refined by the grantee. This method of delivery will allow these neighborhood groups to secure technical assistance inexpensively from sources that are compatible with both their programs and their specific community characteristics.

Intensive Community-Based Aftercare Program

This program is designed to develop a juvenile aftercare model which can be tested in the juvenile justice system. Under this program, an assessment has been completed and a final draft assessment report has been submitted to OJJDP. A model juvenile aftercare program, which builds on the assessment material, is being developed; related policies and procedures will be completed in the near future. This next stage of funding will provide training and technical assistance for up to 10 sites in the aftercare model.

Reaching At-Risk Youth in Public Housing

Boys and Girls Clubs of America have established seven Boys and Girls Clubs in public housing across the nation under the existing cooperative agreement with OJJDP. These programs are designed to provide needed services to the high-risk youth who live in public housing, thereby preventing their involvement in delinquency, drug and alcohol abuse and gang involvement. During Fiscal Year 1992 additional sites will be established and training and technical assistance will be made available to other Boys and Girls Clubs and public housing authorities who wish to establish Clubs. Also, as part of this program, the Boys and Girls Clubs developed a curriculum on their targeted public housing outreach program for the Federal Bureau of Investigation's Drug Reduction Coordinators. Following an intensive training session, the Coordinators are now working with the Boys and Girls Clubs in 58 jurisdictions to establish Clubs in public housing projects or to assist other Boys and Girls Clubs in activities in these communities. The Department of Housing and Urban Development will work closely with OJJDP in this program.

The Congress of National Black Churches: National Anti-Drug Abuse Program

The overall plan for this program calls for the development and implementation of a national public awareness and mobilization strategy to address the problem of drug abuse and drug abuse prevention in targeted communities across the United States. The goals of the national mobilization strategy are to summon, focus and coordinate the leadership of the Black religious community in cooperation with the Department of Justice, other federal agencies and organizations to help mobilize groups of community residents to effectively combat the severe supply and demand problems of drug abuse and drug-related crime activities among adults and juveniles. The program is currently operating in 10 cities. This award will provide funding to extend the program in from 10 to 15 additional cities.

Effective Strategies in the Extension Service Network, Phase II

The purpose of this program is to establish worthwhile community collaborations through training and technical assistance provided by the Extension Service Network. These collaborations will focus on youth substance abuse, including impaired driving and other delinquent behavior. The training and technical assistance will be based on the System-wide Response Planning Process (SRPP), a training curriculum that presents a planning and organization strategy which communities can use to assess and respond to their current juvenile drug abuse problems and needs. The SRPP also provides information about the most promising system-wide technologies in drug abuse prevention and treatment. Regional training centers will be established in five states that have already implemented the process in communities within the states. Each center's training program will be defined and established. Technical assistance resources and programs will also be established.

Field-Initiated Programs

OJJDP is proposing continuation of its program designed to increase the capacity of state and local governments, public and private youth-serving agencies, and neighborhood organizations or community groups to prevent delinquency, develop and use alternatives to the juvenile justice system, and improve the administration of juvenile justice. This program will provide competitive awards to practitioners, policymakers and researchers who have innovative ideas which address areas that do not fall within the scope of other proposed programs. The award of these grants will be closely coordinated with the priorities of the Office of Justice Programs. Any grant funded under this program will follow a regular cycle of application, peer review and competitive selection.

Law-Related Education (LRE) [2]

OJJDP has funded since 1979 a national law-related education (LRE) effort. The Law-Related Education National Training and Dissemination Program involves five national LRE projects and programs which operate in

[2] Selected programs contained in this document are being funded at the direction of Congress either as amendments to the JJDP Act legislation or directions contained in the Office's appropriation documents. An asterisk identifies this and other Congressionally mandated programs contained in this document.

47 States. The purpose of this program is to provide training and materials to State and local school jurisdictions to encourage and guide them in establishing LRE delinquency prevention programs in the curricula of grades kindergarten through 12 and in juvenile justice settings. Grantees will be encouraged to place emphasis on drug abuse prevention programs in primary, middle and secondary schools in minority communities. The major components of the program are: Coordination and management, training and technical assistance, preliminary assistance to future sites, public information, program development, and assessment.

Satellite Prep School and Early Elementary Schools for Privatized Public Housing

The purpose of this program is to establish an early elementary prep school in a public housing development for kindergarten to fourth grade children. The children who reside in public housing developments are generally in need of early childhood educational help to prevent and deter them from delinquent acts and drug and alcohol abuse. The Cranston-Gonzales National Affordable Housing Act calls for the establishment of early childhood development programs in public housing developments. The initiative will utilize the Marva Collins (prep school) Model as the structure for the educational program. Marva Collins will provide consultation on the program design, development and establishment of the school and training of teachers at the prep school, to be located on the premises of a public housing development. The residents and parents will have input into the developments and operations of the school to ensure that educational programs such as reading, math, language, etc., are provided to their children. The parents will also acquire and/or improve their own educational knowledge and skills which may have been omitted from their prior educational development. Foundations such as "I Have a Dream" and others will be requested to sponsor youth from this program in obtaining a higher education and/or employment. OJJDP will also assist the selected housing authority(s) in securing additional Federal government funding and foundation funds for other prep school operational expenses, as well as funding for the high school education for graduates of the housing development prep schools. Fiscal Year 1992 funds will be utilized to continue training and technical assistance for existing site(s) and to expand the number of sites. The U.S. Department of Housing and Urban Development has worked closely with OJJDP to develop and implement this program and the program has been coordinated with the U.S. Department of Education. This program addresses Goal 6 of "Goals for America 2000: The President's Education Strategy."

Career Development

This program gives high-risk youths an opportunity to assess their interest in and potential for careers in the criminal justice system or the National Park Service. The purpose of Law Enforcement Exploring is to educate and involve youth in police or other justice system operations, to interest them in possible law enforcement careers, and to build understanding between youth and law enforcement personnel. An added program component in Fiscal Year 1990 was the introduction of youths to career opportunities in the National Park Service. The youths participating in the Exploring program render hands-on assistance to their host agencies or organizations (state and local police departments, U.S. Park Service, U.S. Customs, etc.). The youths also receive hands-on training from their host agencies.

Partnership Plan, Phase V (Cities in Schools)

This program is a continuation of a national school dropout prevention model that is being implemented by Cities In Schools, Inc. (CIS). CIS provides training and technical assistance to States and local communities to enable them to adapt and implement the CIS dropout prevention model. The model focuses social, employment, mental health and other resources on high-risk youths and their families at the school level. Individualized plans are developed for each youth, and needed remedial education, social and other services are provided to the youths and their families. This program is jointly funded by OJJDP and the Departments of Labor, and Health and Human Services and Commerce.

Community-Based Policing and Police Effectiveness

$772,000

Continuations

Juvenile Justice Training for Law Enforcement Personnel (Glynco)

This project provides technical assistance and training to promote a better understanding of the juvenile justice system to Federal State and local law enforcement agencies. Five training programs are offered through this project, namely: Police Operations Leading to Improved Children and Youth Services (POLICY) which has two components: Policy I introduces law enforcement executives to management strategies in order to integrate juvenile services into the mainstream of their operations, while Policy II helps mid-level managers build on these strategies and demonstrates step-by-step methods to improve police productivity in the juvenile justice area. The Child Abuse and Exploitation Investigative Techniques program provides law enforcement officers with state-of-the-art approaches for building a case against those individuals charged with child abuse, sexual exploitation, or the abduction of children. Managing Juvenile Operations provides a series of training programs for police executives which demonstrate simple, yet effective methods to increase departmental efficiency and effectiveness by integrating juvenile services into the mainstream of police activity. School Administrators for Effective Police, Probation, and Prosecutors Operations Leading to Improved Children and Youth Services (SAFE POLICY) brings together the chief executives of schools, law enforcement, prosecution, and probation to promote interagency cooperation and coordination in dealing with youth-related problems.

Training in Cultural Differences for Law Enforcement Officials

The purpose of this program is to provide law enforcement and other juvenile justice officials with specialized training relative to racial, cultural and ethnic issues. The program will be designed to help prevent disparate treatment of minority youth by the juvenile justice system, and enhance the safety of juvenile justice personnel working in minority communities. The end-product will be an expertly designed curriculum which can be adapted for use in a broad range of juvenile justice training programs. In developing the training modules, the grantee will work in consultation with several current OJJDP grantees which provide training, such as the Federal Law Enforcement Training Center, the National Council of Juvenile and Family Court Judges, the National Institute of Corrections, and the American Probation and Parole Association.

Drug Testing

$300,000

Continuations

Drug Testing Guidelines

The primary purpose of this project is to develop a comprehensive curriculum in close coordination with the National Institute of Justice, consisting of drug identification, screening and testing which will assist juvenile justice systems in educating policymakers and training managers through training and technical assistance. This program, "Training and Technical Assistance Curriculum for Drug Identification, Screening and Testing in the Juvenile Justice System," offers a plan for providing training and technical assistance to selected juvenile justice systems throughout the country.

Testing Juvenile Detainees for Illegal Drug Use

The intent of this program is to assess, develop, test, and disseminate information on new and innovative approaches to test for illegal drug use among juvenile detainees. The purpose of the program is to improve resource allocation and treatment services for youth in detention by developing more accurate and complete information on the use of illegal drugs. The world of drug testing is technical and complex, as are the issues revolving around the decision to test juveniles for illegal drug use. OJJDP has recognized the complexity of the situation and embarked on this initiative, among others, to provide guidance and leadership to the field in this area.

A comprehensive drug testing model should address identification and screening, the testing procedure itself, and the use of the results by the detention programs, as well as other parts of the juvenile justice system. In developing the model certain basic questions should be addressed:

a. Why test for illegal drugs?
b. Who should be tested?
c. When should testing take place?
d. What is the most appropriate technology for testing?
e. How should the results of the tests be used? Moreover, correctional personnel need training in drug testing policies and procedures.

Victims

$1,275,000

Continuations

Permanent Families for Abused and Neglected Children*

This is a national project to prevent unnecessary foster care placement of abused and neglected children, to reunify the families of children already in care, and to ensure permanent adoptive homes when reunification is impossible. The purpose of this project is to ensure that foster care is utilized only as a last resort and temporary solution for children. Accordingly, the project is designed to ensure that government's responsibility to children in foster care is duly acknowledged by all appropriate disciplines. The project will continue to call upon judges, social service personnel, citizen volunteers, attorneys, and others to recognize and resolve the problems of children in foster care. Project activities include national training programs for judges, social service personnel, citizen volunteers and others in the Reasonable Efforts Provision of 42 U.S.C. 671(a)(15); training in selected Lead States; and development of model questions to guide risk assessment.

Advocacy for Abused and Neglected Children*

The National Court Appointed Special Advocates Association (NCASAA) provides training and technical assistance to local and statewide programs. It assists in program development; advocates for the best interest of abused and neglected children; publicizes the Court Appointed Special Advocate (CASA) concept which helps recruit volunteers; develops management systems and standards to improve local CASA operations; provides a resource library and resource services; gathers and publishes information about the needs of the CASA network and operation; develops cooperative relationships with other national and regional organizations; and performs a variety of related services in furtherance of its goal of assuring that every child who needs one has a CASA. There are now 412 CASA programs in 47 States, with 15,000 volunteers. There are 12 statewide programs mandated and State-funded, and 23 State associations and networks offering support services to their State's program.

The Investigation and Prosecution of Child Abuse

This program is designed to provide training and technical assistance to prosecutors and related professionals on the subject of child abuse prosecution. The project also serves as a clearinghouse for child abuse prosecution issues. The trial manual entitled "The Investigation and Prosecution of Child Abuse" will be updated and republished. Case law on issues of child abuse prosecution will also be updated and made available through the clearinghouse. At least one National training event will be held, and the recipient will also participate in several State-level training sessions during the supplemental grant period.

Information Systems, Support and Statistics

$4,815,802

Continuations

National Juvenile Court Data Archive

This program collects, processes, analyzes, and disseminates available data concerning the nation's juvenile courts. The Archive collects automated data and published reports from juvenile courts throughout the nation. Using the automated data, the Archive produces comprehensive reports on the activities of the juvenile courts. These reports examine resources expended, referral, offenses, intake, and disposition. These reports also examine specialized topics such as minorities in juvenile courts, gang-related offenses, or other specific offense categories. The Archive also provided direct assistance to jurisdictions in analyzing their juvenile court data, yielding better case flow management and more effective allocation of resources.

Juvenile Justice Data Resources

This program will address the need to increase the availability of juvenile justice data sets and to improve OJJDP's analytic capability. In order to make the data more widely available, this project will assure that data are understandable and accurate, or "clean." This project will also ensure that the data are fully documented to be of use to researchers and others. OJJDP's computing capability will provide the basis for cross analysis of data sets and add to the basic knowledge and understanding necessary for improved policy decisions. Improved computer capabilities will give OJJDP access to past data sets thus permitting the study of trends. Computer access will also support the Fellowship Program, which is likely to involve data analysis.

Juveniles Taken Into Custody and Research Program on Juveniles Taken Into Custody

This continuing statistical program produces an annual report to OJJDP and the Congress containing a detailed summary and analysis of the most recent data available regarding the numbers and characteristics of juveniles taken into custody. A major objective of this program is to develop individual-based data collection systems that are

more responsive to the statutory requirements and the needs of the field.

Children in Custody Census

This biennial census of public and private juvenile detention and correctional facilities is conducted by the Census Bureau to describe the subject facilities in terms of their resident populations as well as their programs and physical characteristics.

Juvenile Justice Statistics and Systems Development

The purpose of this program is to improve national and sub-national (state and local) statistics on juvenile justice as well as decision making and management information systems (MIS) within the juvenile justice system. The project is divided into two tracks, the National Statistics Track (NST) and Systems Development Track (SDT). The NST will help formulate a comprehensive National Juvenile Justice Statistics program that will include a series of regular reports on the extent and nature of juvenile offending and victimization and the justice systems response. A major product will be a Report to the Nation on Juvenile Crime and Victimization. The SDT will assess juvenile justice agencies' decision making, needs and capabilities to generate and use information; develop models for decision making and related MIS; and develop and provide training and technical assistance to promote the adoption of model systems in test sites.

Study to Evaluate Conditions in Juvenile Detention and Correctional Facilities

This national study of conditions of confinement in juvenile facilities will give facility administrators, agency directors, state policymakers and Congress a systematic overview of the field. The study has involved a review and assessment of secure juvenile detention centers, reception and diagnostic centers, training schools, farms, ranches, and camps operated by public and private agencies in all fifty states. State and local officials will be able to use the information from the study to refine their programs, services, facilities and policies and to provide better information on conditions of confinement and quality of life linked to overcrowding. A major product of this study will be a summary of the results and a report to Congress on the conditions existing within juvenile detention and correctional facilities, including recommendations for the improvement of those conditions.

Juvenile Justice Clearinghouse

The Clearinghouse provides support services to OJJDP in preparing the Office's publications; collecting, synthesizing, and disseminating information on all aspects of juvenile delinquency; and preparing specialized responses to information requests from the juvenile justice field. A toll-free number is maintained for information requests.

National Coalition of State Juvenile Justice Advisory Groups*

The National Coalition of State Juvenile Justice and Delinquency Prevention Advisory Groups was established in 1983 as an organization that would support and facilitate the purposes and functions of state juvenile justice and delinquency prevention groups. In 1984 Congress also required the National Coalition to prepare and submit an Annual Report to the President, the Congress, and the OJJDP Administrator which reviews Federal policies regarding juvenile justice and delinquency prevention. The Coalition is also authorized to disseminate information, data, standards, and advanced techniques.

OJJDP Technical Assistance Support Contract

The purpose of this project is to provide technical assistance and support to OJJDP, the National Institute for Juvenile Justice and Delinquency Prevention, OJJDP grantees, and the Coordinating Council on Juvenile Justice and Delinquency Prevention on all research, program development, evaluation, training, and research activities.

Telecommunications Technology for Training and Information Dissemination

The purpose of this program is to take advantage of the newly developed technology of satellite communications by examining the feasibility of using this medium for the training and dissemination activities of OJJDP. Funds under this program would support a feasibility study to determine (1) what programs currently being implemented by OJJDP would best lend themselves to satellite technology, (2) what modes of the technology (i.e., teleconferencing, closed circuit satellite television, etc.) would best suit the needs of our target audiences and the government, and (3) what cost benefits the agency could reap through application of satellite communications. Additionally, the program would fund one pilot project as a demonstration effort to gather additional information on implementation issues, reaction of the field, and assessment of the medium for training and dissemination activities of OJJDP.

Prosecution/Adjudication

$3,292,000

New Programs

Improvement in Correctional Education for Juvenile Offenders

The primary purpose of this program is to assist juvenile corrections administrators in planning and implementing educational services for detained and incarcerated juvenile offenders. This will be accomplished by the development of minimum educational standards and specific approaches to improving correctional education. OJJDP will seek joint funding for the program from the Department of Education.

Court Management Training

The purpose of this training is to develop and enhance skills of juvenile court personnel who manage the day-to-day operations of juvenile court intake, detention facilities, juvenile court processing, and juvenile court data systems. The focus will be upon improved development and functioning of these systems within the juvenile court through upgrading skills of management staff. Follow-on technical assistance will be available through one of the existing Training, Development and Technical Assistance supported projects.

A Study To Examine the Delay in Juvenile Sanctions

The problems created by delays in juvenile treatment and sanctions are not well documented because of the lack of research. Since the Supreme Court decision in *In Re Gault,* 387 U.S. 1 (1969), procedural requirements in juvenile hearings have become more formal. Crowded civil and criminal calendars often delay juvenile hearings. The decision in *United States* v. *Furey,* 500 F.2d 338 (2d Cir. 1974), and a number of State cases have held that juveniles have a constitutional right to a speedy trial. In line with this right, the Institute of Judicial Administration and the American Bar Association published Standards for Juvenile Justice in 1977 that recommended ideal time limits for juvenile systems to function appropriately and effectively. Delays, directly and many times adversely, affect juveniles and are also wasteful of judicial resources. OJJDP proposes to fund a study to determine the extent of unnecessary delays and whether they

are excessive; the cause of the delays; and their effect on the juveniles and system administration. As a result, recommendations will be offered for improvement.

Juvenile Justice Personnel Improvement

The purpose of this applied research program is to raise the quality of the key juvenile justice personnel, such as probation officers and detention and corrections counselors, who have direct one-on-one contact with juveniles on an on-going basis. Juvenile justice succeeds or fails as a result of the highly interpersonal relations that are established by these professionals. Unfortunately, turnover rates among these professionals are excessively high. The obvious effects of such turnover are disruption on administration and increasing costs of recruitment and training. However, of possibly greater seriousness are the effects of the juveniles who are confused by a succession of youth workers. Many of these youth have begun to form meaningful relationships with a juvenile justice professional only to be abruptly placed with a different person. Despite the high turnover rates, there are capable and experienced staff professionals who stay, are satisfied, and do excellent work. The object of this program is to learn how to increase the number of professionals who achieve such stability and longevity in their careers.

The initial project will include an assessment of the descriptions of the functions, knowledge, and skill requirements of these personnel. A study of turnover rates in a representative sample of jurisdictions and agencies will be initiated. The goal of the overall program, which will be completed in a continuation, will be the development of guides for the implementation of personnel programs that will result in the recruitment and retention of competent and satisfied personnel.

Continuations

Juvenile Court Training*

The primary purpose of this project is to allow the National Council of Juvenile and Family Court Judges to continue to refine the training presently offered and to provide technical assistance. The training objectives are to supplement law school curricula, provide judges with current information on developments in juvenile and family case law and make available options for sentencing and treatment. Specifically, emphasis will be placed on the areas of drug testing, gangs and violence, intermediate sanctions, as well as responding to the problems of unemployability, illiteracy and family dysfunction. This project will provide foundation training both to newly elected or appointed judges and to experienced judges who have been recently assigned to the juvenile or family court bench.

Technical Assistance to the Juvenile Courts*

The National Center for Juvenile Justice (NCJJ) is the research division of the National Council of Juvenile and Family Court Judges. Serving as a direct resource for the members of the Council, the NCJJ provides valuable technical assistance to juvenile court practitioners. Modes of assistance include off-site consultation, cross-site consultation, and on-site consultation. The work force for this project includes staff at the Center, along with juvenile court judges who are members of the Council. The general areas to which assistance will be provided include: court administration and management, program development, court decision making, legal opinions, due process, and case law. Emphasis will be placed on intermediate sanctions such as boot camps, and on appropriate dispositional alternatives for handling juveniles involved in gang activity.

Improving Literacy Skills of Institutionalized Juvenile Delinquents

Many juvenile delinquents in correctional institutions have a serious need to develop basic reading and writing skills. This program will improve the literacy levels of juvenile residents in these facilities while creating a national network of trained reading teachers and volunteers available to juvenile correctional facilities. The program will include training, technical assistance, and development of curricula for use by staff of detention and corrections facilities. The program should improve correctional education and the delivery of appropriate services to incarcerated juveniles. This program will be coordinated with the Department of Education.

Improving Conditions of Confinement: Training for Juvenile Corrections Staff

OJJDP will continue the development of a comprehensive training program for juvenile corrections and detention staff through an interagency agreement with the National Institute of Corrections (NIC). The program is being designed to develop a core curriculum to provide training for juvenile corrections and detention administrators and mid-level management personnel in such areas as drug testing and gang activity and overcrowding. When appropriate, some existing curriculum may be adopted to the needs of juvenile correctional personnel. The development of a core curriculum for juvenile corrections and detention training will build upon the national needs assessment of juvenile corrections training needs to be conducted by the NIC in May 1991. The agreement with the NIC will insure that beyond the development of the core curriculum and implementation of the training, additional opportunities will be made available for juvenile corrections and detention personnel. It is anticipated that the juvenile corrections core training will be conducted at the NIC Academy and that the more issue-oriented training will be done regionally.

Juvenile Justice Training for Prosecutors

This project's activities include designing and implementing policy development workshops for chief prosecutors, and for juvenile unit chiefs in prosecutor's offices, to support their role in the juvenile court processing of delinquents, including offenders. Materials will be collected for the preparation of a training manual on policy issues pertaining to the prosecution of juvenile offenders. The project will also continue to issue a newsletter. To date, the National District Attorneys Association has presented five highly rated workshops designed to expand prosecutor involvement in juvenile justice. The training provided by the project addresses organizational leadership, management, and change. A major goal of the project is to make juvenile matters a priority concern in prosecutors' offices.

Training and Technical Assistance for Juvenile Detention and Corrections Agencies

This project will continue to provide technical assistance and training to juvenile correctional and detention agencies. It will also provide a national forum on juvenile corrections to include representatives from the juvenile court judges and juvenile probation offices; develop a juvenile facility construction handbook; develop a behavior management training package; and complete the development of standards for all juvenile justice facilities. Emphasis will be placed on intermediate sanctions for handling juveniles involved in drug-related offenses and gang activities.

Juvenile Corrections Industries Venture Program

The purpose of this program is to assist juvenile corrections agencies in establishing joint ventures with private businesses and industries in order to provide new opportunities for the vocational training of juvenile offenders. The grantee has performed an assessment of corrections industries ventures programs, developed a policies procedures manual, and produced training technical assistance materials. It is now in the process of selecting four to eight juvenile corrections agencies to participate in the training and technical assistance on the corrections venture models. The Fiscal Year 1992 funding will increase the number of sites receiving training and technical assistance.

Robert W. Sweet, Jr.,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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September 26, 1991

Part IX

Department of Transportation

Coast Guard

33 CFR Parts 130, 131, 132, and 137
Financial Responsibility for Water Pollution (Vessels); Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 130, 131, 132, and 137

[CGD 91-005]

RIN 2115-AD76

Financial Responsibility for Water Pollution (Vessels)

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing regulations to implement the provisions concerning financial responsibility for vessels in the Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (Acts). These provisions require owners and operators of vessels over 300 gross tons (with certain exceptions) to establish and maintain evidence of insurance or other evidence of financial responsibility sufficient to meet their potential liability under the Acts for discharges or threatened discharges of oil or hazardous substances. The proposed regulations are administrative in nature and concern procedures for evidencing financial responsibility.

DATES: Comments must be received on or before November 25, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-005), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Skall, National Pollution Funds Center, (703) 235-4704.

SUPPLEMENTARY INFORMATION: The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 91-005) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Any person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **"ADDRESSES."** If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this document are Mr. Robert M. Skall, Project Manager, and Mr. Stephen H. Barber, Project Counsel.

Background and Purpose

On August 18, 1990, the President signed into law the Oil Pollution Act of 1990 (Pub. L. 101-380; 33 U.S.C. 2701 *et seq.*) (OPA). Under Federal law before that date, several statutes dealt with the issue of oil spill liability and compensation. Each was different and inadequate in scope. To remedy this situation, OPA repealed or superseded certain oil spill liability provisions under the Federal Water Pollution Control Act (33 U.S.C. 1321) (FWPCA), title III of the Outer Continental Shelf Lands Act Amendments of 1978 (43 U.S.C. 1814) (OCSLAA), the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653) (TAPAA), and the Deepwater Port Act of 1974 (33 U.S.C. 1517) (DPA). The financial responsibility provisions of those Acts (i.e. the provisions requiring vessel owners and operators to maintain evidence of financial responsibility sufficient to meet their potential liability under each of those Acts) were replaced by a single financial responsibility regime under section 1016 of OPA (33 U.S.C. 2716). This new regime is keyed to the broader liability of OPA.

In addition to OPA, which is limited to oil, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*) (CERCLA or "Superfund") also concerns pollution liability and compensation. CERCLA also establishes a financial responsibility regime, but concerns hazardous substances, rather than oil. The Conference Report on OPA (H.R. 101-653, p. 120) states:

> To avoid undue administrative burdens, the regulations for financial responsibility for vessels should be consolidated, wherever possible, with those under other Federal statutes. In this manner, only one certificate would be required for vessels to meet the requirements for financial responsibility for the statutes consolidated by this Act, and other pollution laws such as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

This rulemaking, therefore, would consolidate financial responsibility requirements for vessels under both OPA and CERCLA and develop consolidated methods for evidencing financial responsibility under both OPA and CERCLA. It would allow the issuance of a single, unified Certificate of Financial Responsibility (COFR) for vessels, replacing the separate certificates and financial responsibility regimes under the FWPCA, OCSLAA, TAPAA, and DPA. This new, unified Certificate and regime would also make it unnecessary for a separate Certificate and regime under CERCLA. In effect, this proposed rule would alleviate the need for five separate sets of regulations and certificates and for the accompanying paperwork burden on government and industry.

Continuation of Present Regulations

Section 1016(h) of OPA (33 U.S.C. 2716(h)) states that financial responsibility regulations under acts repealed or superseded by OPA remain in effect until superseded by new regulations issued under OPA. Therefore, the financial responsibility requirements in 33 CFR part 130 (FWPCA), 33 CFR part 131 (TAPAA), 33 CFR part 132 (OCSLAA), and 33 CFR part 137 (DPA) remain in effect. (There are no vessel financial responsibility regulations issued specifically under CERCLA.) Vessels presently subject to one or more of these parts must continue to comply with them until the effective date of the final rule under this rulemaking.

Even after the effective date of the final rule, certain of the new requirements (e.g., new application forms and fees) could be waived temporarily to avoid unnecessary disruption of commerce and the burden on vessel operators. Operators with a valid FWPCA certificate issued before the effective date of the final rule could be allowed to use the FWPCA certificate until it expires, if evidence of financial responsibility sufficient to meet OPA and CERCLA requirements is established and maintained.

The Coast Guard specifically requests comments on methods of easing the transition to new regulations.

Requirements for certificates of financial responsibility for offshore facilities under OPA are not included in this rulemaking.

Discussion of Proposed Changes

Under this proposal, 33 CFR parts 130, 131, and 132 and subpart D of part 137 concerning vessel financial responsibility under FWPCA, TAPAA, OCSLAA, and DPA for water pollution would be removed. A new part 130 with the vessel financial responsibility requirements under both OPA and CERCLA would be substituted. The procedures for applying for a Certificate and the methods for establishing evidence of financial responsibility under the existing regulations remain, for the most part, unchanged in this proposal.

Although section 1016(e) OPA includes a letter of credit as a possible method of establishing financial responsibility, section 108(a) of CERCLA does not. Exploration of the use of letters of credit as evidence of financial responsibility under the FWPCA was not encouraging. Letters of credit are of questionable value for the purposes of financial responsibility under OPA and CERCLA and therefore are not being proposed. The use of insurance, surety bonds, guarantees, and self-insurance has met the needs of industry. No additional methods are being proposed. However, the Coast Guard encourages comments on how letters of credit could be used as evidence of financial responsibility.

The addresses and telephone numbers of the offices of the National Pollution Funds Center (NPFC) are indicated as "TO BE DEVELOPED" throughout these proposals. The NPFC has recently relocated from its temporary location at Coast Guard Headquarters in Washington DC to 4200 Wilson Boulevard, Suite 1000, Arlington, Virginia 22203–1804. For submitting comments and obtaining information on this rulemaking, see the "**ADDRESSES**" and "**FOR FURTHER INFORMATION CONTACT**" sections of this preamble.

OPA provides an exception not found in the FWPCA. The FWPCA excluded a non-self-propelled "barge" that does not carry oil as cargo or fuel from the requirement to establish and maintain evidence of financial responsibility. Section 1016(a)(1) of OPA excludes a non-self-propelled "vessel" that does not carry oil as cargo or fuel. In this proposal, the Coast Guard considers "non-self-propelled vessels" to mean "barges". This construction also is consistent with a similar exception in CERCLA. Therefore, the exception in proposed § 130.1(a)(2)(ii) refers to "barges".

This proposal would reduce the existing economic burden on operators of certain barges that are not tank vessels. Operators who currently must bear the expense of obtaining individual certificates and paying certification fees for each such barge (deck barges, hopper barges, etc.), when subject to financial responsibility requirements, would be relieved of those burdens. A single Fleet Certificate would be issued in such cases, and a certified copy would be carried on each barge.

Proposed § 130.13 shows an increase in the application and certification fees from $75.00 and $40.00 to $150.00 and $80.00, respectively and requires separate application fees for each type of certificate. The former fees were instituted in 1977. The amount of the proposed fees is approximate and will be fixed in the final rule using methodology currently being developed for setting user fees in other Coast Guard regulations.

Proposed appendices A through F contain forms for applying for certificates and for evidencing financial responsibility. The information in these forms will be reformatted before final publication.

The Applicable Amount Table in proposed appendices B through G sets out the means by which applicants and guarantors calculate the amounts of financial responsibility which must be established and maintained under these regulations.

The amount of financial responsibility which must be established and maintained with respect to each vessel to be covered under section 1016(a) of OPA (33 U.S.C. 2716(a)) (i.e., the amount applicable to the vessel under OPA) is calculated by applying the appropriate formula specified in part I of the table in accordance with the type of vessel and its size in gross tons. The formulae set out in part I are based upon the provisions of paragraphs (a)(1) and (a)(2) of section 1004 of OPA (33 U.S.C. 2704), pursuant to the terms of section 1016(a) of OPA.

Similarly, the amount of financial responsibility which must be established and maintained with respect to each vessel to be covered under section 108(a)(1) of CERCLA (42 U.S.C. 9608(a)(1)) (i.e., the amount applicable to the vessel under CERCLA) is calculated by applying the formula specified under part II of the table. The formula is derived from the provisions of section 108(a)(1) of CERCLA.

In deriving the formula for part II, practical considerations of which Congress must be deemed to have been aware were taken into account in interpreting CERCLA's text. Operators of all vessels to which section 108(a)(1) of CERCLA applies must establish and maintain evidence of financial responsibility of "$300 per gross ton (or for a vessel carrying hazardous substances as cargo, [of] $5,000,000, whichever is greater)". The term "hazardous substances" as defined for the purposes of CERCLA (42 U.S.C. 9601(14)) includes many classes of materials (see 40 CFR part 302) and there are many methods by which any one of those materials, especially in small amounts, may be carried as cargo aboard vessels. At the time an application for a COFR for a particular vessel is processed, and even after a COFR is issued, there is no way, known by the Coast Guard, to determine with certainty that no hazardous substance is being carried, or will be carried (especially in small amounts), aboard that vessel as proprietary or commercial cargo.

Consequently, in order to assure that adequate financial responsibility has been established and will be maintained for a particular vessel, it is necessary, for the purposes of determining the amount of financial responsibility required for any particular vessel, to assume that all vessels subject to the provisions of section 108(a)(1) of CERCLA carry, or might carry, hazardous substances as cargo. For this reason, the formula in part II of the table prescribes a minimum of $5,000,000 for all vessels. Comments are encouraged regarding possible means by which a determination could be made at the time of certification that, in fact, a particular vessel is not carrying and will not carry hazardous substances as cargo.

Part III of the table specifies the means by which the total amount of financial responsibility required by the two Acts may be calculated, i.e., by adding the largest of the OPA applicable amount, for the vessels being covered, to the largest of the CERCLA applicable amount, for the vessels being covered. This amount is termed the "total applicable amount". The formula is derived from the provisions of section 1016(a) of OPA and section 108(a)(1) of CERCLA and reflects the fact that liability may arise under both Acts stemming from a single occurrence. In such a circumstance, it is necessary that financial responsibility be available to meet the liability under section 1002 of OPA or section 107(a)(1) of CERCLA or both, to the extent required by section 1016 of OPA and section 108 of CERCLA.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 but is considered significant under the Department of Transportation Regulatory Policies and

Procedures (44 FR 11040; February 26, 1979) because of substantial public interest.

These regulations are promulgated under section 1016(a) of OPA (33 U.S.C. 2716) and section 108(a)(1) of CERCLA (42 U.S.C. 9608(a)(1)), concerning the "establishment and maintenance" of evidence of financial responsibility for vessels. This rulemaking is intended to implement this statutory mandate and, therefore, is limited to matters relating to "establishment and maintenance" of financial responsibility, such as how to apply for a Certificate of Financial Responsibility (COFR) and how to establish evidence of financial responsibility.

For the most part, this proposal would impose no new paperwork burdens on vessel operators. The methods for applying for a COFR and establishing evidence are similar to those in the existing regulations under FWPCA, TAPAA, OCSLAA, and DPA. Vessel operators would be required to complete and submit a prescribed application form for a COFR and, if other than a self-insurer, a prescribed form, completed by their guarantors, evidencing financial responsibility. These burdens, however, are being imposed presently under existing 33 CFR parts 130, 131, and 132 and subpart D of part 137. This proposal not only adopts these application procedures but actually reduces the burden by requiring that only one application be submitted under OPA/CERCLA, rather than separate applications under FWPCA, TAPAA, and OCSLAA, which is now the case. Furthermore, as discussed above, the Coast Guard is considering not requiring new applications from vessel operators currently holding valid FWPCA COFRs.

This proposal may affect a slightly different population of vessels than that under the present regulations. This difference results from section 1016(a) of OPA (33 U.S.C. 2716(a)). Before OPA was enacted, the most encompassing Federal statute concerning financial responsibility (the FWPCA) was limited to vessels over 300 gross tons. (TAPAA, OCSLAA, and DPA have no vessel tonnage limits, but very few vessels of 300 gross tons or less are subject to those regimes.) Under section 1016(a)(2) of OPA, all vessels "using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States" also must meet the financial responsibility requirements. The exact number of vessels of 300 gross tons or less engaged in transshipping or lightering not already subject to the existing regulations, is unknown. The Coast Guard requests information on the vessel population not presently subject to a financial responsibility regime under Federal law and which must now comply with the requirements of section 1016 of OPA.

Regulatory Impact Analysis

This proposal is considered significant due to the public interest in this rulemaking. Ordinarily, a rule required by statute that reduces paperwork by combining the financial certification procedures of CERCLA and OPA would not be controversial. The controversy arises because of the possibility that oceangoing vessel operators may encounter difficulty in obtaining statutorily required guaranties of insurance once the rule goes into effect. To assess the affects of such an occurrence, a Regulatory Impact Analysis (RIA) is being prepared.

The liability limits set by OPA and CERCLA are already in effect and virtually all shipowners using U.S. waters have obtained insurance to meet those liability limits. OPA and CERCLA continue the twenty-year old statutory requirement for guaranties that insurance or other financial responsibility exists. However, until vessel owners and operators are required by rule to obtain Coast Guard Certificates of Financial Responsibility in connection with those new liability limits, certificates issued on the basis of guaranties for the old, lower liability limits are still valid. Vessels, although insured to the new liability limits, are operating with far lower guaranties. Without the higher guaranties, the value of the insurance in the event of a catastrophic spill is highly questionable because of the multitude of policy defenses, exclusions, and conditions.

The international group of Protection and Indemnity Associations or "P&I Clubs" (i.e., international shipowners who band together to mutually indemnify each other) have stated that they will refuse to issue Coast Guard insurance guaranties for purposes of complying with the new liability requirements. [The non-oceangoing vessel operating industry (tugs, barges, etc.) can continue to obtain insurance guaranties through their U.S. commercial liability insurers.] If insurance guaranties are not filed with the Coast Guard in compliance with both CERCLA and OPA, the Coast Guard will be unable to certify the financial responsibility of those oceangoing owners and operators, as mandated by those laws. In accordance with past and present laws, the Coast Guard may detain and/or seize vessels using U.S. waters without valid Certificates of Financial Responsibility and the U.S. Customs Service shall withhold or revoke clearance. If many vessels are prevented from using U.S. waters, there is the obvious potential for economic impact on segments of the maritime industry and on those U.S. industries dependent on ocean transportation. The RIA will assess these potential impacts.

To assist in preparing this analysis, the Coast Guard is soliciting comments from industries that may be affected, as well as from the public. After public comment on this NPRM and related economic issues, the RIA will be completed, and notice of its availability will be placed in the **Federal Register**. Based on the comments received in response to the NPRM, if additional opportunity for public comment on the RIA is warranted, the Coast Guard will provide an opportunity for such comment before publishing any final rule.

Although comments are requested and will be considered on all aspects of these issues, the following questions solicit specific information regarding some of the possibilities that may be addressed in the analysis. Responses to these questions should be supported by factual data and indicate the type of vessels (i.e., bulk, oil tanker, chemical tanker, cruise, container, break bulk freighter, inland barge, oceangoing barge), the number of vessels, and their aggregate gross and deadweight tonnage.

(1) If P&I Club insurance guaranties are not available, what alternatives are likely to be used by vessel owners and operators to meet requirements of the law (e.g., self-insurance or surety bonds), and what is the potential cost of such alternative methods of compliance?

(2) Self-insurance requires that the operator show both net worth and working capital in the U.S. sufficient to meet the liability limit. How many vessel operators are likely to be able to meet the requirements for self-insurance under this proposed rule? Please provide an estimate of these operators as a percentage of the total capacity currently serving U.S. ports.

(3) If the Coast Guard waives the U.S. working capital requirement for those who wish to self-insure, how many additional vessel operators representing what percentage of the capacity could meet the requirements for self-insurance under this proposed rule?

(4) Are surety bonds a viable option? If not, why not?

(5) How many vessel operators would be unable to meet the requirements for self-insurance (with waiver of working

capital) or alternative means of coverage under the proposed rule?

(6) What regions and industries within those regions are dependent on products transported (import, export, or coastwise) by vessel operators unable to find alternative coverage?

(7) What would be the likely cost to industries under question (6) of finding an alternative source of transportation, if any is available, and what would be the cost of having to curtail production or services if the affected industry can receive or send only reduced waterborne shipments?

(8) If an industry under question (6) suffers a disruption or curtailment of production or services, what other adverse effects might result with respect to jobs, taxes, services, balance of trade, etc.?

(9) Do any of the companies that rely on waterborne shipping for a particular region have the financial resources to be able to provide guaranties for vessels serving that region?

(10) What would be the likely impact on industry concentration in waterborne transportation and possible impact on prices if the major oil companies capable of providing guaranties met commodity movement needs by purchasing, leasing or otherwise controlling independently owned vessels whose operators are unable otherwise to meet financial responsibility requirements?

(11) With respect to the oil industry in particular, what would be the relative difficulties in meeting the self-insurance standard of major oil company vessel operators as compared to independent vessel operators? (For purposes of this question, a major oil company is one of large size whose operations include oil production, refining and/or marketing as well as shipping; an independent vessel operator is one engaged solely or principally in shipping and is not affiliated with a major oil company.)

(12) What portion of oil transported (a) into and (b) within the United States is transported on tankers and barges owned by each of the following: Major oil companies, independent U.S. operators, and independent foreign operators?

(13) If only major oil companies have the resources to self-insure and P&I clubs elect not to issue insurance guaranties for the remainder of the ocean-going vessels carrying petroleum to refineries, what would be the impact on other major elements of the oil industry?

(14) Do independent refineries (i.e., those without shipping and retail marketing operations) have the financial resources to provide guaranties for vessel owners and operators transporting oil to and from their refineries? If not, what alternatives do such refineries have for sources of transportation of oil and what are the comparative costs of such alternatives?

(15) Do any of the companies that provide oil for a particular region have the financial resources to be able to provide guaranties for vessels transporting oil to that region? For those that cannot, what would be the likely effect if those companies are no longer able to import oil for use in that region?

(16) Are the international P&I clubs more likely to agree to issue insurance guaranties to cruise ships, freighters, bulkers, and other non-oil tankers for which the liability limit is lower? If not, why not?

The above questions assume one set of possible reactions by the shipping industries and the economic interests dependent on them to continue operation should COFR guaranties not be widely available, The questions thus reflect only one of a number of scenarios that might unfold. Comments are solicited on other possible scenarios of industry reaction to such a condition.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their fields and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

As discussed under "Regulatory Evaluation," this proposal would have minimal direct economic impact in that it retains procedures presently in effect and, through consolidation, eliminates duplication of effort on the part of the regulated industry. Ordinarily, therefore, the Coast Guard would certify under 5 U.S.C. 605(b) that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. However, in the event that oceangoing vessel operators encounter difficulty in obtaining required guaranties of insurance and many vessels are prevented from using U.S. waters, there is the obvious potential for economic impact on small entities dependent on ocean transportation. If you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see "**ADDRESSES**") explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This rule contains collection of information requirements. The Coast Guard has submitted the existing requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. There are no additional requirements under this proposal.

The part number in this proposal is part 130 and the corresponding OMB approval number is OMB Control Number 21150545, effective through November 30, 1992. This Control Number was assigned to 33 CFR parts 130, 131, 132, and 137. The collection of information requirements in these four parts would be consolidated into part 130. Under this proposal, the need to apply for separate certificates under separate laws would be eliminated, along with the associated paperwork.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. This rulemaking is administrative in nature and has no environmental impact. This proposal would provide the procedure by which a vessel operator establishes evidence of financial responsibility.

A Categorical Exclusion Determination is available in the docket for inspection or copying in the location indicated under "**ADDRESSES.**"

List of Subjects

33 CFR Part 130

Insurance, Maritime carriers, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 131

Alaska, Insurance, Maritime carriers, Oil pollution, Pipelines, Reporting and recordkeeping requirements.

33 CFR Part 132

Continental shelf, Insurance, Maritime carriers, Oil Pollution, Reporting and recordkeeping requirements.

33 CFR Part 137

Claims, Harbors, Insurance, Oil pollution, Reporting and recordkeeping requirements, Vessels.

For the reasons set out above, the Coast Guard proposes to amend 33 CFR parts 130, 131, 132, and 137 as follows:

1. Part 130 is revised to read as follows:

PART 130—FINANCIAL RESPONSIBILITY FOR WATER POLLUTION (VESSELS)

Sec.

130.1 Scope.
130.2 Definitions.
130.3 General.
130.4 Where to apply for and obtain forms.
130.5 Time to apply.
130.6 Applications, general instructions.
130.7 Renewal of certificates.
130.8 Financial responsibility, how established.
130.9 Individual and Fleet Certificates.
130.10 Operator's responsibility for identification.
130.11 Master Certificates.
130.12 Certificates, denial or revocation.
130.13 Fees.
130.14 Enforcement.
130.15 Service of process.

Appendices to Part 130

Appendix A—Application Form

Appendix B—Insurance Form

Appendix C—Master Insurance Form

Appendix D—Surety Bond Form

Appendix E—Guaranty Form

Appendix F—Master Guaranty Form

Appendix G—Applicable Amount Table

Authority: 33 USC 2716; 42 U.S.C. 9608; sec. 7(b), E.O. 12580 (52 FR 2923); 49 CFR 1.46.

§ 130.1 Scope.

(a) This part applies—

(1) To vessels of any size using the waters of the exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States; and

(2) To vessels using any port or place in the United States, the navigable waters of the United States, or an offshore facility subject to the jurisdiction of the United States, except—

(i) Vessels which are 300 gross tons or less; and

(ii) Non-self-propelled barges which do not carry oil as cargo or fuel and which do not carry hazardous substances as cargo.

(b) This part sets forth the procedures by which operators of vessels may establish and maintain, for themselves and, where the owner is not the operator, for the owners of the vessels, evidence of financial responsibility to cover liability arising under—

(1) Section 1002 of the Oil Pollution Act of 1990 (33 U.S.C. 2702) due to incidents; and

(2) Section 107(a)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607(a)(1)) due to releases or threats of releases.

(c) Upon the satisfactory demonstration of financial responsibility and payment of fees, the Director, NPFC, issues a Certificate of Financial Responsibility (Water Pollution), the original of which (except as provided in §§ 130.9(b) and 130.11(f)) is to be carried aboard the vessel covered by the Certificate. The carriage of a valid certificate or authorized copy indicates compliance with these regulations. Failure to carry a valid certificate or authorized copy subjects the vessel to enforcement action.

(d) Public vessels are deemed to have established and to maintain evidence of financial responsibility to cover liability arising under section 107(a)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9607(a)(1)).

§ 130.2 Definitions.

(a) As used in this part, the following terms have the same meaning as set forth in—

(1) Section 1001 of the Oil Pollution Act of 1990 (33 U.S.C. 2701), respecting the financial responsibility referred to in § 130.1(b)(1): "claimant", "damages", "discharge", "exclusive economic zone", "navigable waters", "mobile offshore drilling unit", "natural resources", "offshore facility", "oil", "person", "remove", "removal", "removal costs", and "United States"; and

(2) Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601), respecting the financial responsibility referred to in § 130.1(b)(2): "claimant", "damages", "environment", "hazardous substance", "navigable waters", "natural resources", "person", "release", "remove", "removal", and "United States".

(b) As used in this part—

Acts means Title I of the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*) and title I of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9601 *et seq.*).

Applicant means an operator who has applied for a certificate or for the renewal of a certificate under this part.

Application means "Application for Certificate of Financial Responsibility (Water Pollution)", as illustrated in appendix A of this part.

Cargo means goods or materials on board a vessel for purposes of transportation, whether proprietary or nonproprietary. Hazardous substances carried solely as fuel for equipment used aboard non-self-propelled barges are not within this definition.

Certificant means an operator who has been issued a certificate under this part.

Certificate means a "Certificate of Financial Responsibility (Water Pollution)" issued under this part, unless otherwise indicated.

Director, NPFC, means the head of the U.S. Coast Guard National Pollution Funds Center (NPFC).

Financial responsibility means statutorily required financial ability to meet liability under the Acts.

Fuel means any oil or hazardous substance used or capable of being used to produce heat or power by burning, including power to operate equipment.

Incident means any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil into or upon the navigable waters or adjoining shorelines or the exclusive economic zone.

Insurer means one or more insurance companies, associations of underwriters, shipowners' protection and indemnity associations, or other persons, all of which must be acceptable to the Coast Guard.

Master Certificate means a certificate issued under this part to builders, repairers, scrappers, and sellers of vessels.

Operator means a person, including, but not limited to, an owner, a demise charterer, or other contractor, who conducts the operation of, or who is responsible for the operation of, a vessel. Persons who are responsible for vessels in the capacity of a builder, repairer, scrapper, or seller are included in this definition of operator.

Owner means any person holding legal or equitable title to a vessel. In a case where a Certificate of Documentation or equivalent document has been issued, the owner is considered to be the person or persons whose name or names appear thereon as owner. For purposes of the Comprehensive Environmental

Response, Compensation, and Liability Act "owner" does not include a person who, without participating in the management of a vessel, holds indicia of ownership primarily to protect the owner's security interest in the vessel.

Public vessel means a vessel owned or bareboat chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when the vessel is engaged in commerce.

Tank vessel means—

(1) A U.S. vessel that would be required to have a certificate of inspection issued under 46 U.S.C. 3710 if it had oil or hazardous material in bulk as cargo or cargo residue on board, whether or not the cargo or cargo residue is actually on board;

(2) A foreign vessel that is required to have a certificate of compliance issued under 46 U.S.C. 3711; and

(3) A tank vessel referred to in 46 U.S.C. 3702 (b), (c), and (d).

Total Applicable Amount means the total applicable amount determined in accordance with the table in appendix G.

Vessel means as follows:

(1) For the purposes of the financial responsibility referred to in § 130.1(b)(1), *vessel* means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, other than a public vessel. Mobile offshore drilling units are included within the definition of *vessel*. They are treated as tank vessels for purposes of the Oil Pollution Act of 1990 under this part, when being used as an offshore facility. They are treated as vessels other than tank vessels for purposes of this part when not being used as offshore facilities.

(2) For the purposes of the financial responsibility referred to in § 130.1(b)(2), *vessel* means every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on water.

§ 130.3 General.

(a) The regulations in this part set forth the procedures whereby an owner and operator of a vessel subject to these regulations can demonstrate that each is financially able to meet potential liability for costs and damages in the amounts established in the Acts.

(b) Where a vessel is operated by its owner, or the owner is responsible for its operation, the owner is considered to be the operator and shall submit the application for a certificate. In all other cases, the vessel operator shall submit the application.

(c) For U.S. vessels, *gross tonnage*, as referred to in this part, is determined as follows:

(1) For documented U.S. vessels measured under both 46 U.S.C. Chapters 143 (Convention Measurement) and 145 (Regulatory Measurement). The vessel's regulatory gross tonnage is used to determine whether the vessel exceeds 300 gross tons, if the vessel is subject to the 300 gross ton threshold under section 1016(a)(1) of the Oil Pollution Act of 1990 (33 U.S.C. 2716 (a)(1). If the vessel's regulatory tonnage is determined under the Dual Measurement System in 46 CFR part 69, subpart D, the higher gross tonnage is the regulatory tonnage for the purposes of the 300 gross ton threshold. The vessel's Convention gross tonnage is used to determine the vessel's required amount of financial responsibility.

(2) For all other U.S. vessels. The vessel's gross tonnage under 46 CFR part 69 is used for determining both the 300 gross ton threshold, if applicable, and the required amount of financial responsibility. If the vessel is measured under the Dual Measurement System, the higher gross tonnage is used in both determinations.

(d) For vessels of a foreign country that is a party to the International Convention on Tonnage Measurement of Ships, 1969 (the Convention), "gross tonnage," as referred to in this part, is determined as follows:

(1) For vessels assigned, or presently required to be assigned, tonnages under Annex I of the Convention. The vessel's gross tonnage under Annex I of the Convention is used for determining both the 300 gross ton threshold, if applicable, and the required amount of financial responsibility.

(2) For vessels not presently required to be assigned tonnages under Annex I of the Convention. The highest gross tonnage that appears on the vessel's certificate of documentation or equivalent document and that is acceptable to the Coast Guard under 46 U.S.C. chapter 143 is used for determining both the 300 gross ton threshold, if applicable, and the required amount of financial responsibility. If the vessel has no document or the gross tonnage appearing on the document is not acceptable under 46 U.S.C. chapter 143, the vessel's gross tonnage is determined by applying the Convention Measurement System under 46 CFR part 69, subpart B, or if applicable, the Simplified Measurement System under 46 CFR part 69, subpart E. The measurement standards applied are subject to applicable international agreements to which the United States Government is a party.

(e) For vessels of a foreign country that is not a party to the Convention, "gross tonnage," as referred to in this part, is determined as follows:

(1) For vessels measured under laws and regulations found by the Commandant to be similar to Annex I of the Convention. The vessel's gross tonnage under the similar laws and regulations is used for determining both the 300 gross ton threshold, if applicable, and the required amount of financial responsibility. The measurement standards applied are subject to applicable international agreements to which the United States Government is a party.

(2) For vessels not measured under laws and regulations found by the Commandant to be similar to Annex I of the Convention. The vessel's gross tonnage under 46 CFR part 69, subpart B, or, if applicable, subpart E, is used for determining both the 300 gross ton threshold, if applicable, and the required amount of financial responsibility. The measurement standards applied are subject to applicable international agreements to which the United States is a party.

(f) Persons who agree to act as guarantors or self-insurers for the purposes of title I of the Oil Pollution Act of 1990 agree to be bound by the vessel's gross tonnage as determined under paragraphs (c), (d), or (e) of this section, regardless of what gross tonnnage may appear on forms submitted under this part.

§ 130.4 Where to apply for and obtain forms.

(a) Applications for certificates (see appendix A to this part), together with fees and evidence of financial responsibility, must be filed with the Coast Guard National Pollution Funds Center at the following address: [*to be developed*].

(b) Regulations concerning application forms are set forth in §§ 130.6 and 130.7, regulations concerning fees are set forth in § 130.13, and regulations concerning evidence of financial responsibility are set forth in § 130.8. Forms may be obtained from [*to be developed*]. All requests for assistance, including telephone inquiries, in completing applications should be directed to the U.S. Coast Guard National Pollution Funds Center, Vessel Certification Division, [*to be developed*].

§ 130.5 Time to apply.

(a) A vessel operator who wishes to obtain a certificate must file a completed application form, evidence of financial responsibility and appropriate

fees at least 21 days prior to the date the certificate is required.

(b) Applications are processed in the order in which they are received for filing at the National Pollution Funds Center.

§ 130.6 Applications, general instructions.

(a) All applications and supporting documents must be in English. All monetary terms must be expressed in United States dollars.

(b) The application must be signed by an authorized official of the applicant. The title of the signer must be shown in the space provided on the application.

(c) The application must be accompanied by a written statement providing authority to sign, where the signer is not disclosed as an individual (sole proprietor) applicant, a partner in a partnership applicant, or a director or other empowered officer of a corporate applicant.

(d) If, before the issuance of a certificate, the applicant becomes aware of a change in any of the facts contained in the application or supporting documentation, the applicant shall, within five days of becoming aware of the change, notify the Director, NPFC, in writing, of the change.

§ 130.7 Renewal of certificates.

(a) An application for a renewal certificate must be made in writing to the Director, NPFC, at least 21 days, but not earlier than 90 days, before the expiration date of the certificate. A letter may be used for this purpose.

(b) Each renewal application must be accompanied by the appropriate certification fee, identify any changes which have occurred since the original application was filed, and set forth the correct information in full.

§ 130.8 Financial responsibility, how established.

(a) *General*—In addition to submitting an application and fees, each applicant must submit, or cause to be submitted, evidence of financial responsibility in the total applicable amount determined in accordance with appendix G of this part.

(b) *Methods*—Evidence of financial responsibility must be established by one or more of the following methods:

(1) *Insurance*—Evidence may be established by filing with the Director, NPFC, an insurance form CG–5358–9(XX) illustrated in appendix B of this part (or, when applying for a Master Certificate, a master insurance form CG–5358–9A(XX) illustrated in appendix C of this part) executed by an insurer that has been approved by and remains acceptable to the Director, NPFC, for purposes of this part.

(2) *Surety bond*—Evidence may be established by filing with the Commander, NPFC, a surety bond form (CG–5358–9B(XX), illustrated in appendix D of this part, executed by an acceptable surety company certified by the United States Department of the Treasury with respect to the issuance of Federal bonds in the penal sum of the bonds to be issued under this part.

(3) *Self-insurance*—An applicant may establish financial responsibility as a self-insurer by maintaining, in the United States, working capital and net worth each in amounts equal to or greater than the total applicable amount of financial responsibility required. As used in this paragraph, *working capital* means the amount of current assets located in the United States, less all current liabilities; and *net worth* means the amount of all assets located in the United States, less all liabilities anywhere in the world. Maintenance of the required working capital and net worth must be demonstrated by submitting, together with the initial application, the financial statements specified in paragraph (b)(3)(i) of this section for the applicant's last fiscal year preceding the date of application. Thereafter, for each of the applicant's fiscal years, the applicant shall submit the statements as follows:

(i) *Initial and annual submissions*—An applicant or certificant shall submit annual, current, and audited non-consolidated financial statements with the associated notes, certified by an independent Certified Public Accountant. These financial statements must be accompanied by an additional statement from the Treasurer (or equivalent official) of the applicant or certificant certifying both the amount of current assets and the amount of total assets included in the accompanying balance sheet, which are located in the United States. If the financial statements cannot be submitted in non-consolidated form, a consolidated statement may be submitted if accompanied by an additional statement prepared by the same Certified Public Accountant, certifying to the amount by which the applicant's or certificant's—

(A) Total assets, located in the United States, exceed its total (i.e., worldwide) liabilities; and

(B) Current assets, located in the United States, exceed its total current liabilities. This additional statement must specifically name the applicant or certificant, indicate that the amounts so certified relate only to the applicant or certificant, apart from any other entity, and identify the consolidated financial statement to which it applies.

(ii) *Semiannual submissions*—When the applicant's or certificant's demonstrated net worth is not at least ten times the total applicable amount of financial responsibility under the Acts, affidavits must be filed by the applicant's or certificant's corporate Treasurer (or equivalent official for a non-corporate entity) covering the first six months of the applicant's or certificant's fiscal year. The affidavits must state that neither the working capital nor the net worth have, during the first six months of the current fiscal year, fallen below the applicant's or certificant's total applicable amount of financial responsibility.

(iii) *Additional submissions*—(A) Additional financial information must be submitted upon request of the Director, NPFC.

(B) All applicants or certificants who utilize self-insurance shall notify the Director, NPFC, within five days of the date they know, or have reason to believe, that the amounts of working capital or net worth have fallen below the required total applicable amount of financial responsibility.

(iv) *Time for submissions*—All required annual financial statements must be received by the Director, NPFC, within 90 days after the close of the applicant's or certificant's fiscal year, and all affidavits required by paragraph (b)(3)(ii) of this section within 30 days after the close of the applicable six-month period. Upon written request, the Director, NPFC, may grant an extension of the time limits for filing financial statements or affidavits. A request for extension must set forth sufficient reason to justify the extension and must be delivered at least 15 days before the statements or affidavits are due. Requests for extensions of more than 60 days will not be considered.

(v) *Failure to submit*—Certificates are subject to revocation for failure to submit any statement, data, notification, or affidavit required by paragraph (b)(3) of this section.

(vi) *Waivers*—(A) If the applicant or certificant is a regulated public utility, a municipal or higher-level governmental entity, or an entity operating solely as a charitable, non-profit making organization qualifying under section 501(c) Internal Revenue Code, the Director, NPFC may waive the working capital requirement. The applicant or certificant must demonstrate in writing that the grant of a waiver would benefit at least a local public interest without resulting in undue risk to the environment and without resulting in

undue risk that the applicant or certificant would be unable to maintain its required total applicable amount of financial responsibility under the Acts.

(B) The Director, NPFC, may waive the working capital requirement where the applicant or certificant demonstrates in writing that working capital is not a significant factor in the applicant's or certificant's financial condition. An applicant's or certificant's net worth in relation to the amount of its required total applicable amount of financial responsibility under the Acts and a substantial and consistent history of stable operations are major elements in such a demonstration.

(4) *Guaranty*—An applicant or certificant may file with the Director, NPFC, a Guaranty Form (Master Guaranty Form when applying for a Master Certificate) executed by a guarantor acceptable to the Coast Guard. The guarantor must comply with all of the self-insurance provisions of this part. In addition, the amounts of working capital and net worth required to be demonstrated by an acceptable guarantor must be no less than the aggregate total applicable amounts of financial responsibility underwritten as a guarantor and self-insurer under this part.

(c) *Forms—general*—The Application Form, Insurance Form, Master Insurance Form, Surety Bond Form, Guaranty Form, and Master Guaranty Form are illustrated in appendices B through F of this part. If more than one insurer, guarantor, or surety joins in executing an insurance, guarantee, or surety bond form, this action constitutes joint and several liability for such joint underwriters. Each form submitted under this part must set forth in full the correct legal name of the vessel operator to whom certificates are to be issued.

(d) *Direct action*—The evidence of financial responsibility forms, and any other undertaking accepted under this part, must contain an acknowledgment by the respective insurer or other guarantor that an action in court by a claimant (including a claimant by right of subrogation) for costs and damages claims arising under the provisions of the Acts, may be brought directly against the insurer or other guarantor. The forms and other undertakings must also provide that, in the event an action is brought directly against the insurer or other guarantor, the insurer or other guarantor or similar party shall be entitled to invoke only those rights and defenses permitted by the respective Acts.

(e) *Public access to data*—Financial data filed by applicants, certificants, and other persons is considered public information to the extent required by the Freedom of Information Act (5 U.S.C. 552) and permitted by the Privacy Act (5 U.S.C. 552a).

§ 130.9 Individual and Fleet Certificates.

(a) An Individual Certificate for each vessel listed on a completed application is issued by the Director, NPFC, when acceptable evidence of financial responsibility has been provided and appropriate fees have been paid except where a Fleet Certificate is issued under this section or where a Master Certificate is issued under § 130.11. Each certificate is issued only in the name of a vessel operator and is effective for not more than three years from the date of issue. Additional vessels may be added to a previously submitted application for Individual Certificates by submission of a letter from an authorized official of the applicant, setting forth all information required in item 5 of the application form. Additional acceptable evidence of financial responsibility, if required, and certification fees must be submitted for these additional vessels.

(b) The original Individual Certificate must be carried on the vessel named in the Certificate. However, a legible copy (certified as accurate by a notary public or other person authorized to take oaths in the United States) may be carried instead of the original if the vessel is an unmanned barge and does not have a document carrying device which the vessel operator believes would offer suitable protection for the original certificate. If a copy is carried aboard a barge, the original must be retained at a location in the United States and must be readily accessible for inspection by U.S. Government officials. An exception will also be made in the case of an operator of two or more barges that are not tank vessels and which from time to time may be subject to this Part (e.g., a hopper barge over 300 gross tons when carrying oily cargo). If the operator of such a fleet arranges with an acceptable guarantor to provide insurance to cover, automatically, all such barges for which the operator may from time to time be responsible, a Fleet Certificate will be issued to that operator. A legible copy of the Fleet Certificate, certified as accurate by a notary public or other person authorized to take oaths in the United States, must be carried on each barge when subject to this Part. In addition, the original Fleet Certificate must be retained at a location in the United States and must be readily available for inspection by U.S. Government officials. The original Fleet Certificate, when invalid, must be returned immediately to the Director, NPFC, and all copies must be destroyed. Where the certificant ceases to be the operator of a barge covered by a Fleet Certificate, the copy of the Fleet Certificate carr ed aboard that barge must be immediately destroyed by the certificant.

(c) Erasures or other alterations on a certificate or copy, except the certifications permitted in paragraph (b) above, are prohibited and automatically void the certificate or copy.

(d) If at any time after a certificate has been issued, a certificant becomes aware of a change in any of the facts contained in the application or supporting documentation, the certificant shall notify the Director, NPFC, in writing within 10 days of becoming aware of the change.

(e) At the moment a certificant ceases to be the operator of a vessel for any reason, including cases where the vessel is scrapped or transferred to a new responsible operator, the Individual Certificate naming the vessel, and any copies of the Certificate, become void. At that moment, their further use is prohibited. The certificant shall, within 10 days, complete the reverse side of the original Individual Certificate naming the vessel involved and return the Certificate to the Director, NPFC. If the Certificate cannot be returned because it has been lost or destroyed, the certificant shall, as soon as possible, submit the following information in writing to the Director, NPFC:

(1) The number of the Individual Certificate and the name of the vessel.

(2) The date and reason why the certificant ceased to be the operator of the vessel.

(3) The location of the vessel on the date the certificant ceased to be the operator.

(4) The name and mailing address of the person to whom the vessel was sold or transferred.

(f) In the event of the temporary transfer of an unmanned barge certificated under this part, where the certificant transferring the barge continues to be liable under the Acts and continues to maintain on file adequate evidence of financial responsibility with respect to the barge, the existing Individual Certificate remains in effect. A temporary new Individual Certificate need not be obtained.

§ 130.10 Operator's responsibility for identification.

(a) Each operator of a certificated vessel, other than an unmanned barge, who is not the owner of the vessel shall ensure that the original or a legible copy of the demise charter-party, or any other

written document which specifies the responsible operator for the vessel, is maintained on board the vessel.

(b) The demise charter-party or other document required by paragraph (a) of this section must be presented for examination to U.S. Government officials, upon request.

§ 130.11 Master certificates.

(a) A contractor or other person who is responsible for vessels in the capacity of a builder, repairer, scrapper, or seller may choose to apply for a Master Certificate instead of applying for an Individual Certificate for each vessel. A Master Certificate covers all of the vessels held by the applicant solely for purposes of construction, repair, scrapping, or sale. A vessel which is being operated commercially in any business venture, including the business of building, repairing, scrapping, or selling other vessels (e.g. a slop barge used by a shipyard) is not eligible to be covered by a Master Certificate. Any vessel that requires a certificate, but is not eligible for a Master Certificate, must be covered by either an Individual Certificate or a Fleet Certificate.

(b) The application procedure for a Master Certificate is the same as for other certificates. Evidence of financial responsibility may be established in accordance with § 130.8 by submission of an acceptable Master Insurance Form, Surety Bond Form, or Master Guarantee Form or by submission of acceptable Self-Insurance documentation. Applications must be completed in full, except for Item 5. The applicant must make the following statement in Item 5: "This is an application for a Master Certificate. The largest tank vessel to be covered by this application is _____ gross tons. The largest vessel other than a tank vessel is _____ gross. tons." The dollar amount of financial responsibility evidenced by the applicant must be sufficient to meet the total applicable amount required under the Acts.

(c) Each Master Certificate issued by the Director, NPFC, indicates—

(1) The name of the applicant (i.e. the builder, repairer, scrapper, or seller);

(2) The date of issuance and termination, encompassing a period of not more than three years; and

(3) The gross tons of the largest tank vessel and gross tons of the largest vessel other than a tank vessel eligible for coverage by that Master Certificate. The Master Certificate does not identify the names of the vessels covered by the Certificate.

(d) Additional vessels which do not exceed the respective tonnages indicated on the Master Certificate and which are eligible for coverage by a Master Certificate are automatically covered by that Master Certificate. Before acquiring a vessel, by any means, including conversion of an existing vessel, that would have the effect of increasing the certificant's total applicable amount of financial responsibility above that provided for issuance of the existing Master Certificate, the certificant shall submit the following:

(1) Evidence of increased financial responsibility to cover the greater total applicable amount.

(2) A new certification fee.

(3) Either a new application form or a letter amending the existing application form to reflect the new gross tonnage which is to be indicated on a new Master Certificate.

(e) A person to whom a Master Certificate has been issued shall submit to the Director, NPFC, every six months, after the month in which the Master Certificate is issued, a report indicating the name, previous name, type, and gross tonnage of each vessel covered by the Master Certificate during the preceding six-month reporting period and indicating which vessels, if any, are tank vessels.

(f) A legible copy of the Master Certificate (certified as accurate by a notary public or other person authorized to take oaths in the United States) must be carried aboard each vessel covered by the Master Certificate. The original Master Certificate must be retained in the United States and be kept readily accessible for inspection by U.S. Government officials.

(g) Upon revocation or other invalidation of the Master Certificate, the original must be returned within ten days to the Director, NPFC. The person in whose name the certificate was issued shall ensure that all copies of the certificate are destroyed.

§ 130.12 Certificates, denial or revocation.

(a) A certificate may be denied or revoked for any of the following reasons:

(1) Making any willfully false statement in connection with an application for an initial certificate, a request for a renewal certificate, the retention of an existing certificate, or any other matter under this part.

(2) Failure to establish or maintain evidence of financial responsibility as required by this part.

(3) Failure to comply with or respond to lawful inquiries, regulations, or orders of the Coast Guard pertaining to activities subject to this part.

(4) Failure to timely file required statements, data, notifications, or affidavits.

(5) Cancellation or termination of any insurance, surety bond, guaranty, or other form or undertaking under this part, unless acceptable substitute evidence of financial responsibility has been submitted.

(b) Denial or revocation of a certificate is immediate and without prior notice where the applicant or certificant—

(1) Is no longer the responsible operator of the vessel in question;

(2) Fails to submit a completed application, furnish acceptable evidence of financial responsibility in support of an application or submit required fees; or

(3) Permits the cancellation or termination of the insurance, surety bond, guaranty, or other undertaking upon which the continued validity of the certificate was based.

(c) Except as under paragraph (b) of this section, before the denial or revocation of a certificate, the Director, NPFC, will advise the applicant or certificant, in writing, of the intention to deny or revoke the certificate, and states the reason therefor.

(d) If the intended revocation is based on failure to timely file the required financial statements, data, notifications, or affidavits, the revocation is effective 10 days after the date of the notice of intention to revoke, unless, before revocation, the certificant demonstrates to the satisfaction of the Director, NPFC, that the required documents were timely filed or that revocation is inappropriate.

(e) If the intended denial or revocation is based on paragraph (a)(1) or (a)(3) of this section, the applicant or certificant may request, in writing, an opportunity to present information for the purpose of showing that the applicant or certificant is in compliance with this part. The request must be received within 10 days after the date of the notification of intention to deny or revoke.

§ 130.13 Fees.

(a) This section establishes the application fee imposed by the Coast Guard for processing applications. It also establishes the certification fee imposed by the Coast Guard for the issuance or renewal of certificates.

(b) Certificates will not be issued until the fees set forth in paragraphs (d) and (e) of this section have been paid.

(c) Fees must be paid in United States currency, by check, draft, or postal money order made payable to the U.S. Coast Guard. Cash will not be accepted.

(d) An applicant who submits an application for the first time under this part, shall pay an initial, non-refundable application fee of $150 for each type of application (i.e. individual Certificate(s), Fleet Certificate, and Master Certificate). Applications for additional Individual Certificates, or to amend or renew any type of existing certificate, do not require new application fees. However, once an application for an Individual Certificate(s) is withdrawn for any reason and the applicant holds no valid Individual Certificate(s), the applicant must submit a new application form and an application fee of $150 in order to reapply for an Individual Certificate(s) covering the same or different vessel(s). Similarly, a new application form and fee is required to obtain a new Fleet or Master Certificate following invalidation of such certificate.

(e) In addition to a first-time application fee of $150, applicants must pay a certification fee of $80 for each certificate issued. Applicants shall submit the certification fee for each vessel listed in, or later added to, an application for an Individual Certificate(s). The $80 certification fee is required to renew or to reissue a certificate for any reason, including, but not limited to, a name change or a lost certificate.

(f) Certification fees are refunded, upon receipt of a written request, if the application is denied or withdrawn before issuance of the certificate. Overpayments of application and certification fees are refunded, on request, only if the refund is for $50 or more. However, any overpayments not refunded will be credited, for a period of three years from the date of receipt of the monies by the Coast Guard, for the applicant's possible future use under this part.

§ 130.14 Enforcement.

(a) Any vessel operator required to establish and maintain evidence of financial responsibility under section 1016 of the Oil Pollution Act of 1990 (33 U.S.C. 2716) who fails to comply with this part is subject to a civil penalty of not more than $25,000 per day of violation in accordance with section 4303(a) of the Oil Pollution Act of 1990 (33 U.S.C. 2716a(a)). In addition, under section 4303(b) of that Act (33 U.S.C. 2716a(b)), the Attorney General may secure such relief as may be necessary to compel compliance with this part including termination of operations. Further, any vessel owner or operator required to establish and maintain evidence of financial responsibility under section 108(a)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9608(a)(1)) who fails to comply with this part is subject to a Class I administrative civil penalty of not more than $25,000 per violation and a Class II administrative civil penalty or judicial penalty of $25,000 per day of violation (or $75,000 per day if a second or subsequent violation) in accordance with section 109(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. 9609(a)).

(b) The Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any vessel subject to this part which does not produce evidence of financial responsibility required by the Acts.

(c) The Coast Guard may deny entry to any port or place in the United States or the navigable waters of the United States, and may detain at a port or place in the United States in which it is located, any vessel subject to this part, which, upon request, does not produce evidence of financial responsibility required by the Acts.

(d) Any vessel subject to this part which is found in the navigable waters without the necessary evidence of financial responsibility is subject to seizure by and forfeiture to the United States.

(e) Knowingly and willfully using an invalid Certificate, or any copy thereof, constitutes fraud.

§ 130.15 Service of process.

(a) When executing the forms required by this part, each applicant and guarantor shall designate thereon a person located in the United States as its agent for service of any process for purposes of the Acts. Each such designated agent shall acknowledge the designation in writing unless such agent has already furnished the Commander, NPFC, with a "master" concurrence showing that it has agreed in advance to act as the United States agent for service of process for the applicant or guarantor in question.

(b) If any applicant or guarantor desires, for any reason, to change any designated agent, the change must be accomplished by notifying Director, NPFC, of the change and furnishing the relevant information, including the acknowledgment under paragraph (a) of this section, if required. In the event of death, disability, or unavailability of a designated agent, the applicant or guarantor shall designate another agent in accordance with paragraph (a) of this section within 10 days of knowledge of any such event. The new designation must be submitted to the Director, NPFC. Failure to so designate and maintain a viable agent for service of process may lead to revocation of a certificate.

(c) If any designated agent can not be served because of death, disability, unavailability or similar event, and another agent has not been designated pursuant to this section, then service of process on Director, NPFC, will serve as if service of process had been effected on the designated agent. Service of process on Director, NPFC, will not be effective unless the server—

(1) Sends the applicant or guarantor by registered mail, at its last known address on file with Director, NPFC, a copy of each document served on Director, NPFC; and

(2) Attests to this mailing, at the time process is served upon Director, NPFC, indicating that the intent of the mailing is to effect service of process on the applicant or guarantor and that service on the designated agent is not possible, stating the reason why.

Appendix A to Part 130—Application Form

Department of Transportation U.S. Coast Guard CG-_____

Application for Certificate of Financial Responsibility (Water Pollution)

Instructions: Please type or print clearly and submit this application to the Director, Coast Guard National Pollution Funds Center [to be developed]. The application is in four parts: Part I—General; Part II—Evidence of Financial Responsibility; Part III—Declaration; and Part IV—Concurrence of Agent. Applicants must answer all applicable questions. If a question does not apply, answer "not applicable." Incomplete applications will be returned. If additional space is required, supplemental sheets may be attached. All information must be provided in the English language.

This Space for Use by CG Only

General (Part I of 4 Parts)

1. (a) Legal name of applicant (name of legally responsible operator of all vessels listed in part II):

(b) English equivalent of legal name if customarily written in language other than English:

(c) Trade name, if any:

2. Is this the first time the above-named applicant is submitting application Form CG-5358-8?

☐ Yes No☐

If "No" what Coast Guard control number was assigned to the first application Form CG 5358-8(6-83)?

3. State applicant's legal form of organization, i.e., whether operating as an individual, corporation, partnership, association, joint stock company, business

trust or other organized group of persons (whether incorporated or not), or as a receiver, trustee, or other liquidating agent, and briefly describe current business activities and length of time engaged therein.

(a) If a corporation, association, or other organization, please indicate:

Name of U.S. state or foreign country in which incorporated or organized:

Date of incorporation or organization:

(b) If a partnership, give name and address of each partner:

4. Name and address of applicant's United States agent or other person authorized by applicant to accept legal service in the United States. (See part IV)

Evidence of Financial Responsibility (Part II of 4 Parts)

5. List all vessels to which 33 Code of Federal Regulations section 130.1(a) applies and for which you are the operator.

In column (f) indicate the number "1" if the operator is also the registered owner. Indicate "2" in column (f) if the operator is not the registered owner.

(a) Name of vessel.
(b) Type of vessel (see note below).
(c) Country of registry.
(d) Registration number.
(e) Gross tons.
(f) "1" or "2".

Note: Designate the type of vessel by using a number from one of the following categories:

Cargo Vessels, Self-Propelled

Breakbulk freighter 10
Container ship [1] 11
Roll on-roll off 12
Barge carrier (e.g., lash, Seabee) 13

Recreational Vessels

All types of pleasure craft 40

Utility Craft

Combination breakbulk containership [1] 14
Combination roll on-roll off containership [1] 15
Combination barge carrier containership [1] 16
Tanker 17
Dry bulk carrier 18
All other self-propelled cargo vessels 19
Tank barge 50
Tug and towboat 51
Barge and scow 52
Drilling rig 53
Fishing vessel 54
Factory vessel 55
Research vessel 56
All other utility craft [3] 57

Passenger Vessels

Passenger vessel [2] 30
Combination passenger/cargo vessel [3] 31
Ferry [2] 32

Miscellaneous

Vessels not otherwise specified 60

(g) If applicant indicated "2" for any vessel listed above in column 5(f), indicate:

Name of vessel:
Owner:
Owner's Mailing Address:

6. Items 7 through 10 are optional methods of establishing financial responsibility. Check the appropriate box(es) below and answer only the item(s) which are applicable to this application:

☐ Insurance (Answer item 7)
☐ Surety Bond (Answer item 8)
☐ Guaranty (Answer item 9)
☐ Self-insurer (Answer item 10)

7. Name and address of applicant's insurer (evidence of insurance acceptable to the Director, Coast Guard National Pollution Funds Center, must be filed before a Certificate will be issued):

8. Total amount of surety bond. (Surety Bond Form CG 5358–9B ( ) must be filed before a Certificate will be issued). Name and address of applicant's surety:

9. Name and address of applicant's guarantor (Guaranty Form CG 5359–9C( ) and all required financial data must be filed before a Certificate will be issued. If applicant is applying for a Master Certificate, the correct guaranty is Form CG 5358–9D ( ).

Guarantor's fiscal year: _____ (Month) (Day) to _____ (Month) (Day)

10. If applicant intends to qualify as a self-insurer, attach all required financial data and indicate fiscal year: _____ (Month) (Day) to _____ (Month) (Day)

Declaration (Part III of 4 Parts)

11. Applicant's mailing address (street, number, post office box, city, state or country, and ZIP code if in the United States):

12. Telex number and answerback:

13. Type or print in this space the name and title of the official who is signing this application:

14. Address of principal office in the United States (if any):

15. Area code and telephone no.:

I declare that I have examined this application, including any accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete. Furthermore, it is agreed that the applicant named in item 1(a) of part I above is the responsible operator of all vessels now listed in or later added to this application. I also agree that in the event the agent designated in item 4 of part I above, or his replacement as may be designated later with the approval of the Director, Coast Guard National Pollution Funds Center, cannot be served due to death, disability, unavailability or similar event, the Director, Coast Guard National Pollution Funds Center, shall be deemed to be the agent for service of process. I have signed this application in my above indicated capacity as an authorized official of the applicant, or, if acting under a power of attorney, pursuant to the power vested in me by the said applicant as evidenced by the attached document.

Date _____ Signature of above official

Note: Please be sure that parts I, II, and III have been completed in full and that part III has been dated and signed. Then proceed to part IV, attached.

No certificate will be issued unless a completed application form has been received, processed and approved—

33 CFR part 130.

Comments:

The statements hereinabove set forth are made subject to penalties prescribed by law for any person who knowingly and willfully makes false statements on any matter within the jurisdiction of an agency of the United States (18 U.S.C. 1001).

Concurrence of Agent (Part IV of 4 Parts)

Part IV-A must be completed by the person designated in item 4 of part I to serve as applicant's United States agent for service of legal process. Part IV-B must be completed by the applicant. After parts IV-A and IV-B are completed, part IV should be submitted to the Director, Coast Guard National Pollution Funds Center, by the applicant or by the agent, either separately or together with parts I, II, and III. (Part IV need not be completed if the agent designated in item 4 of part I already has submitted to the U.S. Coast Guard an acceptable blanket Concurrence of Agent, agreeing to serve on behalf of certain applicants who designate such agent).

Part IV-A

It is hereby agreed that _____ shall serve as the herein named applicant's United States agent for service of legal process for purposes of part 130, title 33, CFR. This designation and agreement shall cease immediately in the event that said applicant designates a new agent acceptable and agreed to by the Director, Coast Guard National Pollution Funds Center.

Date: _____

Signature of person signing on behalf of agent:

_____

Title:
Business address:

Part IV-B (To be Completed by Applicant)

Name of applicant (From item I(a)):
Signature of person signing on behalf of applicant: (Person signing here should also sign in appropriate place on Part III)
Date:
Type or Print Name and Title:

Appendix B to Part 130—Insurance Form

Department of Transportation U.S. Coast Guard Insurance Form No. CG-5358–9 Furnished as Evidence of Financial Responsibility Under the Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended

_____

(Name of Insurer)

(hereinafter "Insurer") hereby certifies that for purposes of complying with the financial responsibility provisions of the Oil Pollution Act of 1990 (hereinafter referred to as OPA) and Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter referred to as CERCLA), as

[1] Container ship categories should be assigned only to vessels having fixed container cells or regularly carrying multi-tier container deckloads.

[2] Passenger categories should be assigned only to vessels carrying more than 12 passengers for hire.

[3] Includes floating cranes, dredges, docks, etc.

amended (hereinafter referred to collectively as the "Acts"), the vessel owners and operators of each respective vessel specified in the schedules below are insured by it against liability for costs and damages to which such vessel owners and operators could be subjected under either section 1002 OPA or section 107(a)(1) CERCLA, or both, in an amount equal to the total of the applicable amounts determined in accordance with part I and part II of the Applicable Amount Table below, respecting each such vessel.

The amount and scope of insurance coverage hereby provided by the Insurer is not conditioned or dependent in any way upon any contract, agreement or understanding between an assured owner or operator and the insurer. Coverage hereunder is as required for purposes of evidencing financial responsibility under each of the Acts, separately, at the levels in effect at the time of the incident(s), release(s) or threatened release(s) giving rise to claims.

(Name of Agent)

with offices located at _____

is hereby designated as the Insurer's Agent in the United States for service of process for the purposes of this undertaking. If the designated agent cannot be served due to death, disability or unavailability, the Director, Coast Guard National Pollution Funds Center, shall be the agent for service of process.

The Insurer consents to be sued directly with respect to any claims for costs and damages arising under section 1002 OPA or section 107(a)(1) CERCLA, or both, against any of said owners or operators. However, in any direct action under the Oil Pollution Act of 1990 the Insurer's liability per vessel per incident shall not exceed the amount determined under section 1016(g) of that Act and, in any direct action under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Insurer's liability per vessel per release or threatened release shall not exceed the amount determined under section 108(d)(1) of that Act. The Insurer shall be entitled to invoke only the rights and defenses specifically permitted to guarantors by the Act under which the action is brought.

The insurance evidenced by this undertaking shall be applicable only in relation to incidents, releases and threatened releases occurring on or after the effective date and before the termination date of this undertaking and shall be applicable only in relation to incidents, releases and threatened releases giving rise to claims under section 1002 OPA or section 107(a)(1) CERCLA, or both, with respect to any of the vessels listed below.

The effective date of this undertaking for each vessel listed below, shall be the date such vessel is named in or added to the schedules below. For each such vessel, the termination date of this undertaking shall be 30 days after the date of receipt of written notice by the Director, Coast Guard National Pollution Funds Center (Center) that the Insurer has elected to terminate the insurance evidenced by this undertaking and has so notified the vessel operator identified on the schedule below.

However, with respect to any vessel which is carrying oil or hazardous substances in bulk as cargo that has been loaded before the above termination date, termination shall not take effect earlier than 30 days from receipt of the notice prescribed above and furthermore not until either (1) completion of discharge of such cargo or (2) 60 days after the date of receipt by the Center of the written notice prescribed above, whichever date is earlier.

Termination of this undertaking as to any vessel shall not affect the liability of the Insurer in connection with an incident, release, or threatened release occurring prior to the date such termination becomes effective.

If during the currency of this undertaking an owner or operator requests that an additional vessel be made subject to this undertaking and if the Insurer accedes to such request and so notifies the Center, then such vessel shall be deemed included in the schedules below.

If more than one Insurer joins in executing this undertaking, such action shall constitute joint and several liability on the part of such Insurers. The definitions in 33 CFR part 130 apply to this undertaking.

Effective Date of Coverage for Vessels Originally Named in This Undertaking:

day/month/year

(Name of Insurer)

(Mailing Address)

By: _____

(Signature of Official Signing On Behalf of Insurer)

(Typed Name and Title of Signer)

Applicable Amount Table

(I) Applicable Amount under section 1016, Oil Pollution Act:

(A) Tank Vessel—

(i) Over 300 gross tons [1] but not to exceed 3000 gross tons; the greater of $2,000,000 or $1200 per gross ton;

(ii) Over 3000 gross tons; the greater of $10,000,000 or $1200 per gross ton.

(B) Vessel other than a tank vessel—over 300 gross tons [1]; the greater of $500,000 or $600 per gross ton.

(II) Applicable amount under section 108, Comprehensive Environmental Response, Compensation, and Liability Act:

Vessel over 300 gross tons—the greater of $5,000,000 or $300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

Insurance Form No._____

[1] This minimum gross ton limit does not apply to any vessel using the waters of the U.S. exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States.

Schedule of Vessels

Vessel	Gross tons	Operator

Insurance Form No._____

CG_____

Schedule of Vessels Added to Above Schedule

Vessel	Gross tons	Operator	Date added

Insurance Form No._____

Appendix C to Part 130—Master Insurance Form

Department of Transportation U.S. Coast Guard Master Insurance Form No. CG-5358-9A Furnished as Evidence of Financial Responsibility for Builders, Repairers, Scrappers, or Sellers of Vessels Under the Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended

(Name of Insurer)
(hereinafter "Insurer") hereby certifies that

(Name of Assured)
(hereinafter "Assured") and the owner of each vessel covered hereunder are insured by it against cost and damage liability for purposes of complying with the financial responsibility provisions of the Oil Pollution Act of 1990 (hereinafter referred to as OPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter referred to as CERCLA), as amended (hereinafter referred to collectively as the "Acts"). This undertaking shall be applicable in relation to any vessel for which either or both Acts require financial responsibility and which the Assured may from time to time hold for purposes of construction, repair, scrapping, or sale. The amount of liability insured hereunder is equal to the total of the applicable amounts determined in accordance with part I and part II of the Applicable Amount Table below, respecting each such vessel. The amount and scope of insurance coverage hereby provided by the Insurer is not conditioned or dependent in any way upon any contract, agreement or understanding between the owner or Assured and the Insurer. Coverage hereunder is as required for purposes of evidencing financial responsibility under each of the Acts, separately, at the levels in effect at the time

of the incident(s), release(s) or threatened release(s) giving rise to claims.

(Name of Agent)
with offices located at _____

_____,

is hereby designated as the Insurer's agent in the United States for service of process for purposes of this undertaking. If the designated agent cannot be served due to death, disability, or unavailability, the Director, Coast Guard National Pollution Funds, shall be the agent for service of process.

The Insurer consents to be sued directly in respect of any claims for costs and damages arising under section 1002 OPA or section 107(a)(1) CERCLA, or both, against the Assured or the owner. In any direct action under the Oil Pollution Act of 1990, the Insurer's liability per vessel per incident shall not exceed the amount determined under section 1016(g) of that Act and, in any direct action under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Insurer's liability per vessel per release or threatened release shall not exceed the amount determined under section 108(d)(1) of that Act. The Insurer shall be entitled to invoke only the rights and defenses specifically permitted to guarantors by the Act under which the action is brought.

The insurance evidenced by this undertaking shall be applicable only in relation to incidents, releases or threatened releases which give rise to claims under section 1002 OPA or section 107(a)(1) CERCLA, or both, in respect to any of the above-mentioned vessels and which occur on or after the below-specified effective date of this undertaking and before the termination date of this undertaking. Such termination date shall be 30 days after the date of receipt by the Director, Coast Guard National Pollution Funds Center (Center), of written notice that the Insurer has elected to terminate the insurance evidenced by this undertaking and has so notified the above named Assured.

However, with respect to any vessel which is carrying oil or hazardous substances in bulk as cargo that has been loaded before the above termination date, termination shall not take effect earlier than 30 days from receipt by the Center of the notice prescribed above and furthermore not until either (1) completion of discharge of such cargo, or (2) 60 days after the date of receipt by the Center of the written notice prescribed above, whichever date is earlier.

Termination of this undertaking shall not affect the liability of the Insurer in connection with an incident, release or threatened release occurring prior to the date such termination becomes effective.

If more than one Insurer joins in executing this undertaking, such action shall constitute joint and several liability on the part of such Insurers.

The definitions in 33 CFR part 130 shall apply to this undertaking.

Effective Date: _____

_____
(Name of Insurer)

(Mailing Address)

_____

_____

By: _____
(Signature of Official Signing on Behalf of Insurer) (Typed Name and Title of Signer)
Master Insurance Form No. _____

(I) Applicable Amount Table

Applicable Amount under section 1016, Oil Pollution Act:

(A) Tank Vessel—

(i) over 300 gross tons [1] but not to exceed 3000 gross tons; the greater of $2,000,000 or $1200 per gross ton;

(ii) over 3000 gross tons; the greater of $10,000,000 or $1200 per gross ton.

(B) Vessel other than a tank vessel—over 300 gross tons [1]; the greater of $500,000 or $600 per gross ton.

(II) Applicable amount under section 108, Comprehensive Environmental Response, Compensation, and Liability Act:

Vessel over 300 gross tons—the greater of $5,000,000 or $300 per gross ton.

(III) Total Applicable Amount = Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

CG- _____

Appendix D to Part 130—Surety Bond Form

Surety Co. Bond No._____

Department of Transportation U.S. Coast Guard CG-5358-9B Surety Bond Furnished as Evidence of Financial Responsibility Under the Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended

Know All Persons by These Presents, that we

_____
(Name of Vessel Operator)
of _____
(City)

_____
(State and Country)
as Principal (hereinafter "Principal"), and

_____
(Name of Surety)
a company created and existing under the laws of

_____
(State and Country)
and authorized by the U.S. Department of the Treasury to do business in the United States as Surety (hereinafter "Surety"), are held and firmly bound unto the United States of America and other claimants for costs and damages liability under the Oil Pollution Act of 1990 (hereinafter referred to as OPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter referred to as CERCLA), as amended (hereinafter referred to collectively as the "Acts"), in the penal sum of $_____, which sum is equal to the total applicable amount, determined in accordance with the Applicable Amount Table below, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. The foregoing penal sum is not conditioned or dependent in any way upon any contract, agreement or understanding between the Principal and Surety. The Principal shall be deemed to include both owner and operator of each vessel covered by this bond.

Whereas, the Principal intends to become or is a holder of a Certificate of Financial Responsibility (Water Pollution) under the provisions of 33 Code of Federal Regulations part 130 and has elected to file with the Director, Coast Guard National Pollution Funds Center (Center) such a bond as will ensure financial responsibility to meet any liability for costs and damages incurred under section 1002 OPA or section 107(a)(1) CERCLA, or both, in amounts equal to the applicable amount, determined in accordance with the Applicable Amount Table below, for the respective Act; and

Whereas, this bond is written to ensure compliance by the Principal with the financial responsibility requirements of each Act and shall inure to the benefit of the United States of America and other claimants under each Act;

Now, Therefore, the condition of this obligation is such that if the Principal shall pay or cause to be paid to the United States of America or other claimants any sum or sums for which the Principal may be held legally liable for costs and damages under section 1002 OPA or section 107(a)(1) CERCLA, or both, then this obligation, to the extent of such payment, shall be void, otherwise to remain in full force and effect.

The liability of the Surety as guarantor under section 1002 OPA or section 107(a)(1) CERCLA, or both, shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty amount of the bond, determined in accordance with the Applicable Amount Table below, applicable to the respective Act, and furthermore unless and until the Surety furnishes written notice to the Center of all suits filed, judgments rendered and payments made by the Surety under this bond.

Any claim for which the Principal may be liable under either section 1002 OPA or section 107(a)(1) CERCLA, or both, may be brought directly against the Surety. In the event of such direct claim the Surety shall be entitled to invoke only the rights and defenses specifically permitted by the respective Act to guarantors. The Surety's liability (1) per vessel per incident under the Oil Pollution Act of 1990 shall not exceed the amount determined under Section 1016(g) of that Act and (2) per vessel per release or threatened release under the Comprehensive Environmental Response, Compensation, and

[1] This minimum gross ton limit does ot apply to any vessel using the waters of the U.S. exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States.

Liability Act shall not exceed the amount determined under section 108(d)(1) of that Act.

This bond is effective the _____ day of _____, _____, 12:01 a.m., eastern standard time at the address of the Surety as stated herein and shall continue in force until discharged or terminated as herein provided. The Principal or the Surety may at any time terminate this bond by written notice sent by certified mail to the other party, with a copy (plainly indicating that the original notice was sent by certified mail) to the Center. The termination shall become effective thirty (30) days after the Center's receipt of said written advice; *Provided, however,* that with respect to any of the vessels being operated by the Principal which are carrying oil or hazardous substance in bulk as cargo that have been loaded before the above termination date, termination shall not take effect earlier than 30 days from receipt by the Center of the notice prescribed above and furthermore not until either (1) completion of discharge of such cargo, or (2) 60 days after the date of receipt by the Center of the notice prescribed above, whichever date is earlier. The Surety shall not be liable hereunder in connection with an incident, release or threatened release occurring after the termination of this bond as herein provided, but such termination shall not affect the liability of the Surety in connection with an incident, release or threatened release occurring prior to the date such termination becomes effective.

The Surety designates _____
(Name of Agent)
with offices at _____

as the Surety's agent in the United States for service of process for the purposes of this bond. If the designated agent cannot be served due to death, disability, or unavailability, the Director, Coast Guard National Pollution Funds Center, shall be the agent for service of process.

If more than one surety company joins in executing this bond, such action shall constitute joint and several liability on the part of such Sureties.

The definitions in 33 CFR part 130 shall apply to this bond.

In witness whereof, the above-named Principal and Surety have executed this instrument on the _____ day of _____.

(Please type name of signer under each signature. In the case of partnership, each partner must sign.)

Principal

(Individual Principal or Partner)

(Business Address)

(Individual Principal or Partner)

(Individual Principal or Partner)

Corporate Principal Business Address

(Affix Corporate Seal)
By
Title

Surety

Corporate Surety Business Address

(Affix Corporate Seal)
By
Title
Surety Co. Bond No. _____

Applicable Amount Table

(I) Applicable Amount under section 1016, Oil Pollution Act:

(A) Tank Vessel—

(i) Over 300 gross tons [1] but not to exceed 3000 gross tons; the greater of $2,000,000 or $1200 per gross ton;

(ii) Over 3000 gross tons; the greater of $10,000,000 or $1200 per gross ton.

(B) Vessel other than a tank vessel—over 300 gross tons [1]; the greater of $500,000 or $600 per gross ton.

(II) Applicable amount under section 108, Comprehensive Environmental Response, Compensation, and Liability Act: Vessel over 300 gross tons—the greater of $5,000,000 or $300 per gross ton.

(III) Total Applicable Amount=Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

CG – _____

Appendix E to Part 130—Guaranty Form

Department of Transportation U.S. Coast Guard CG–5358–9C Guaranty as Evidence of Financial Responsibility Under The Oil Pollution Act of 1990 and The Comprehensive Environmental Response, Compensation, and Liability Act, as Amended

1. Whereas _____
(Name of Vessel Operator)
(hereinafter referred to as the "Operator") is the Operator of the Vessel(s) specified in the annexed schedules (hereinafter "Vessel" or "Vessels"), and whereas the Operator desires to establish evidence of financial responsibility for both the owner and operator of each such vessel in accordance with the Oil Pollution Act of 1990 (hereinafter referred to as OPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter referred to as CERCLA), as amended (hereinafter referred to collectively as the "Acts"), the undersigned Guarantor hereby guarantees, subject to the provisions hereof, to discharge the owner's and Operator's liability in respect to each such vessel for costs and damages under section 1002 OPA or section 107(a)(1) CERCLA, or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below (such guaranteed amount to be so limited provided that the Guarantor furnishes written notice to the Director, Coast Guard National Pollution Funds Center (Center) forthwith of all suits filed, judgments rendered, and payments made by the Guarantor under this Guaranty). The amount and scope of such liability are not conditioned or dependent in any way upon any contract, agreement or understanding between the owner or Operator and the Guarantor.

2. Any claim against the owner or Operator for costs and damages arising under either section 1002 OPA or section 107(a)(1) CERCLA, or both, may be brought directly against the Guarantor. In the event of such direct claim, the Guarantor shall be entitled to invoke only the rights and defenses specifically permitted by the respective Act to guarantors. The Guarantor's liability (1) per Vessel per incident under the Oil Pollution Act of 1990 shall not exceed the amount determined under section 1016(g) of that Act and (2) per Vessel per release or threatened release under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, shall not exceed the amount determined under section 108(d)(1) of that Act.

3. The Guarantor's liability under this Guaranty shall attach only in relation to incidents, releases or threatened releases occurring on or after the effective date and before the termination date of this Guaranty and shall be applicable only in relation to incidents, releases or threatened releases giving rise to claims under section 1002 OPA or section 107(a)(1) CERCLA, or both, with respect to any of the Vessels listed below. The effective date of this undertaking for each vessel listed below shall be the date such Vessel is named in or added to the schedules below. For each such vessel, the termination date of Guaranty shall be 30 days after the date of receipt of written notice by the Center that the Guarantor has elected to terminate this Guaranty, with respect to any of such Vessels, and has so notified the Operator. However, with respect to any Vessel which is carrying oil or hazardous substances in bulk as cargo that has been loaded prior to the above termination date, termination shall not take effect earlier than 30 days from receipt by the Center of the written notice prescribed above and furthermore not until either (1) completion of discharge of such cargo, or (2) until 60 days after the date of receipt by the Center of the written notice prescribed above, whichever date is earlier. Termination of the Guaranty as to any of such Vessels shall not affect the liability of the guarantor in connection with an incident, release or threatened release occurring prior to the date such termination becomes effective.

4. If, during the currency of this Guaranty, the Operator requests that a vessel become subject to this Guaranty, and if the Guarantor accedes to such request and so notifies the Center in writing, then such vessel shall thereupon be deemed to be one of the Vessels included in Schedule B and subject to this Guaranty.

5. The Guarantor hereby designates _____
(Name of Agent)
with offices at _____

[1] This minimum gross ton limit does not apply to any vessel using the waters of the U.S. exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States.

_____

as the Guarantor's agent in the United States for service of process for purposes of this Guaranty. If the designated agent cannot be served due to death, disability or unavailability, the Director, Coast Guard National Pollution Funds Center, shall be the agent for service of process.

6. If more than one Guarantor joins in executing this Guaranty, such action shall constitute joint and several liability on the part of such Guarantors.

7. The definitions in 33 CFR part 130 apply to this Guaranty.

Effective Date: _____
(Month/Day/Year and Place of Execution)

_____
(Type Name of Guarantor)

_____
(Type Address of Guarantor)

_____

_____

By: _____
(Signature)

_____
(Type Name and Title of Person Signing Above)

Guaranty No. _____

Applicable Amount Table

(I) Applicable Amount under section 1016, Oil Pollution Act:

(A) Tank Vessel—

(i) Over 300 gross tons[1] but not to exceed 3000 gross tons; the greater of $2,000,000 or $1200 per gross ton;

(ii) Over 3000 gross tons; the greater of $10,000,000 or $1200 per gross ton.

(B) Vessel other than a tank vessel—over 300 gross tons[1]; the greater of $500,000 or $600 per gross ton.

(II) Applicable amount under section 108, Comprehensive Environmental Response, Compensation, and Liability Act:

Vessel over 300 gross tons—the greater of $5,000,000 or $300 per gross ton.

(III) Total Applicable Amount=Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

CG– _____

Schedule A—Vessels Initially Listed

Vessels	Gross Tons	Operator

Guaranty No. _____

CG– _____

[1] This minimum gross ton limit does not apply to any vessel using the waters of the U.S. exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States.

Schedule B—Vessels Added in Accordance With Clause 4

Vessels	Gross Tons	Operator	Date Added

Guaranty No. _____

CG– _____

Appendix F to Part 130—Master Guaranty Form

Guaranty No. _____

Department of Transportation U.S. Coast Guard CG-5358-9D Master Guaranty Furnished as Evidence of Financial Responsibility for Builders, Repairers, Scrappers or Sellers of Vessels Under the Oil Pollution Act of 1990 and the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended

1. Whereas _____
(Name of Vessel Operator)
(hereinafter referred to as the "Operator") is in, or from time to time may come into, possession of a vessel or vessels held for purposes of construction, repair, scrapping, or sale (hereinafter "Vessel" or "Vessels"), and whereas the Operator desires to establish evidence of financial responsibility for both the owner and operator of each such vessel in accordance with the Oil Pollution Act of 1990 (hereinafter referred to as OPA) and the Comprehensive Environmental Response, Compensation, and Liability Act (hereinafter referred to as CERCLA), as amended (hereinafter referred to collectively as the "Acts"), the undersigned Guarantor hereby guarantees, subject to the provisions hereof, to discharge the owner's and Operator's liability in respect to each such vessel for costs and damages under section 1002 OPA or section 107(a)(1) CERCLA, or both, in an amount equal to the total applicable amount determined in accordance with the Applicable Amount Table below (such guaranteed amount to be so limited provided that the Guarantor furnishes written notice to the Director, Coast Guard National Pollution Funds Center (Center), forthwith, of all suits filed, judgments rendered, and payments made by the Guarantor under this Guaranty). The amount and scope of such legal liability are not conditioned or dependent in any way upon any contract, agreement or understanding between the owner or Operator and the Guarantor.

2. Any claim against the owner or Operator for costs and damages arising under section 1002 OPA or section 107(a)(1) CERCLA, or both, the Acts may be brought directly against the Guarantor. In the event of such direct claim, the Guarantor shall be entitled to invoke only the rights and defenses specifically permitted by the respective Act to guarantors. The Guarantor's liability (1) per Vessel per incident under the Oil Pollution Act of 1990 shall not exceed the amount determined under section 1016(g) of that Act and (2) per vessel per release or threatened release under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, shall not exceed the amount determined under section 108(d)(1) of that Act.

3. The Guarantor's liability under this Guaranty shall attach only in relation to incidents, releases or threatened releases which give rise to claims under section 1002 OPA or section 107(a)(1) CERCLA, or both, against the owner or Operator in respect of any of the above-mentioned Vessels and which occur, on or after the effective date of this Guaranty and before the termination date of this Guaranty. Such termination date shall be 30 days after the date of receipt by the Center of written notice that the Guarantor has elected to terminate this Guaranty and has so notified the Operator. However, with respect to any Vessel which is carrying oil or hazardous substances in bulk as cargo that has been loaded before the above termination date, termination shall not take effect earlier than 30 days from receipt by the Center of the notice prescribed above and furthermore not until either (1) completion of discharge of such cargo, or (2) 60 days after the date of receipt by the Center of notice prescribed above, whichever date is earlier. Termination of this Guaranty shall not affect the liability of the Guarantor in connection with an incident, release or threatened release occurring prior to the date such termination becomes effective.

4. The Guarantor hereby designates

_____
(Name of Agent)
with offices at _____

_____

_____

as the Guarantor's agent in the United States for service of process for purposes of this Guaranty. If the designated agent cannot be served due to death, disability, or unavailability, the Director, National Pollution Funds Center, shall be the agent for service of process.

5. If more than one Guarantor joins in executing this Guaranty, such action shall constitute joint and several liability on the part of such Guarantors.

6. The definitions in 33 CFR part 130 apply to this Guaranty.

Effective Date: _____
(Month/Day/Year and Place of Execution)

_____
(Type Name of Guarantor)

_____
(Type Address of Guarantor)

_____

_____

(Signature)

_____
(Type Name and Title of Person Signing Above)

Guaranty No. _____

Applicable Amount Table

(I) Applicable Amount under section 1016 Oil Pollution Act:

(A) Tank Vessel—

(i) Over 300 gross tons[1] but not to exceed 3000 gross tons; the greater of $2,000,000 or $1200 per gross ton;

(ii) Over 3000 gross tons; the greater of $10,000,000 or $1200 per gross ton.

(B) Vessel other than a tank vessel—over 300 gross tons[1]; the greater of $500,000 or $600 per gross ton.

(II) Applicable amount under section 108, Comprehensive Environmental Response, Compensation, and Liability Act:

Vessel over 300 gross tons—the greater of $5,000,000 or $300 per gross ton.

(III) Total Applicable Amount=Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

CG-

Appendix G to Part 130—Applicable Amount Table; Department of Transportation U.S. Coast Guard

(I) Applicable Amount under section 1016 Oil Pollution Act:

(A) Tank Vessel—

(i) Over 300 gross tons [1] but not to exceed 3000 gross tons; the greater of $2,000,000 or $1200 per gross ton;

(ii) Over 3000 gross tons; the greater of $10,000,000 or $1200 per gross ton.

(B) Vessel other than a tank vessel—over 300 gross tons [1]; the greater of $500,000 or $600 per gross ton.

(II) Applicable amount under section 108, Comprehensive Environmental Response, Compensation, and Liability Act:

Vessel over 300 gross tons—the greater of $5,000,000 or $300 per gross ton.

(III) Total Applicable Amount=Maximum applicable amount calculated under (I) plus maximum applicable amount calculated under (II).

PART 131—[REMOVED]

2. Part 131, Financial Responsibility for Oil Pollution—Alaska Pipeline, is removed.

PART 132—[REMOVED]

3. Part 132, Financial Responsibility for Oil Pollution—Outer Continental Shelf, is removed.

PART 137—DEEPWATER PORT LIABILITY FUND

4. The authority citation for part 137 continues to read as follows:

Authority: 33 U.S.C. 1509(a), 1512(a), 1517(j)(1); 49 CFR 1.46.

Subpart D—[Removed and Reserved]

5. Subpart D, Vessel Financial Responsibility (§§ 137.301 through 137.305), is removed and reserved.

Dated: September 19,1991.

J.W. Kime,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 91-23061 Filed 9-25-91; 8:45 am]

BILLING CODE 4910-14-M

[1] This minimum gross ton limit does not apply to any vessel using the waters of the U.S. exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States.

[1] This minimum gross ton limit does not apply to any vessel using the waters of the U.S. exclusive economic zone to transship or lighter oil destined for a place subject to the jurisdiction of the United States.

federal register

Thursday
September 26, 1991

Part X

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 888

Low Income Housing, Housing Assistance Payments (Section 8); Fair Market Rent Schedules for Existing Housing, Loan Management and Property Disposition, Moderate Rehabilitation, and Housing Voucher Programs; Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 888

[Docket No. N-91-3245; FR-3011-N-03]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Rental Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Rental Voucher Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final fair market rents.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) periodically, but not less frequently than annually, to be effective on October 1 of each year. The Department published proposed FY 1991 FMRs for the Section 8 Rental Certificate Program on April 11, 1991 (56 FR 14732) and solicited public comments. Today's notice announces final FY 1992 FMR schedules for the Section 8 Rental Certificate Program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the Section 8 Rental Certificate Program (part 882, subpart F); the Section 8 Moderate Rehabilitation Program (part 882, subparts D and E); and Section 8 housing assisted under part 886, subparts A and C (Section 8 loan management and property disposition programs). FMRs are also used to determine payment standard schedules in the Rental Voucher Program.

EFFECTIVE DATE: The FMRs published in this notice are effective on October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Cecelia D. Livingston, Rental Assistance Division, Office of Elderly and Assisted Housing, telephone (202) 708-0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708-0577. (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs) (or payment standards based on FMRs in the Housing Voucher Program) established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually, to be effective on October 1 of each year. The FMRs must reflect changes based on the most recent available data, so FMRs will be current for the year in which they apply. The Department's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment, analyzing the public comment, and publishing final FMRs. (See 24 CFR 888.115). On April 11, 1991 (56 FR 14732), the Department proposed FMRs for Section 8 rental certificates for FY 1992. Today's notice contains an analysis and response to public comments and makes appropriate revisions to the proposed FMRs.

The FMRs for 1992 announced in this Notice govern the following Section 8 Housing Assistance Payments Programs: The Section 8 Rental Certificate Program under part 882 (subparts A and B), including space rentals by owners of manufactured homes (subpart F), the Moderate Rehabilitation Program under part 882 (subparts D and E), the Section 8 Housing Assistance Program for Projects with HUD-insured or HUD-held Mortgages under part 886 (subpart A), as well as for existing housing under the Section 8 Housing Assistance Program for the Disposition of HUD-owned Projects under part 886 (subpart C). In addition, FMRs are used to establish payment standards for the Rental Voucher Program.

Proposed Fair Market Rents

The proposed FY 1992 FMRs published on April 11, 1991, (56 FR 14732) reflected estimated rent levels projected forward to April 1, 1992. The criteria and methodology used by HUD in developing the proposed FMRs appear at 24 CFR Part 888, Subpart A, and have been in use since 1983.

The criteria used by HUD in developing FMRs are: (1) The 45th percentile rent (that is, the rent below which 45 percent of the standard quality rental housing units are distributed); (2) rents based on units occupied by recent movers (households who moved within two years before the date of the survey data used in these calculations); and (3) exclusion from the data based of public housing units and recently completed housing (units built within two years of the survey dates). (See 24 CFR 888.113.) The FMRs for manufactured home spaces are based on the 45th percentile rent for manufactured home spaces. (See 24 CFR 888.113(a).)

In establishing the proposed FMRs, HUD used the most accurate data available. Data used to compute the FY 1992 FMRs include the 1980 Census data, post-1980 American Housing Survey (AHS) data, and the statistically reliable area specific data submitted by public commenters.

The proposed FY 1992 FMRs were calculated by updating FY 1991 FMRs one additional year to April 1, 1992, based on the most recent CPI data available on average annual changes for rents and utilities. The proposed FY 1992 FMRs for manufactured home spaces were calculated by updating FY 1991 FMRs to April 1, 1992, using the most current average annual change in the CPI residential rent index (with heating costs included in the rent factored out).

Administrative Fees

The FMRs published for effect will be used to calculate the PHA ongoing administrative fee. For a PHA administering a Section 8 program in an area where the two-bedroom FMR has increased, the PHA's administrative fee will be adjusted as of October 1, 1991. For a PHA administering a Section 8 program in an area where the two-bedroom FMR is decreased, the PHA's administrative fee will be adjusted as of the first day of the PHA's fiscal year that begins after October 1, 1991.

Public Comments

HUD received 111 comments covering 73 FMR areas in response to the publication of its proposed FY-1992 FMRs. This total included 61 letters from individuals from the Pittsburgh area expressing their concerns about the proposed decrease in that area's FMRs. The final FMRs for Pittsburgh have been increased as a result of a correction of a calculation error related to use of a trending factor, which was discovered in evaluating the FMRs for the area. The Department also made the same correction for six other areas:

Cincinnati, OH PMSA
Denver, CO PMSA
Ft. Lauderdale, FL PMSA
Miami-Hialeah, FL PMSA
Pittsburgh, PA PMSA
New Orleans, LA MSA
San Antonio, TX MSA

This year's FMRs incorporated the results of the 1989 metropolitan area

AHSs, covering 12 FMR areas. One area—Phoenix, AZ—had a proposed decrease in its FRMs, which will be made final since no comments were received for this area. Four areas—Ft. Worth-Arlington, TX PMSA, Los Angeles-Long Beach, CA PMSA, Minneapolis-St. Paul, MN–WI MSA, and Washington, DC–MD–VA MSA—will receive catch-up increases that are larger than the CPI adjustments.

The Department evaluated all the comments carefully and has modified FMRs where the survey data were acceptable or where deficiencies could be corrected. Based on the evaluation of the comments, the FMRs for 21 areas are being revised, including increases for 18 areas and decreases for the three areas that had requested decreases. No. rental housing survey data were submitted for 30 FMR areas. The surveys submitted for 22 other FMR areas were not adequate to provide a basis for revising the FMRs.

Rental Housing Survey Instrument

Two years ago, the Department announced the availability of a FMR survey it had developed. This survey, which is based on a Random Digit Dialing (RDD) telephone, provides a statistically reliable means for obtaining FMR estimates. The RDD survey technique is based on a sampling procedure that uses computers to select a statistically random sample of rental housing, dial and keep track of the telephone numbers, and process and responses.

Because of its complexity and the large number of calls required, a survey contractor with specialized knowledge and equipment is required to conduct one of these surveys. To assist interested parties, the "PHA Guide to Conducting a Fair Market Rent (FMR) Telephone Survey" is available from HUD USER by calling 1–800–245–2691. This guide is intended for local governments or PHAs that believe their FMRs are too high, or too low, and wish to obtain the data needed to revise them. The information contained in the guide provides a full explanation of how to decide whether to use the survey and step-by-step instructions on how to proceed with the contract. Interested PHAs concerned about the accuracy of their FMRs may wish to begin now, since it takes about two to three months to receive the survey results.

The Department recommends the RDD survey as the preferred method for testing FMR accuracy for areas where there is a sufficient number of Section 8 units to justify the survey cost of approximately $15,000 to $20,000. HUD intends to use this technique in the future as an improved method for obtaining rent charge factors for the metropolitan and nonmetropolitan portions of the ten HUD Regions. In addition, several of RDD surveys will be conducted annually by HUD in selected areas identified as having potential FMR problems.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not charge the rent from that which would be charged if the unit were not in the Section 8 program.

This document does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the document indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR Part 888, are amended as follows:

Dated: September 19, 1991.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

Section 8 Fair Market Rent Schedules for Use In the Existing Housing Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Housing Voucher Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. FMRs for Existing Housing (Schedule B) are established for all Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties, and county equivalents in the United States, District of Columbia, Puerto Rico, the Virgin Island, and Guam. FMRs also are established for nonmetropolitan parts of counties in the New England states.

b. FMRs for Manufactured Home spaces in the Section 8 Certificate Program (Schedule D) are established for all MSAs, PMSAs, selected nonmetropolitan counties, and the residual nonmetropolitan portion of each State.

c. The current 339 MSAs and PMSAs are those established by the Office of Management and Budget effective in June 1986.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedules B and D are listed alphabetically by MSA–PMSA and nonmetropolitan county within each State.

b. The constituent counties (and New England towns and cities) included in each MSA and PMSA are listed immediately following the listings of the FMR dollar amounts. All of the constituent parts of an MSA that are in more than one State can be identified by consulting listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

BILLING CODE 4210–33–M

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A B A M A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anniston, AL MSA	251	304	358	450	503	Calhoun
Birmingham, AL MSA	291	355	417	521	583	Blount, Jefferson, St Clair, Shelby, Walker
Columbus, GA-AL MSA	259	312	370	463	522	Russell
Decatur, AL MSA	256	311	368	460	516	Lawrence, Morgan
Dothan, AL MSA	293	355	418	523	585	Dale, Houston
Florence, AL MSA	264	323	382	475	531	Colbert, Lauderdale
Gadsden, AL MSA	229	280	332	415	464	Etowah
Huntsville, AL MSA	296	358	421	528	592	Madison
Mobile, AL MSA	305	370	435	545	612	Baldwin, Mobile
Montgomery, AL MSA	269	329	387	485	543	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	283	344	406	507	570	Tuscaloosa

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barbour	212	257	304	380	426
Bullock	216	262	309	388	434
Chambers	210	255	301	377	421
Chilton	205	251	297	370	413
Clarke	229	280	332	415	464
Cleburne	210	255	301	377	421
Conecuh	229	280	332	415	464
Covington	212	257	304	380	426
Cullman	256	311	368	460	516
De Kalb	243	294	345	431	486
Fayette	205	251	297	370	413
Geneva	212	257	304	380	426
Hale	205	251	297	370	413
Jackson	243	294	345	431	486
Lee	262	319	377	472	529
Lowndes	216	262	309	388	434
Marengo	229	280	332	415	464
Marshall	225	274	322	401	449
Perry	229	280	332	415	464
Pike	229	279	331	412	462
Sumter	229	280	332	415	464
Tallapoosa	210	255	301	377	421
Wilcox	229	280	332	415	464

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bibb	205	251	297	370	413
Butler	220	267	315	395	442
Cherokee	210	255	301	377	421
Choctan	229	280	332	415	464
Clay	210	255	301	377	421
Coffee	278	336	396	496	555
Coosa	210	255	301	377	421
Crenshaw	216	262	309	388	434
Dallas	229	280	332	415	464
Escambia	194	239	278	349	391
Franklin	205	250	294	368	411
Greene	205	251	297	370	413
Henry	212	257	304	380	426
Lamar	205	251	297	370	413
Limestone	217	264	312	391	438
Macon	229	279	331	412	462
Marion	205	250	294	368	411
Monroe	229	280	332	415	464
Pickens	205	251	297	370	413
Randolph	210	255	301	377	421
Talladega	210	255	301	377	421
Washington	229	280	332	415	464
Winston	205	250	294	368	411

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A S K A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anchorage, AK MSA	476	578	680	850	952	Anchorage

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aleutian I	473	574	676	846	948
Bristol Bay	473	574	676	846	948
Fairbanks No. Star	449	546	664	830	930
Juneau	547	664	850	1010	1131
Ketchikan Gateway	573	696	819	1025	1147
Kodiak Island	635	770	907	1134	1271
Nome	473	574	676	846	948
Pr Wales-Outer Ket	473	574	676	846	948
Skgwy-Ykutt-Angoon	473	574	676	846	948
Valdez-Cordova	597	724	853	1066	1194
Wrangellpetersburg	531	645	759	949	1062

NONMETROPOLITAN COUNTIES	FF	1 BR	2 BR	3 BR	4 BR
Bethel	73	574	676	846	948
Dillingham	473	574	676	846	948
Haines	473	574	676	846	948
Kenai-Penin	137	530	624	781	875
Kobuk	173	574	676	846	948
Matanuska-Susitna	402	488	574	718	804
North Slope	473	574	676	846	948
Sitka	531	645	759	949	1062
Southeastfairbanks	389	473	556	696	781
Wade Hampton	473	574	676	846	948
Ykn-Koykk	473	574	676	846	948

A R I Z O N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Phoenix, AZ MSA	381	462	544	680	762	Maricopa
Tucson, AZ MSA	410	500	588	737	825	Pima
Yuma, AZ MSA	386	469	554	692	776	Yuma

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Apache	299	364	429	536	601
Coconino	381	462	544	682	764
Graham	305	372	436	548	614
Lapaz	386	469	554	692	776
Nauajo	299	364	429	536	601
Santa Cruz	305	372	436	548	614

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Cochise	305	372	436	548	614
Gila	307	375	444	554	619
Greenlee	305	372	436	548	614
Mohave	386	469	554	692	776
Pinal	307	375	444	554	619
Yavapai	381	462	544	682	764

A R K A N S A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Fayetteville-Springdale, AR MSA	276	334	394	492	552	Washington
Fort Smith, AR-OK MSA	265	324	382	480	537	Crawford, Sebastian
Little Rock-North Little Rock, AR MSA	318	386	454	570	638	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	308	373	439	547	612	Crittenden
Pine Bluff, AR MSA	262	321	379	476	531	Jefferson
Texarkana, TX-Texarkana, AR MSA	263	320	378	475	530	Miller

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A R K A N S A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Arkansas	223	270	320	400	449
Baxter	253	308	365	455	512
Boone	253	308	365	455	512
Calhoun	214	262	307	386	431
Chicot	213	257	304	381	428
Clay	239	290	340	427	479
Cleveland	220	267	316	395	442
Conway	219	265	315	394	440
Cross	224	276	324	401	449
Desha	213	257	304	381	428
Franklin	198	241	284	355	397
Garland	233	286	335	420	472
Greene	239	290	340	427	479
Hotspring	233	286	335	420	472
Independence	249	303	358	447	500
Jackson	249	303	358	447	500
Lafayette	218	262	311	391	438
Lee	224	276	324	401	449
Little River	218	262	311	391	438
Madison	253	308	365	455	512
Mississippi	257	315	370	462	520
Montgomery	233	286	335	420	472
Newton	253	308	365	455	512
Perry	219	265	315	394	440
Pike	233	286	335	420	472
Polk	238	288	338	423	476
Prairie	191	232	276	344	385
St Francis	224	276	324	401	449
Searcy	253	308	365	455	512
Sharp	249	303	358	447	500
Union	214	262	307	386	431
White	249	303	358	447	500
Yell	219	265	315	394	440

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashley	213	257	304	381	428
Benton	262	319	372	458	512
Bradley	213	257	304	381	428
Carroll	253	308	365	455	512
Clark	233	286	335	420	472
Cleburne	249	303	358	447	500
Columbia	214	262	307	386	431
Craighead	280	338	399	498	560
Dallas	214	262	307	386	431
Drew	236	286	337	453	474
Fulton	249	303	358	447	500
Grant	220	267	316	395	442
Hempstead	218	262	311	391	438
Howard	218	262	311	391	438
Izard	249	303	358	447	500
Johnson	219	265	315	394	440
Lawrence	239	290	340	427	479
Lincoln	213	257	304	381	428
Logan	198	241	284	355	397
Marion	253	308	365	455	512
Monroe	191	232	276	344	385
Nevada	218	262	311	391	438
Ouachita	214	259	305	383	431
Phillips	224	276	324	401	449
Poinsett	239	290	340	427	479
Pope	219	265	315	394	440
Randolph	239	290	340	427	479
Scott	198	241	284	355	397
Sevier	218	262	311	391	438
Stone	249	303	358	447	500
Van Buren	249	303	358	447	500
Woodruff	249	303	358	447	500

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

C A L I F O R N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anaheim-Santa Ana, CA PMSA	630	764	900	1125	1261	Orange
Bakersfield, CA MSA	420	510	601	751	842	Kern
Chico, CA MSA	368	448	528	659	739	Butte
Fresno, CA MSA	383	466	549	685	769	Fresno
Los Angeles-Long Beach, CA PMSA	562	683	804	1005	1126	Los Angeles
Merced, CA MSA	361	438	516	665	754	Merced
Modesto, CA MSA	402	489	578	723	809	Stanislaus
Oakland, CA PMSA	558	678	798	998	1118	Alameda, Contra Costa
Oxnard-Ventura, CA PMSA	537	654	769	961	1078	Ventura
Redding, CA MSA	383	466	549	685	769	Shasta
Riverside-San Bernardino, CA PMSA	456	538	628	813	915	Riverside, San Bernardino
Sacramento, CA MSA	405	483	578	840	892	El Dorado, Placer, Sacramento, Yolo
Salinas-Seaside-Monterey, CA MSA	460	559	656	823	922	Monterey
San Diego, CA MSA	494	606	711	891	997	San Diego
San Francisco, CA PMSA	669	811	962	1197	1341	Marin, San Francisco, San Mateo
San Jose, CA PMSA	617	749	883	1103	1236	Santa Clara
Santa Barbara-Santa Maria-Lompoc, CA MSA	519	631	744	932	1042	Santa Barbara
Santa Cruz, CA PMSA	598	726	857	1071	1199	Santa Cruz
Santa Rosa-Petaluma, CA PMSA	526	638	753	943	1056	Sonoma
Stockton, CA MSA	356	430	506	648	756	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	488	559	657	949	1023	Napa, Solano
Visalia-Tulare-Porterville, CA MSA	357	435	512	743	813	Tulare
Yuba City, CA MSA	315	385	453	597	670	Sutter, Yuba

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alpine	420	510	601	751	842
Calaveras	420	510	601	751	842
Del Norte	383	466	549	685	769
Humboldt	395	480	565	707	794
Inyo	420	510	601	751	842
Lake	383	466	549	685	769
Madera	346	421	495	623	695
Mendocino	383	466	594	750	769
Mono	420	510	601	751	842
Plumas	351	426	502	627	705
San Luis Obispo	475	578	681	852	955
Siskiyou	351	426	502	627	705
Trinity	383	466	549	685	769

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Amador	420	510	601	751	842
Colusa	316	386	455	572	641
Glenn	316	386	455	572	641
Imperial	398	484	570	713	798
Kings	346	421	495	620	695
Lassen	351	426	502	627	705
Mariposa	420	510	601	751	842
Modoc	351	426	502	627	705
Nevada	470	574	674	843	943
San Benito	392	477	601	772	867
Sierra	470	574	674	843	943
Tehama	351	426	502	627	705
Tuolumne	420	510	601	751	842

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C O L O R A D O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Boulder-Longmont, CO PMSA	408	496	583	729	816	Boulder
Colorado Springs, CO MSA	341	413	487	610	683	El Paso
Denver, CO PMSA	354	430	506	632	708	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	392	477	561	701	787	Larimer
Greeley, CO MSA	340	411	484	608	681	Weld
Pueblo, CO MSA	338	409	482	604	678	Pueblo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alamosa	338	409	482	604	678
Baca	295	355	413	517	580
Chaffee	375	454	535	670	752
Clear Creek	375	454	535	670	752
Costilla	338	409	482	604	678
Custer	375	454	535	670	752
Delores	338	409	482	604	678
Elbert	288	351	413	517	580
Garfield	425	516	609	762	853
Grand	447	541	637	797	894
Hinsdale	447	541	637	797	894
Jackson	447	541	637	797	894
Kit Carson	288	351	413	517	580
La Plata	376	451	532	665	746
Lincoln	295	355	413	517	580
Mesa	425	516	609	762	853
Moffat	425	516	609	762	853
Montrose	447	541	637	797	894
Otero	295	355	413	517	580
Park	375	454	535	670	752
Pitkin	447	541	637	797	894
Rio Blanco	425	516	609	762	853
Routt	447	541	637	797	894
San Juan	338	409	482	604	678
Sedgwick	288	351	413	517	580
Teller	375	454	535	670	752
Yuma	288	351	413	517	580

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Archuleta	338	409	482	604	678
Bent	295	355	413	517	580
Cheyenne	288	351	413	517	580
Conejos	338	409	482	604	678
Crowley	295	355	413	517	580
Delta	447	541	637	797	894
Eagle	447	541	637	797	894
Fremont	375	454	535	670	752
Gilpin	375	454	535	670	752
Gunnison	447	541	637	797	894
Huerfano	338	409	482	604	678
Kiowa	295	355	413	517	580
Lake	375	454	535	670	752
Las Animas	338	409	482	604	678
Logan	288	351	413	517	580
Mineral	338	409	482	604	678
Montezuma	338	409	482	604	678
Morgan	288	351	413	517	580
Ouray	447	541	637	797	894
Phillips	288	351	413	517	580
Prowers	295	355	413	517	580
Rio Grande	338	409	482	604	678
Saguache	338	409	482	604	678
San Miguel	447	541	637	797	894
Summit	447	541	637	797	894
Washington	288	351	413	517	580

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

CONNECTICUT

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Bridgeport-Milford, CT PMSA	493	599	707	882	990	Fairfield county towns of Bridgeport, Easton, Fairfield Monroe, Shelton, Stratford, Trumbull New Haven county towns of Ansonia, Beacon Falls, Derby Milford, Oxford, Seymour
Bristol, CT PMSA	407	494	582	729	817	Hartford county towns of Bristol, Burlington Litchfield county towns of Plymouth
Danbury, CT PMSA	534	651	765	958	1075	Fairfield county towns of Bethel, Brookfield, Danbury New Fairfield, Newtown, Redding, Ridgefield, Sherman Litchfield county towns of Bridgewater, New Milford
Hartford, CT PMSA	490	597	698	880	981	Hartford county towns of Avon, Bloomfield, Canton East Granby, East Hartford, East Windsor, Enfield Farmington, Glastonbury, Granby, Hartford, Manchester Marlborough, Newington, Rocky Hill, Simsbury South Windsor, Suffield, West Hartford, Wethersfield Windsor, Windsor Locks Litchfield county towns of Barkhamsted, New Hartford Middlesex county towns of East Haddam New London county towns of Colchester Tolland county towns of Andover, Bolton, Columbia Coventry, Ellington, Hebron, Somers, Stafford, Tolland Vernon, Willington
Middletown, CT PMSA	412	501	592	741	830	Middlesex county towns of Cromwell, Durham, East Hampton Haddam, Middlefield, Middletown, Portland
New Britain, CT PMSA	436	530	624	781	876	Hartford county towns of Berlin, New Britain, Plainville Southington
New Haven-Meriden, CT MSA	528	642	757	948	1060	Middlesex county towns of Clinton, Killingworth New Haven county towns of Bethany, Branford, Cheshire East Haven, Guilford, Hamden, Madison, Meriden New Haven, North Branford, North Haven, Orange Wallingford, West Haven, Woodbridge
New London-Norwich, CT-RI MSA	469	571	670	838	940	New London county towns of Bozrah, East Lyme, Franklin Griswold, Groton, Ledyard, Lisbon, Montville, New London North Stonington, Norwich, Old Lyme, Preston, Salem Sprague, Stonington, Waterford Windham county towns of Canterbury
Norwalk, CT PMSA	569	691	814	1017	1141	Fairfield county towns of Norwalk, Weston, Westport Wilton
Stamford, CT PMSA	686	834	982	1228	1374	Fairfield county towns of Darien, Greenwich, New Canaan Stamford
Waterbury, CT MSA	425	515	607	759	851	Litchfield county towns of Bethlehem, Thomaston Watertown, Woodbury New Haven county towns of Middlebury, Naugatuck, Prospect Southbury, Waterbury Wolcott

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR

091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C O N N E C T I C U T continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	407	494	582	729	817	Hartland
Litchfield	451	548	644	807	904	Canaan, Colebrook, Cornwall, Goshen, Harwinton, Kent Litchfield, Morris, Norfolk, North Canaan, Roxbury Salisbury, Sharon, Torrington, Warren, Washington Winchester
Middlesex	506	613	721	902	1011	Chester, Deep River, Essex, Old Saybrook, Westbrook
New London	360	439	517	648	727	Lebanon, Lyme, Voluntown
Tolland	489	594	698	875	980	Mansfield, Union
Windham	431	524	618	773	867	Ashford, Brooklyn, Chaplin, Eastford, Hampton, Killingly Plainfield, Pomfret, Putnam, Scotland, Sterling Thompson, Windham, Woodstock

D E L A W A R E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Wilmington, DE-NJ-MD PMSA	437	522	622	778	925	New Castle

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Kent	373	452	532	665	745
Sussex	373	452	532	665	745

D I S T . O F C O L U M B I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Washington, DC-MD-VA MSA	580	705	830	1037	1161	Washington

F L O R I D A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bradenton, FL MSA	370	451	531	664	744	Manatee
Daytona Beach, FL MSA	359	435	512	641	719	Volusia
Fort Lauderdale-Hollywood-Pompano Beach, FL PMSA	438	532	627	783	877	Broward
Fort Myers-Cape Coral, FL MSA	381	462	544	683	765	Lee
Fort Pierce, FL MSA	381	462	544	683	765	Martin, St Lucie
Fort Walton Beach, FL MSA	254	308	363	455	509	Okaloosa
Gainesville, FL MSA	322	392	461	578	646	Alachua, Bradford
Jacksonville, FL MSA	337	409	484	604	678	Clay, Duval, Nassau, St Johns
Lakeland-Winter Haven, FL MSA	303	370	436	545	611	Polk
Melbourne-Titusville-Palm Bay, FL MSA	348	418	493	617	692	Brevard
Miami-Hialeah, FL PMSA	417	507	597	746	835	Dade
Naples, FL MSA	391	475	559	700	784	Collier

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

F L O R I D A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Ocala, FL MSA	303	391	433	541	606	Marion
Orlando, FL MSA	372	454	534	649	726	Orange, Osceola, Seminole
Panama City, FL MSA	269	329	388	486	542	Bay
Pensacola, FL MSA	301	368	433	541	606	Escambia, Santa Rosa
Sarasota, FL MSA	401	488	575	718	806	Sarasota
Tallahassee, FL MSA	318	386	455	570	637	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	363	441	520	648	727	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton-Delray Beach, FL MSA	389	464	541	662	729	Palm Beach

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Baker	246	297	349	438	492
Charlotte	368	449	528	659	740
Columbia	252	306	360	451	505
Dixie	224	276	324	405	455
Franklin	208	252	296	371	416
Glades	368	449	528	659	740
Hamilton	224	276	324	405	455
Hendry	368	449	528	659	740
Holmes	242	292	345	433	485
Jackson	216	261	308	387	434
Lafayette	224	276	324	405	455
Levy	281	342	402	503	564
Madison	224	276	324	405	455
Okeechobee	263	321	378	474	531
Sumter	281	340	402	503	564
Taylor	224	276	324	405	455
Wakulla	267	324	381	477	535
Washington	242	294	346	435	486

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Calhoun	208	252	296	371	416
Citrus	281	340	402	503	564
De Soto	263	321	378	474	531
Flagler	284	343	405	507	570
Gilchrist	224	276	324	405	455
Gulf	208	252	296	371	416
Hardee	263	321	378	474	531
Highlands	263	321	378	474	531
Indian River	381	462	544	683	765
Jefferson	208	252	296	371	416
Lake	296	360	422	530	595
Liberty	208	252	296	371	416
Monroe	433	525	695	832	903
Putnam	284	343	405	507	570
Suwannee	224	276	324	405	455
Union	224	276	324	405	455
Walton	283	342	404	506	568

G E O R G I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albany, GA MSA	279	337	399	499	559	Dougherty, Lee
Athens, GA MSA	288	351	413	517	579	Clarke, Jackson, Madison, Oconee
Atlanta, GA MSA	402	489	576	720	807	Barrow, Butts, Cherokee, Clayton, Cobb, Coweta, De Kalb Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry Newton, Paulding, Rockdale, Spalding, Walton
Augusta, GA-SC MSA	293	355	413	517	579	Columbia, Mcduffie, Richmond
Chattanooga, TN-GA MSA	312	380	448	560	630	Catoosa, Dade, Walker
Columbus, GA-AL MSA	259	312	370	463	522	Chattahoochee, Columbus

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

G E O R G I A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Macon-Warner Robins, GA MSA	289	355	418	522	581	Bibb, Houston, Jones, Peach
Savannah, GA MSA	293	358	421	526	590	Chatham, Effingham

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Appling	241	292	345	431	484
Bacon	225	274	322	404	454
Baldwin	228	279	328	410	460
Barton	244	297	350	438	492
Berrien	239	289	340	427	478
Brantley	225	274	322	404	454
Bryan	278	322	381	477	535
Burke	229	280	329	413	462
Camden	265	322	381	477	535
Carroll	278	335	395	494	552
Chattooga	244	297	350	438	492
Clinch	225	274	322	404	454
Colquitt	231	283	332	416	465
Crawford	194	238	279	349	390
Dawson	219	270	315	391	435
Dodge	233	286	332	417	460
Early	233	286	332	417	465
Elbert	221	269	317	398	446
Evans	241	292	345	431	484
Floyd	244	297	350	438	492
Gilmer	260	317	372	466	524
Glynn	265	322	381	477	535
Grady	233	286	332	417	465
Habersham	243	294	348	435	488
Hancock	233	286	332	417	460
Harris	238	289	335	418	465
Heard	257	313	369	462	518
Jasper	233	286	332	417	460
Jefferson	229	280	329	413	462
Johnson	233	286	332	417	460
Lanier	239	289	340	427	478
Liberty	265	322	381	477	535
Long	265	322	381	477	535
Lumpkin	219	270	315	391	435
Macon	233	286	332	417	465
Meriwether	257	313	369	462	518

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Atkinson	225	274	322	404	454
Baker	233	286	332	417	465
Banks	216	263	310	388	435
Ben Hill	239	289	340	427	478
Bleckley	233	286	332	417	460
Brooks	239	289	340	427	478
Bulloch	241	292	345	431	484
Calhoun	233	286	332	417	465
Candler	241	292	345	431	484
Charlton	233	285	332	409	454
Clay	233	286	332	417	465
Coffee	225	274	322	404	454
Cook	239	289	340	427	478
Crisp	231	283	332	416	465
Decatur	233	286	332	417	465
Dooly	233	286	332	417	465
Echols	239	289	340	427	478
Emanuel	229	280	329	413	462
Fannin	260	317	372	466	524
Franklin	216	263	310	388	435
Glascock	229	280	329	413	462
Gordon	244	297	350	438	492
Greene	219	265	313	392	439
Hall	312	375	447	557	628
Haralson	244	297	350	438	492
Hart	216	263	310	388	435
Irwin	239	289	340	427	478
Jeff Davis	241	292	345	431	484
Jenkins	229	280	329	413	462
Lamar	215	260	308	386	431
Laurens	228	279	328	410	460
Lincoln	229	280	329	413	462
Lowndes	239	289	340	427	478
Mcintosh	265	322	381	477	535
Marion	238	289	335	418	465
Miller	233	286	332	417	465

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

G E O R G I A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Mitchell	233	286	332	417	465
Montgomery	238	290	340	420	465
Murray	260	317	372	466	524
Pickens	260	317	372	466	524
Pike	215	260	308	386	431
Pulaski	233	286	332	417	460
Quitman	231	283	332	416	465
Randolph	233	286	332	417	465
Screven	238	290	340	420	465
Stephens	254	312	365	458	510
Sumter	259	318	375	468	527
Taliaferro	229	280	329	413	462
Taylor	233	286	332	417	465
Terrell	233	286	332	417	465
Tift	239	289	340	427	478
Towns	219	270	315	391	435
Troup	263	318	373	465	520
Twiggs	194	238	279	349	390
Upson	215	260	308	386	431
Warren	229	280	329	413	462
Wayne	241	292	345	431	484
Wheeler	233	286	332	417	460
Whitfield	260	317	372	466	524
Wilkes	229	280	329	413	462
Worth	233	286	332	417	465

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Monroe	194	238	279	349	390
Morgan	219	265	313	392	439
Oglethorpe	219	265	313	392	439
Pierce	225	274	322	404	454
Polk	244	299	350	438	492
Putnam	233	286	332	417	460
Rabun	219	270	315	391	435
Schley	238	289	335	418	465
Seminole	233	286	332	417	465
Stewart	238	289	335	418	465
Talbot	231	283	332	416	465
Tattnall	241	292	345	431	484
Telfair	233	286	332	417	460
Thomas	271	329	388	488	545
Toombs	241	292	345	431	484
Treutlen	233	286	332	417	460
Turner	239	289	340	427	478
Union	219	270	315	391	435
Ware	225	274	322	404	454
Washington	233	286	332	417	460
Webster	238	289	335	418	465
White	219	270	315	391	435
Wilcox	233	286	332	417	460
Wilkinson	233	286	332	417	460

H A W A I I

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Honolulu, HI MSA	595	723	851	1071	1200	Honolulu

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hawaii	490	594	698	876	980
Maui	578	702	826	1034	1157
Kauai	610	744	874	1093	1224

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I D A H O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Boise City, ID MSA	395	480	566	708	793	Ada

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	307	375	441	550	618
Bear Lake	319	387	457	573	642
Bingham	321	392	457	573	642
Boise	307	375	441	550	618
Bonneville	345	418	494	617	692
Butte	345	418	494	617	692
Canyon	307	375	441	550	618
Cassia	327	397	468	585	657
Clearwater	319	387	457	573	642
Elmore	307	375	441	550	618
Fremont	345	418	494	617	692
Gooding	327	397	468	585	657
Jefferson	345	418	494	617	692
Kootenai	319	387	457	573	642
Lemhi	345	418	494	617	692
Lincoln	327	397	468	585	657
Minidoka	327	397	468	585	657
Oneida	319	387	457	573	642
Payette	307	375	441	550	618
Shoshone	319	387	457	573	642
Twin Falls	327	397	468	585	657
Washington	307	375	441	550	618

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bannock	321	392	457	573	642
Benewah	319	387	457	573	642
Blaine	327	397	468	585	657
Bonner	319	387	457	573	642
Boundary	319	387	457	573	642
Camas	327	397	468	585	657
Caribou	321	392	457	573	642
Clark	345	418	494	617	692
Custer	345	418	494	617	692
Franklin	319	387	457	573	642
Gem	307	375	441	550	618
Idaho	319	387	457	573	642
Jerome	327	397	468	585	657
Latah	319	387	457	573	642
Lewis	319	387	457	573	642
Madison	345	418	494	617	692
Nez Perce	319	387	457	573	642
Owyhee	307	375	441	550	618
Power	321	392	457	573	642
Teton	345	418	494	617	692
Valley	307	375	441	550	618

I L L I N O I S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Aurora-Elgin, IL PMSA	470	573	676	844	948	Kane, Kendall
Bloomington-Normal, IL MSA	334	408	479	598	671	Mclean
Champaign-Urbana-Rantoul, IL MSA	324	393	464	583	651	Champaign
Chicago, IL PMSA	460	567	663	834	934	Cook, Du Page, Mchenry
Davenport-Rock Island-Moline, IA-IL MSA	356	433	510	637	713	Henry, Rock Island
Decatur, IL MSA	324	393	464	583	651	Macon
Joliet, IL PMSA	475	578	684	854	960	Grundy, Will
Kankakee, IL MSA	321	389	459	575	645	Kankakee
Lake County, IL PMSA	488	593	695	874	979	Lake
Peoria, IL MSA	377	457	538	674	754	Peoria, Tazewell, Woodford

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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I L L I N O I S continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rockford, IL MSA	341	416	489	611	684	Boone, Winnebago
St. Louis, MO-IL MSA	348	422	498	622	697	Clinton, Jersey, Madison, Monroe, St Clair
Springfield, IL MSA	342	417	490	613	686	Menard, Sangamon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	254	308	363	455	510
Bond	278	341	400	502	561
Bureau	309	378	446	556	623
Carroll	287	349	413	516	577
Christian	294	356	420	526	590
Clay	262	318	377	470	527
Cranford	262	318	377	470	527
De Kalb	374	454	536	669	749
Douglas	278	341	400	502	561
Edwards	254	308	363	455	510
Fayette	262	318	377	470	527
Franklin	297	359	425	534	597
Gallatin	235	285	338	421	472
Hamilton	254	308	363	455	510
Hardin	235	285	338	421	472
Iroquois	292	353	417	523	586
Jasper	262	318	377	470	527
Jo Daviess	287	349	413	516	577
Knox	302	367	429	540	606
Lawrence	262	318	377	470	527
Livingston	292	353	417	523	586
Mcdonough	278	340	395	493	549
Marion	262	318	377	470	527
Mason	292	350	415	513	571
Mercer	272	331	389	489	549
Morgan	292	350	415	513	571
Ogle	287	349	413	516	577
Piatt	278	341	400	502	561
Pope	235	285	338	421	472
Putnam	309	378	446	556	623
Richland	262	318	377	470	527
Schuyler	254	308	363	455	510
Shelby	294	356	420	526	590
Stephenson	287	349	413	516	577
Vermilion	292	353	417	523	586

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alexander	235	285	338	421	472
Brown	254	308	363	455	510
Calhoun	284	346	409	509	571
Cass	292	350	415	513	571
Clark	278	341	400	502	561
Coles	278	341	400	502	561
Cumberland	278	341	400	502	561
De Witt	278	341	400	502	561
Edgar	278	341	400	502	561
Effingham	262	318	377	470	527
Ford	292	353	417	523	586
Fulton	309	378	446	556	623
Greene	284	346	409	509	571
Hancock	272	331	389	489	549
Henderson	272	331	389	489	549
Jackson	297	359	425	534	597
Jefferson	286	347	414	516	575
Johnson	235	285	338	421	472
La Salle	351	426	503	630	706
Lee	351	426	503	630	706
Logan	292	350	415	513	571
Macoupin	294	356	420	526	590
Marshall	309	378	446	556	623
Massac	235	285	338	421	472
Montgomery	294	356	420	526	590
Moultrie	294	356	420	526	590
Perry	278	341	400	502	561
Pike	254	308	363	455	510
Pulaski	235	285	338	421	472
Randolph	278	341	400	502	561
Saline	235	285	338	421	472
Scott	292	350	415	513	571
Stark	309	378	446	556	623
Union	235	285	338	421	472
Wabash	254	308	363	455	510

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

I L L I N O I S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Warren	278	340	395	493	549
Wayne	254	308	363	455	510
Whiteside	351	426	503	630	706
Washington	278	341	400	502	561
White	254	308	363	455	510
Williamson	297	359	425	534	597

I N D I A N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anderson, IN MSA	277	337	396	497	558	Madison
Bloomington, IN MSA	299	364	429	537	601	Monroe
Cincinnati, OH-KY-IN PMSA	330	401	472	590	660	Dearborn
Elkhart-Goshen, IN MSA	293	355	418	524	588	Elkhart
Evansville-Henderson, IN-KY MSA	307	366	430	539	603	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	307	371	433	543	603	Allen, De Kalb, Whitley
Gary-Hammond, IN PMSA	376	456	538	673	755	Lake, Porter
Indianapolis, IN MSA	346	421	495	619	693	Boone, Hamilton, Hancock, Hendricks, Johnson, Marion Morgan, Shelby
Kokomo, IN MSA	304	372	436	547	613	Howard, Tipton
Lafayette-West Lafayette, IN MSA	323	393	462	577	648	Tippecanoe
Louisville, KY-IN MSA	279	338	397	495	555	Clark, Floyd, Harrison
Muncie, IN MSA	265	320	377	468	524	Delaware
South Bend-Mishawaka, IN MSA	301	365	426	529	590	St Joseph
Terre Haute, IN MSA	273	333	389	484	537	Clay, Vigo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	271	330	384	481	539
Benton	260	317	374	468	524
Brown	306	374	440	553	619
Cass	269	329	387	484	542
Crawford	224	273	321	404	454
Decatur	306	374	440	553	619
Fayette	264	319	374	468	524
Franklin	264	319	374	468	524
Gibson	293	355	418	524	588
Greene	263	306	364	456	509
Huntington	268	328	384	481	539
Jasper	271	331	389	488	546
Jefferson	293	355	418	524	588
Knox	260	313	364	456	509
Lagrange	279	338	398	499	560
Lawrence	282	344	405	507	567
Bartholomew	306	374	440	553	619
Blackford	246	299	352	440	495
Carroll	260	317	374	468	524
Clinton	260	317	374	468	524
Daviess	253	306	364	456	509
Dubois	224	273	321	404	454
Fountain	260	317	374	468	524
Fulton	261	316	372	469	524
Grant	246	299	352	440	495
Henry	246	299	352	440	495
Jackson	306	374	440	553	619
Jay	246	299	352	440	495
Jennings	306	374	440	553	619
Kosciusko	283	343	403	497	556
La Porte	296	360	423	529	595
Marshall	271	331	389	488	546

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

I N D I A N A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Martin	253	306	364	456	509
Montgomery	260	317	374	468	524
Noble	278	338	398	499	560
Orange	224	273	321	404	454
Parke	260	317	374	468	524
Pike	293	355	418	524	588
Putnam	294	358	421	526	589
Ripley	293	355	418	524	588
Scott	279	339	400	501	562
Starke	271	331	389	488	546
Sullivan	260	317	374	468	524
Union	264	319	374	468	524
Wabash	252	305	361	454	507
Washington	301	367	432	541	606
Wells	275	331	385	484	539

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Miami	269	329	387	484	542
Newton	271	331	389	488	546
Ohio	293	355	418	524	588
Owen	298	363	426	534	599
Perry	224	273	321	404	454
Pulaski	271	331	389	488	546
Randolph	246	299	352	440	495
Rush	260	317	374	468	524
Spencer	224	273	321	404	454
Steuben	278	338	398	499	560
Switzerland	293	355	418	524	588
Vermillion	269	328	382	475	527
Warren	260	317	374	468	524
Wayne	265	320	377	468	524
White	260	317	374	468	524

I O W A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Cedar Rapids, IA MSA	347	419	493	619	695	Linn
Davenport-Rock Island-Moline, IA-IL MSA	356	433	510	637	713	Scott
Des Moines, IA MSA	343	418	492	618	692	Dallas, Polk, Warren
Dubuque, IA MSA	320	387	456	572	640	Dubuque
Iowa City, IA MSA	362	442	519	650	728	Johnson
Omaha, NE-IA MSA	315	382	449	562	633	Pottawattamie
Sioux City, IA-NE MSA	311	379	446	557	625	Woodbury
Waterloo-Cedar Falls, IA MSA	348	420	495	621	697	Black Hawk, Bremer

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	261	319	374	471	525
Allamakee	276	335	396	495	555
Audubon	277	337	399	497	557
Boone	317	383	451	565	634
Buena Vista	272	329	389	486	547
Calhoun	277	337	399	497	557
Cass	285	347	407	510	572
Cerro Gordo	274	333	393	491	551
Chickasaw	276	335	396	495	555
Clay	272	329	389	486	547
Clinton	309	374	443	553	621

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	261	319	374	471	525
Appanoose	261	319	374	471	525
Benton	271	328	387	485	544
Buchanan	276	335	396	495	555
Butler	276	335	396	495	555
Carroll	277	337	399	497	557
Cedar	309	374	443	553	621
Cherokee	277	337	399	497	557
Clarke	261	319	374	471	525
Clayton	276	335	396	495	555
Crawford	277	337	399	497	557

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Davis	261	319	374	471	525
Delaware	309	374	443	553	621
Dickinson	272	329	389	486	547
Fayette	276	335	396	495	555
Franklin	274	333	393	491	551
Greene	277	337	399	497	557
Guthrie	277	337	399	497	557
Hancock	274	333	393	491	551
Harrison	285	347	407	510	572
Howard	276	335	396	495	555
Ida	277	337	399	497	557
Jackson	309	374	443	553	621
Jefferson	289	352	413	518	581
Keokuk	272	329	389	486	546
Lee	290	354	416	520	584
Lucas	261	319	374	471	525
Madison	292	357	419	524	588
Marion	292	357	419	524	588
Mills	285	347	407	510	572
Monona	277	337	399	497	557
Montgomery	285	347	407	510	572
O Brien	272	329	389	486	547
Page	285	347	407	510	572
Plymouth	277	337	399	497	557
Poweshiek	288	351	412	516	580
Sac	277	337	399	497	557
Sioux	272	329	389	486	547
Tama	288	351	412	516	580
Union	261	319	374	471	525
Wapello	309	373	442	552	619
Wayne	261	319	374	471	525
Winnebago	274	333	393	491	551
Worth	274	333	393	491	551

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Decatur	261	319	374	471	525
Des Moines	290	354	416	520	584
Emmet	272	329	389	486	547
Floyd	274	333	393	491	551
Fremont	285	347	407	510	572
Grundy	276	335	396	495	555
Hamilton	277	337	399	497	557
Hardin	288	351	412	516	580
Henry	290	354	416	520	584
Humboldt	277	337	399	497	557
Iowa	271	328	387	485	544
Jasper	292	357	419	524	588
Jones	271	328	387	485	544
Kossuth	274	333	393	491	551
Louisa	290	354	416	520	584
Lyon	272	329	389	486	547
Mahaska	261	319	374	471	525
Marshall	288	351	412	516	580
Mitchell	274	333	393	491	551
Monroe	261	319	374	471	525
Muscatine	290	354	416	520	584
Osceola	272	329	389	486	547
Palo Alto	272	329	389	486	547
Pocahontas	277	337	399	497	557
Ringgold	261	319	374	471	525
Shelby	285	347	407	510	572
Story	317	383	451	565	634
Taylor	261	319	374	471	525
Van Buren	261	319	374	471	525
Washington	271	328	387	485	544
Webster	277	337	399	497	557
Winneshiek	276	335	396	495	555
Wright	277	337	399	497	557

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

K A N S A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Kansas City, MO-KS MSA	316	384	451	564	633	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	349	423	499	623	700	Douglas
Topeka, KS MSA	316	385	451	568	634	Shawnee
Wichita, KS MSA	336	409	486	606	675	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	220	267	315	393	443
Atchison	254	308	363	455	510
Barton	255	310	366	457	512
Brown	254	308	363	455	510
Chautauqua	220	267	315	393	443
Cheyenne	222	270	318	399	447
Clay	277	338	399	499	557
Coffey	277	338	399	499	557
Cowley	220	267	315	393	443
Decatur	222	270	318	399	447
Doniphan	254	308	363	455	510
Elk	220	267	315	393	443
Ellsworth	275	335	394	495	553
Ford	261	318	374	470	526
Geary	277	338	399	499	557
Graham	222	270	318	399	447
Gray	261	318	374	470	526
Greenwood	277	338	399	499	557
Harper	255	310	366	457	512
Hodgeman	261	318	374	470	526
Jefferson	241	293	346	430	484
Kearny	261	318	374	470	526
Kiowa	255	310	366	457	512
Lane	261	318	374	470	526
Linn	220	267	315	393	443
Lyon	277	338	399	499	557
Marion	277	338	399	499	557
Meade	261	318	374	470	526
Montgomery	233	284	334	419	470
Morton	261	318	374	470	526
Neosho	233	284	334	419	470
Norton	222	270	318	399	447
Osborne	222	270	318	399	447
Pawnee	255	310	366	457	512

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anderson	220	267	315	393	443
Barber	255	310	366	457	512
Bourbon	220	267	315	393	443
Chase	277	338	399	499	557
Cherokee	233	284	334	419	470
Clark	261	318	374	470	526
Cloud	275	335	394	495	553
Comanche	255	310	366	457	512
Crawford	233	284	334	419	470
Dickinson	277	338	399	499	557
Edwards	255	310	366	457	512
Ellis	222	270	318	399	447
Finney	261	318	374	470	526
Franklin	241	292	345	429	482
Gove	222	270	318	399	447
Grant	261	318	374	470	526
Greeley	261	318	374	470	526
Hamilton	261	318	374	470	526
Haskell	261	318	374	470	526
Jackson	254	308	363	455	510
Jewell	275	335	394	495	553
Kingman	255	310	366	457	512
Labette	233	284	334	419	470
Lincoln	275	335	394	495	553
Logan	222	270	318	399	447
Mcpherson	293	356	421	526	588
Marshall	277	338	399	499	557
Mitchell	275	335	394	495	553
Morris	277	338	393	499	557
Nemaha	254	308	363	455	510
Ness	261	318	374	470	526
Osage	241	293	346	430	484
Ottawa	275	335	394	495	553
Phillips	222	270	318	399	447

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Pottawatomie	277	338	399	499	557
Rawlins	222	270	318	399	447
Republic	275	335	394	495	553
Riley	277	338	399	499	557
Rush	255	310	366	457	512
Saline	275	335	394	495	553
Seward	261	318	374	470	526
Sherman	222	270	318	399	447
Stafford	255	310	366	457	512
Stevens	261	318	374	470	526
Thomas	222	270	318	399	447
Wabaunsee	277	338	399	499	557
Washington	275	335	394	495	553
Wilson	220	267	315	393	443

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Pratt	255	310	366	457	512
Reno	293	356	421	526	588
Rice	293	356	421	526	588
Rooks	222	270	318	399	447
Russell	222	270	318	399	447
Scott	261	318	374	470	526
Sheridan	222	270	318	399	447
Smith	222	270	318	399	447
Stanton	261	318	374	470	526
Sumner	255	310	366	457	512
Trego	222	270	318	399	447
Wallace	222	270	318	399	447
Wichita	261	318	374	470	526
Woodson	220	267	315	393	443

K E N T U C K Y

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Cincinnati, OH-KY-IN PMSA	330	401	472	590	660	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	289	364	456	554	615	Christian
Evansville-Henderson, IN-KY MSA	307	366	430	539	603	Henderson
Huntington-Ashland, WV-KY-OH MSA	309	375	444	555	624	Boyd, Carter, Greenup
Lexington-Fayette, KY MSA	323	394	462	580	649	Bourbon, Clark, Fayette, Jessamine, Scott, Woodford
Louisville, KY-IN MSA	279	338	397	495	555	Bullitt, Jefferson, Oldham, Shelby
Owensboro, KY MSA	253	307	363	453	508	Daviess

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	239	290	338	418	467
Anderson	297	363	426	533	597
Barren	253	307	364	453	510
Bell	257	315	370	462	520
Bracken	239	289	340	427	479
Breckinridge	233	286	335	420	469
Caldwell	254	309	367	458	514
Carlisle	244	296	347	436	489
Casey	232	284	334	418	467
Clinton	239	290	338	418	467
Cumberland	239	290	338	418	467
Elliott	219	265	315	394	441
Fleming	239	289	340	427	479

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	200	244	287	359	402
Ballard	244	296	347	436	489
Bath	239	289	340	427	479
Boyle	289	349	413	517	579
Breathitt	245	297	349	438	491
Butler	200	244	287	359	402
Calloway	244	296	347	436	489
Carroll	245	298	349	439	491
Clay	219	265	313	392	440
Crittendon	254	309	367	458	514
Edmonson	200	244	287	359	402
Estill	289	349	413	517	579
Floyd	258	316	371	464	522

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091191

KENTUCKY continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Franklin	297	363	426	533	597
Gallatin	245	298	349	439	491
Grant	245	298	349	439	491
Grayson	233	286	335	420	469
Hancock	247	300	355	444	495
Harlan	257	315	370	462	520
Hart	200	244	287	359	402
Hickman	244	296	347	436	489
Jackson	219	265	313	392	440
Knott	245	297	349	438	491
Larue	233	286	335	420	469
Lawrence	219	265	315	394	441
Leslie	245	297	349	438	491
Lewis	239	289	340	427	479
Livingston	220	267	316	395	442
Lyon	220	267	316	395	442
Mccreary	239	290	338	418	467
Madison	289	349	417	517	579
Marion	233	286	335	420	469
Martin	258	316	371	464	522
Meade	264	323	380	477	534
Mercer	297	363	426	533	597
Monroe	200	244	287	359	402
Morgan	239	290	340	427	479
Nelson	233	286	335	420	469
Ohio	247	300	355	444	495
Owsley	245	297	349	438	491
Perry	245	297	349	438	491
Powell	215	260	307	386	434
Robertson	239	289	340	427	479
Rowan	239	289	340	427	479
Simpson	255	311	368	460	516
Taylor	239	290	338	418	467
Trigg	220	267	316	395	442
Union	247	300	355	444	495
Washington	233	286	335	420	469
Webster	247	300	355	444	495
Wolfe	245	297	349	438	491

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Fulton	244	296	347	436	489
Garrard	289	349	413	517	579
Graves	244	296	347	436	489
Green	239	290	338	418	467
Hardin	264	323	380	477	534
Harrison	289	351	413	516	578
Henry	218	264	311	391	438
Hopkins	254	309	367	458	514
Johnson	258	316	371	464	522
Knox	254	307	361	451	504
Laurel	219	306	386	401	440
Lee	245	297	349	438	491
Letcher	245	297	349	438	491
Lincoln	289	349	413	517	579
Logan	255	311	368	460	516
Mccracken	254	299	352	436	489
Mclean	247	300	355	444	495
Magoffin	258	316	371	464	522
Marshall	254	299	352	436	489
Mason	239	289	340	427	479
Menifee	239	290	340	427	479
Metcalfe	200	244	287	359	402
Montgomery	239	289	340	427	479
Muhlenberg	254	309	367	458	514
Nicholas	215	260	307	386	434
Owen	245	298	349	439	491
Pendleton	245	298	349	439	491
Pike	258	316	371	464	522
Pulaski	239	290	338	418	467
Rockcastle	219	265	313	392	440
Russell	232	284	334	418	467
Spencer	218	264	311	391	438
Todd	220	267	316	395	442
Trimble	218	264	311	391	438
Warren	255	311	368	460	516
Wayne	239	290	338	418	467
Whitley	257	315	370	462	520

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 19

L O U I S I A N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Alexandria, LA MSA	272	332	391	489	546	Rapides
Baton Rouge, LA MSA	343	416	490	612	687	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma-Thibodaux, LA MSA	303	368	434	542	608	Lafourche, Terrebonne
Lafayette, LA MSA	343	416	490	612	687	Lafayette, St Martin
Lake Charles, LA MSA	280	340	400	500	560	Calcasieu
Monroe, LA MSA	271	331	389	487	544	Ouachita
New Orleans, LA MSA	369	448	528	660	739	Jefferson, Orleans, St Bernard, St Charles, St John The St Tammany
Shreveport, LA MSA	308	374	444	554	620	Bossier, Caddo

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Acadia	233	286	337	420	472
Assumption	203	247	289	363	407
Beauregard	186	227	269	338	377
Caldwell	213	257	304	374	419
Catahoula	230	281	333	416	465
Concordia	230	281	333	416	465
East Carroll	185	226	267	335	373
Evangeline	224	272	320	403	451
Grant	230	281	333	416	465
Iberville	194	237	278	348	391
Jefferson Davis	186	227	269	338	377
Lincoln	242	296	347	434	487
Morehouse	185	226	267	335	373
Plaquemines	341	412	487	609	682
Red River	242	296	347	434	487
Sabine	242	296	347	434	487
St James	203	247	289	363	407
St Mary	277	339	398	497	557
Tensas	185	226	267	335	373
Vermilion	233	286	337	420	472
Washington	219	267	313	394	441
West Carroll	185	226	267	335	373
Winn	230	281	333	416	465

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allen	186	227	269	338	377
Avoyelles	230	281	333	416	465
Bienville	242	296	347	434	487
Cameron	186	227	269	338	377
Claiborne	242	296	347	434	487
De Soto	242	296	347	434	487
E Feliciana	194	237	278	348	391
Franklin	185	226	267	335	373
Iberia	277	339	398	497	557
Jackson	185	226	267	335	373
La Salle	230	281	333	416	465
Madison	185	226	267	335	373
Natchitoches	242	296	347	434	487
Pointe Coupee	194	237	278	348	391
Richland	185	226	267	335	373
St Helena	194	237	278	348	391
St Landry	224	272	320	403	451
Tangipahoa	219	267	313	394	441
Union	185	226	267	335	373
Vernon	230	281	333	416	465
Webster	210	255	301	375	421
W Feliciana	194	237	278	348	391

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

M A I N E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Bangor, ME MSA	361	439	517	648	727	Penobscot county towns of Bangor, Brewer, Eddington Glenburn, Hampden, Hermon, Holden, Kenduskeag, Old Town Orono, Orrington, Penobscot Indian I, Veazie Waldo county towns of Winterport
Lewiston-Auburn, ME MSA	380	453	512	573	652	Androscoggin county towns of Auburn, Greene, Lewiston Lisbon, Mechanic Falls, Poland, Sabattus
Portland, ME MSA	445	565	716	802	964	Cumberland county towns of Cape Elizabeth, Cumberland Falmouth, Freeport, Gorham, Gray, North Yarmouth Portland, Raymond, Scarborough, South Portland, Standish Westbrook, Windham, Yarmouth York county towns of Buxton, Hollis, Old Orchard Beach
Portsmouth-Dover-Rochester, NH-ME MSA	478	582	683	856	959	York county towns of Berwick, Eliot, Kittery North Berwick, South Berwick, Wells, York

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	330	390	460	565	625	Durham, Leeds, Livermore, Livermore Falls, Minot, Turner Wales
Aroostook	335	408	481	601	675	
Cumberland	372	452	532	661	736	Baldwin, Bridgton, Brunswick, Casco, Harpswell, Harrison Naples, New Gloucester, Pownal, Sebago
Franklin	350	396	472	558	634	
Hancock	352	419	491	614	685	
Kennebec	352	429	506	634	708	
Knox	340	414	488	612	685	
Lincoln	335	407	480	601	674	
Oxford	350	396	472	558	634	
Penobscot	347	419	488	612	685	Alton, Argyle, Bradford, Bradley, Burlington, Carmel Carroll, Charleston, Chester, Clifton, Corinna, Corinth Dexter, Dixmont, Drew, East Millinocket, Edinburg Enfield, Etna, Exeter, Garland, Grand Falls, Greenbush Greenfield, Howland, Hudson, Kingman, Lagrange Lakeville, Lee, Levant, Lincoln, Lowell, Mattawamkeag Maxfield, Medway, Milford, Millinocket, Mount Chase Newburgh, Newport, North Penobscot, Passadumkeag, Patten Plymouth, Prentiss, Seboeis, Springfield, Stacyville Stetson, Summit, Twombly, Webster, Whitney, Winn Woodville
Piscataquis	289	352	415	523	584	
Sagadahoc	385	518	558	652	765	
Somerset	335	407	480	601	674	
Waldo	340	414	488	612	685	Belfast, Belmont, Brooks, Burnham, Frankfort, Freedom Islesboro, Jackson, Knox, Liberty, Lincolnville, Monroe Montville, Morrill, Northport, Palermo, Prospect Searsmont, Searsport, Stockton Springs, Swanville Thorndike, Troy, Unity, Waldo

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M A I N E continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Washington	340	414	488	612	685	
York	426	501	634	652	791	Acton, Alfred, Arundel, Biddeford, Cornish, Dayton Kennebunk, Kennebunkport, Lebanon, Limerick, Limington Lyman, Newfield, Parsonsfield, Saco, Sanford, Shapleigh Waterboro

M A R Y L A N D

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Baltimore, MD MSA	398	485	571	714	800	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Annes, Baltimore
Columbia, MD MSA	520	631	743	929	1040	Columbia
Cumberland, MD-WV MSA	284	338	396	489	546	Allegany
Hagerstown, MD MSA	317	386	455	570	637	Washington
Washington, DC-MD-VA MSA	580	705	830	1037	1161	Calvert, Charles, Frederick, Montgomery, Prince George'S
Wilmington, DE-NJ-MD PMSA	437	522	622	778	925	Cecil

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Caroline	300	360	423	531	596
Garrett	285	346	408	509	572
St Marys	435	526	614	770	852
Talbot	343	417	491	615	688
Worcester	309	378	441	552	618
Dorchester	307	373	441	552	618
Kent	312	381	449	563	630
Somerset	307	373	441	552	618
Wicomico	366	448	525	553	618

M A S S A C H U S E T T S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Boston, MA PMSA	631	767	902	1129	1264	Bristol county towns of Mansfield, Norton, Raynham Essex county towns of Lynn, Lynnfield, Nahant, Saugus Middlesex county towns of Acton, Arlington, Ashland, Ayer Bedford, Belmont, Boxborough, Burlington, Cambridge Carlisle, Concord, Everett, Framingham, Groton Holliston, Hopkinton, Hudson, Lexington, Lincoln Littleton, Malden, Marlborough, Maynard, Medford Melrose, Natick, Newton, North Reading, Reading Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury Townsend, Wakefield, Waltham, Watertown, Wayland, Weston Wilmington, Winchester, Woburn Norfolk county towns of Bellingham, Braintree, Brookline Canton, Cohasset, Dedham, Dover, Foxborough, Franklin Holbrook, Medfield, Medway, Millis, Milton, Needham Norfolk, Norwood, Quincy, Randolph, Sharon, Stoughton Walpole, Wellesley, Westwood, Weymouth, Wrentham Plymouth county towns of Carver, Duxbury, Hanover, Hanson

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M A S S A C H U S E T T S continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
						Hingham, Hull, Kingston, Lakeville, Marshfield Middleborough, Norwell, Pembroke, Plymouth, Plympton Rockland, Scituate Suffolk county towns of Boston, Chelsea, Revere, Winthrop Worcester county towns of Berlin, Bolton, Harvard Hopedale, Lancaster, Mendon, Milford, Southborough Upton
Brockton, MA PMSA	490	592	742	900	1010	Bristol county towns of Easton Norfolk county towns of Avon Plymouth county towns of Abington, Bridgewater, Brockton East Bridgewater, Halifax, West Bridgewater, Whitman
Fall River, MA-RI PMSA	424	506	607	703	776	Bristol county towns of Fall River, Somerset, Swansea Westport
Fitchburg-Leominster, MA MSA	465	561	664	830	931	Middlesex county towns of Ashby Worcester county towns of Ashburnham, Fitchburg Leominster, Lunenburg, Westminster
Lawrence-Haverhill, MA-NH PMSA	523	637	764	874	972	Essex county towns of Amesbury, Andover, Boxford Georgetown, Groveland, Haverhill, Lawrence, Merrimac Methuen, Newbury, Newburyport, North Andover, Salisbury West Newbury
Lowell, MA-NH PMSA	485	590	689	835	952	Middlesex county towns of Billerica, Chelmsford, Dracut Dunstable, Lowell, Pepperell, Tewksbury, Tyngsborough Westford
New Bedford, MA MSA	432	486	575	703	776	Bristol county towns of Acushnet, Dartmouth, Fairhaven Freetown, New Bedford Plymouth county towns of Marion, Mattapoisett, Rochester
Pawtucket-Woonsocket-Attleboro, RI-MA PMSA	411	497	586	719	822	Bristol county towns of Attleboro, North Attleborough Rehoboth, Seekonk Norfolk county towns of Plainville Worcester county towns of Blackstone, Millville
Pittsfield, MA MSA	429	520	608	757	854	Berkshire county towns of Cheshire, Dalton, Hinsdale Lanesborough, Lee, Lenox, Pittsfield, Richmond Stockbridge
Salem-Gloucester, MA PMSA	555	675	794	993	1113	Essex county towns of Beverly, Danvers, Essex, Gloucester Hamilton, Ipswich, Manchester, Marblehead, Middleton Peabody, Rockport, Rowley, Salem, Swampscott, Topsfield Wenham
Springfield, MA MSA	445	541	636	795	890	Hampden county towns of Agawam, Chicopee, East Longmeadow Hampden, Holyoke, Longmeadow, Ludlow, Monson, Montgomery Palmer, Russell, Southwick, Springfield, Westfield West Springfield, Wilbraham Hampshire county towns of Belchertown, Easthampton Granby, Huntington, Northampton, Southampton South Hadley
Worcester, MA MSA	445	548	641	806	898	Worcester county towns of Auburn, Barre, Boylston Brookfield, Charlton, Clinton, Douglas, Dudley East Brookfield, Grafton, Holden, Leicester, Millbury

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A S S A C H U S E T T S continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
						Northborough, Northbridge, North Brookfield, Oxford Paxton, Princeton, Rutland, Shrewsbury, Spencer Sterling, Sutton, Uxbridge, Webster, Westborough West Boylston, Worcester
NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Barnstable	575	709	812	1015	1139	
Berkshire	376	458	539	676	757	Adams, Alford, Becket, Clarksburg, Egremont, Florida Great Barrington, Hancock, Monterey, Mount Washington New Ashford, New Marlborough, North Adams, Otis, Peru Sandisfield, Savoy, Sheffield, Tyringham, Washington West Stockbridge, Williamstown, Windsor
Bristol	417	506	596	716	796	Berkley, Dighton, Taunton
Dukes	575	709	812	1015	1139	
Franklin	438	520	607	765	851	
Hampden	394	479	564	707	792	Blandford, Brimfield, Chester, Granville, Holland Tolland, Wales
Hampshire	513	596	730	879	1021	Amherst, Chesterfield, Cummington, Goshen, Hadley Hatfield, Middlefield, Pelham, Plainfield, Ware Westhampton, Williamsburg, Worthington
Nantucket	575	709	812	1015	1139	
Plymouth	446	541	637	774	893	Wareham
Worcester	417	493	596	730	812	Athol, Gardner, Hardwick, Hubbardston, New Braintree Oakham, Petersham, Phillipston, Royalston, Southbridge Sturbridge, Templeton, Warren, West Brookfield Winchendon

M I C H I G A N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Ann Arbor, MI PMSA	429	522	615	770	863	Washtenaw
Battle Creek, MI MSA	289	352	413	519	582	Calhoun
Benton Harbor, MI MSA	322	392	459	576	645	Berrien
Detroit, MI PMSA	361	439	516	646	723	Lapeer, Livingston, Macomb, Monroe, Oakland, St Clair Wayne
Flint, MI MSA	305	370	439	548	613	Genesee
Grand Rapids, MI MSA	342	420	492	615	695	Kent, Ottawa
Jackson, MI MSA	319	386	455	570	638	Jackson
Kalamazoo, MI MSA	331	400	471	579	645	Kalamazoo
Lansing-East Lansing, MI MSA	349	418	489	609	680	Clinton, Eaton, Ingham
Muskegon, MI MSA	283	343	405	508	569	Muskegon
Saginaw-Bay City-Midland, MI MSA	315	380	446	558	625	Bay, Midland, Saginaw

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

M I C H I G A N continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alcona	252	308	362	454	509
Allegan	292	357	419	524	588
Antrim	317	383	451	565	634
Baraga	258	314	369	462	519
Benzie	317	383	451	565	634
Cass	287	349	410	514	576
Cheboygan	252	308	362	454	509
Clare	277	337	399	497	557
Delta	248	303	358	447	502
Emmet	317	383	451	565	634
Gogebic	258	314	369	462	519
Gratiot	318	385	453	569	636
Houghton	290	353	416	519	625
Ionia	295	358	421	525	588
Iron	258	314	369	462	519
Kalkaska	317	383	451	565	634
Lake	290	354	416	520	584
Lenawee	315	381	449	562	631
Mackinac	248	303	358	447	502
Marquette	317	383	451	565	634
Mecosta	290	354	416	520	584
Missaukee	317	383	451	565	634
Montmorency	252	308	362	454	509
Oceana	282	341	403	506	565
Ontonagon	258	314	369	462	519
Oscoda	252	308	362	454	509
Presque Isle	252	308	362	454	509
St Joseph	294	359	423	529	592
Schoolcraft	248	303	358	447	502
Tuscola	285	347	407	510	572
Wexford	317	383	451	565	634

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alger	248	303	358	447	502
Alpena	252	308	362	454	509
Arenac	277	337	399	497	557
Barry	294	359	423	529	592
Branch	294	359	423	529	592
Charlevoix	317	383	451	565	634
Chippewa	248	303	358	447	502
Crawford	252	308	362	454	509
Dickinson	258	327	386	483	543
Gladwin	277	337	399	497	557
Grand Traverse	317	383	451	565	634
Hillsdale	315	381	449	562	631
Huron	285	347	407	510	572
Iosco	277	337	399	497	557
Isabella	318	385	453	569	636
Keweenaw	258	314	369	462	519
Leelanau	317	383	451	565	634
Luce	248	303	358	447	502
Manistee	317	383	451	565	634
Mason	290	354	416	520	584
Menominee	317	383	451	565	634
Montcalm	292	357	419	524	588
Newaygo	290	354	416	520	584
Ogemaw	277	337	399	497	557
Osceola	290	354	416	520	584
Otsewo	252	308	362	454	509
Roscommon	277	337	399	497	557
Sanilac	285	347	407	510	572
Shiawassee	314	380	448	559	629
Van Buren	287	349	410	514	576

M I N N E S O T A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Duluth, MN-WI MSA	323	385	454	570	640	St Louis
Fargo-Moorhead, ND-MN MSA	323	393	481	579	649	Clay
Minneapolis-St. Paul, MN-WI MSA	432	526	619	774	866	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Washington, Wright

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I N N E S O T A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rochester, MN MSA	343	416	491	614	687	Olmsted
St. Cloud, MN MSA	326	397	468	587	655	Benton, Sherburne, Stearns

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aitkin	293	357	420	527	591
Beltrami	282	343	404	504	567
Blue Earth	326	396	459	568	628
Carlton	295	359	420	527	591
Chippewa	260	318	375	470	525
Cook	293	357	420	527	591
Crow Wing	276	335	418	519	576
Douglas	292	356	418	525	589
Fillmore	270	328	388	485	542
Goodhue	282	343	401	498	558
Houston	270	328	388	485	542
Itasca	295	359	420	527	591
Kanabec	293	357	420	527	591
Kittson	282	343	404	504	567
Lac Qui Parle	260	318	375	470	525
Lake Of The Woods	282	343	404	504	567
Lincoln	269	324	380	473	526
Mcleod	308	375	441	553	617
Marshall	282	343	404	504	567
Meeker	308	375	441	553	617
Morrison	276	335	394	494	554
Murray	269	324	380	473	526
Nobles	269	324	380	473	526
Otter Tail	292	356	418	525	589
Pine	293	357	420	527	591
Polk	282	343	404	504	567
Red Lake	282	343	404	504	567
Renville	308	375	441	553	617
Rock	269	324	380	473	526
Sibley	306	373	437	546	613
Stevens	292	356	418	525	589
Todd	276	335	394	494	554
Wabasha	282	343	401	498	558
Waseca	278	339	398	498	558
Wilkin	292	356	418	525	589
Yellow Medicine	260	318	375	470	525

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Becker	292	356	418	525	589
Big Stone	260	318	375	470	525
Brown	278	339	398	498	558
Cass	276	335	394	494	554
Clearwater	282	343	404	504	567
Cottonwood	260	318	375	470	525
Dodge	264	321	378	473	530
Faribault	278	339	398	498	558
Freeborn	319	388	458	572	642
Grant	292	356	418	525	589
Hubbard	282	343	404	504	567
Jackson	269	324	380	473	526
Kandiyohi	308	375	441	553	617
Koochiching	293	357	420	527	591
Lake	293	357	420	527	591
Le Sueur	306	373	437	546	613
Lyon	269	324	380	473	526
Mahnomen	282	343	404	504	567
Martin	278	339	398	498	558
Mille Lacs	293	357	420	527	591
Mower	270	328	388	485	542
Nicollet	306	373	437	546	613
Norman	282	343	404	504	567
Pennington	282	343	404	504	567
Pipestone	269	324	380	473	526
Pope	292	356	418	525	589
Redwood	260	318	375	470	525
Rice	319	388	458	572	642
Roseau	282	343	404	504	567
Steele	319	388	458	572	642
Swift	260	318	375	470	525
Traverse	292	356	418	525	589
Wadena	276	335	394	494	554
Watonwan	278	339	398	498	558
Winona	272	328	388	485	542

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

M I S S I S S I P P I

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Biloxi-Gulfport, MS MSA	269	329	388	486	543	Hancock, Harrison
Jackson, MS MSA	343	417	492	616	691	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	308	373	439	547	612	De Soto
Pascagoula, MS MSA	296	358	420	529	594	Jackson

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	238	274	323	429	464
Amite	197	240	281	351	396
Benton	220	268	317	398	446
Calhoun	258	315	371	463	525
Chickasaw	265	315	371	467	522
Claiborne	197	240	281	351	396
Clay	255	298	348	438	491
Copiah	208	253	299	373	418
Forrest	256	312	368	459	516
George	200	244	287	359	402
Grenada	261	318	374	468	525
Humphreys	227	277	327	408	457
Itawamba	244	296	347	436	488
Jefferson	197	240	281	351	396
Jones	258	301	339	386	429
Lafayette	258	315	371	463	522
Lauderdale	254	308	364	456	510
Leake	217	264	313	394	441
Leflore	258	287	338	441	476
Lowndes	281	348	401	537	559
Marshall	220	268	317	398	446
Montgomery	198	242	283	355	398
Newton	217	264	313	394	441
Oktibbeha	245	298	348	438	491
Pearl River	256	312	368	459	516
Pike	238	274	323	429	464
Prentiss	220	268	317	398	446
Scott	217	264	313	394	441
Simpson	208	253	299	373	418
Stone	256	312	368	459	516
Tallahatchie	240	289	340	425	480
Tippah	220	268	317	398	446
Tunica	240	289	340	425	480
Walthall	197	240	281	351	396

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alcorn	237	286	337	420	474
Attala	198	242	283	355	398
Bolivar	227	277	327	408	457
Carroll	198	242	283	355	398
Choctaw	255	298	348	438	491
Clarke	256	311	364	456	510
Coahoma	240	289	340	425	480
Covington	200	244	287	359	402
Franklin	197	240	281	351	396
Greene	200	244	287	359	402
Holmes	198	242	283	355	398
Issaquena	227	277	327	408	457
Jasper	256	311	364	456	510
Jefferson Davis	200	244	287	359	402
Kemper	256	311	364	456	510
Lamar	256	312	368	459	516
Lawrence	197	240	281	351	396
Lee	276	334	392	493	552
Lincoln	197	240	281	351	396
Marion	256	312	368	459	516
Monroe	244	296	347	436	488
Neshoba	217	264	313	394	441
Noxubee	245	298	348	438	491
Panola	240	289	340	425	480
Perry	200	244	287	359	402
Pontotoc	265	315	371	467	522
Quitman	240	289	340	425	480
Sharkey	227	277	327	408	457
Smith	217	264	313	394	441
Sunflower	227	277	327	408	457
Tate	240	289	340	425	480
Tishomigo	220	268	317	398	446
Union	265	315	371	467	522
Warren	289	351	413	520	581

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Washington	227	277	327	408	457
Webster	255	298	348	438	491
Winston	255	298	348	438	491
Yazoo	289	351	413	520	581

M I S S O U R I

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Columbia, MO MSA	281	341	402	503	564	Boone
Joplin, MO MSA	243	296	348	437	490	Jasper, Newton
Kansas City, MO-KS MSA	316	384	451	564	633	Cass, Clay, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	259	314	370	462	521	Buchanen
St. Louis, MO-IL MSA	348	422	498	622	697	Crawford, Franklin, Jefferson, St Charles, St Louis St. Louis
Springfield, MO MSA	269	330	388	487	542	Christian, Greene

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	246	298	352	442	495
Atchison	232	284	334	418	469
Barry	227	276	327	408	457
Bates	221	268	317	397	446
Bollinger	261	318	373	466	526
Caldwell	232	284	335	418	469
Camden	249	302	356	446	499
Carroll	240	292	344	429	484
Cedar	221	268	317	397	446
Clark	246	298	352	442	495
Cole	273	332	392	491	550
Crawford	238	291	340	427	481
Dallas	227	276	327	408	457
De Kalb	232	284	334	418	469
Douglas	215	262	307	384	432
Gasconade	238	291	340	427	481
Grundy	246	298	352	442	495
Henry	221	268	317	397	446
Holt	232	284	334	418	469
Howell	215	262	307	384	432
Johnson	249	303	374	481	500
Laclede	249	302	356	446	499
Lewis	244	295	348	435	485
Linn	246	298	352	442	495

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Wayne	200	244	287	359	402
Wilkinson	197	240	281	351	396
Yalobusha	198	242	283	355	398
Andrew	259	314	370	462	521
Audrain	273	332	392	491	550
Barton	221	268	317	397	446
Benton	221	268	317	397	446
Butler	215	262	312	389	435
Callaway	273	332	392	491	550
Cape Girardeau	261	318	373	466	526
Carter	215	262	312	389	435
Charlton	240	292	344	429	484
Clinton	232	284	334	418	469
Cooper	273	332	392	491	550
Dade	227	276	327	408	457
Daviess	232	284	335	418	469
Dent	238	291	340	427	481
Dunklin	215	262	307	384	432
Gentry	232	284	334	418	469
Harrison	232	284	335	418	469
Hickory	221	268	317	397	446
Howard	273	332	392	491	550
Iron	261	318	373	466	526
Knox	246	298	352	442	495
Lawrence	227	276	327	408	457
Lincoln	238	291	340	427	481
Livingston	246	298	352	442	495

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Mcdonald	227	276	327	408	457
Madison	261	318	373	466	526
Marion	244	295	348	435	485
Miller	249	302	356	446	499
Moniteau	273	332	392	491	550
Montgomery	238	291	340	427	481
New Madrid	215	262	307	384	432
Oregon	215	262	307	384	432
Ozark	215	262	307	384	432
Perry	261	318	373	466	526
Phelps	278	336	397	502	564
Polk	227	276	327	408	457
Putnam	246	298	352	442	495
Randolph	238	291	340	427	481
Ripley	215	262	312	389	435
Ste. Genevieve	261	318	373	466	526
Saline	240	292	344	429	484
Scotland	246	298	352	442	495
Shannon	215	262	307	384	432
Stoddard	215	262	307	384	432
Sullivan	246	298	352	442	495
Texas	215	262	307	384	432
Warren	238	291	340	427	481
Wayne	215	262	312	389	435
Worth	232	284	334	418	469

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Macon	238	291	340	427	481
Maries	238	291	340	427	481
Mercer	232	284	335	418	469
Mississippi	215	262	307	384	432
Monroe	238	291	340	427	481
Morgan	249	302	356	446	499
Nodaway	242	284	344	418	469
Osage	273	332	392	491	550
Pemiscot	215	262	307	384	432
Pettis	240	292	344	429	484
Pike	238	291	340	427	481
Pulaski	249	302	356	446	499
Ralls	244	295	348	435	485
Reynolds	215	262	312	389	435
St Clair	221	268	317	397	446
St Francois	261	318	373	466	526
Schuyler	246	298	352	442	495
Scott	261	318	373	466	526
Shelby	238	291	340	427	481
Stone	227	276	327	408	457
Taney	227	276	327	408	457
Vernon	221	268	317	397	446
Washington	238	291	340	427	481
Webster	227	276	327	408	457
Wright	215	262	307	384	432

M O N T A N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Billings, MT MSA	371	451	531	664	744	Yellowstone
Great Falls, MT MSA	328	398	470	589	659	Cascade

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beaverhead	327	397	468	585	657
Blaine	305	371	435	546	612
Carbon	307	374	441	551	618
Chouteau	305	371	435	546	612
Daniels	305	371	435	546	612
Deer Lodge	327	397	468	585	657
Fergus	307	374	441	551	618

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Big Horn	307	374	441	551	618
Broadwater	327	397	468	585	657
Carter	307	374	441	551	618
Custer	307	374	441	551	618
Dawson	307	374	441	551	618
Fallon	307	374	441	551	618
Flathead	333	406	477	598	670

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091191

MONTANA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Gallatin	360	443	524	649	731
Glacier	305	371	435	546	612
Granite	327	397	468	585	657
Jefferson	327	397	468	585	657
Lake	333	406	477	598	670
Liberty	305	371	435	546	612
Mccone	307	374	441	551	618
Meagher	327	397	468	585	657
Missoula	333	406	477	598	670
Park	327	397	468	585	657
Phillips	305	371	435	546	612
Powder River	307	374	441	551	618
Prairie	307	374	441	551	618
Richland	307	374	441	551	618
Rosebud	307	374	441	551	618
Sheridan	305	371	435	546	612
Stillwater	307	374	441	551	618
Teton	305	371	435	546	612
Treasure	307	374	441	551	618
Wheatland	307	374	441	551	618
Yl-St-Nt-Pk	327	397	468	585	657

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Garfield	307	374	441	551	618
Golden Valley	307	374	441	551	618
Hill	305	371	435	546	612
Judith Basin	307	374	441	551	618
Lewis And Clark	374	462	544	674	762
Lincoln	333	406	477	598	670
Madison	327	397	468	585	657
Mineral	333	406	477	598	670
Musselshell	307	374	441	551	618
Petroleum	307	374	441	551	618
Pondera	305	371	435	546	612
Powell	327	397	468	585	657
Ravalli	333	406	477	598	670
Roosevelt	305	371	435	546	612
Sanders	333	406	477	598	670
Silver Bow	327	397	468	585	657
Sweet Grass	307	374	441	551	618
Toole	305	371	435	546	612
Valley	305	371	435	546	612
Wibaux	307	374	441	551	618

NEBRASKA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Lincoln, NE MSA	320	389	458	574	643	Lancaster
Omaha, NE-IA MSA	315	382	449	562	633	Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	311	379	446	557	625	Dakota

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	286	349	410	514	575
Arthur	242	294	347	434	485
Blaine	235	285	335	420	473
Box Butte	267	325	383	479	537
Brown	235	285	335	420	473
Burt	256	312	367	460	516
Cass	253	308	362	453	510
Chase	242	294	347	434	485
Cheyenne	235	285	335	420	473
Colfax	256	312	367	460	516

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Antelope	277	337	399	496	558
Banner	235	285	335	420	473
Boone	256	312	367	460	516
Boyd	235	285	335	420	473
Buffalo	286	349	410	514	575
Butler	253	308	362	453	510
Cedar	277	337	399	496	558
Cherry	235	285	335	420	473
Clay	286	349	410	514	575
Cuming	256	312	367	460	516

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

NEBRASKA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Custer	235	285	335	420	473
Dawson	242	294	347	434	485
Dixon	277	337	399	496	558
Dundy	242	294	347	434	485
Franklin	286	349	410	514	575
Furnas	242	294	347	434	485
Garden	235	285	335	420	473
Gosper	242	294	347	434	485
Greeley	235	285	335	420	473
Hamilton	286	349	410	514	575
Hayes	242	294	347	434	485
Holt	239	293	345	429	479
Howard	286	349	410	514	575
Johnson	253	308	362	453	510
Keith	242	294	347	434	485
Kimball	235	285	335	420	473
Lincoln	242	294	347	434	485
Loup	235	285	335	420	473
Madison	277	337	399	496	558
Morrill	235	285	335	420	473
Nemaha	253	308	362	453	510
Otoe	253	308	362	453	510
Perkins	242	294	347	434	485
Pierce	277	337	399	496	558
Polk	253	308	362	453	510
Richardson	253	308	362	453	510
Saline	253	308	362	453	510
Scotts Bluff	273	328	383	476	529
Sheridan	235	285	335	420	473
Sioux	235	285	335	420	473
Thayer	253	308	362	453	510
Thurston	256	312	367	460	516
Wayne	277	337	399	496	558
Wheeler	235	285	335	420	473

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Dawes	235	285	335	420	473
Deuel	235	285	335	420	473
Dodge	256	312	367	460	516
Fillmore	253	308	362	453	510
Frontier	242	294	347	434	485
Gage	280	340	401	503	561
Garfield	235	285	335	420	473
Grant	242	294	347	434	485
Hall	286	349	410	514	575
Harlan	286	349	410	514	575
Hitchcock	242	294	347	434	485
Hooker	242	294	347	434	485
Jefferson	253	308	362	453	510
Kearney	286	349	410	514	575
Keya Paha	239	293	345	429	479
Knox	277	337	399	496	558
Logan	242	294	347	434	485
Mcpherson	242	294	347	434	485
Merrick	286	349	410	514	575
Nance	256	312	367	460	516
Nuckolls	286	349	410	514	575
Pawnee	253	308	362	453	510
Phelps	286	349	410	514	575
Platte	256	312	367	460	516
Red Willow	242	294	347	434	485
Rock	239	293	345	429	479
Saunders	253	308	362	453	510
Seward	253	308	362	453	510
Sherman	235	285	335	420	473
Stanton	277	337	399	496	558
Thomas	242	294	347	434	485
Valley	235	285	335	420	473
Webster	286	349	410	514	575
York	253	308	362	453	510

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

N E V A D A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Las Vegas, NV MSA	464	563	663	832	932	Clark
Reno, NV MSA	573	695	820	1025	1150	Washoe

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Churchill	408	490	578	722	810
Elko	408	490	578	722	810
Eureka	404	490	578	722	810
Lander	408	490	578	722	810
Lyon	408	490	578	722	810
Nye	404	490	578	722	810
Storey	408	490	578	722	810
Carson City	408	490	578	722	810

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Douglas	408	490	578	722	810
Esmeralda	404	490	578	722	810
Humboldt	408	490	578	722	810
Lincoln	404	490	578	722	810
Mineral	408	490	578	722	810
Pershing	408	490	578	722	810
White Pine	404	490	578	722	810

N E W H A M P S H I R E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Lawrence-Haverhill, MA-NH PMSA	523	637	764	874	972	Rockingham county towns of Atkinson, Brentwood, Danville Derry, East Kingston, Hampstead, Kingston, Newton Plaistow, Salem, Sandown, Seabrook, Windham
Lowell, MA-NH PMSA	485	590	689	835	952	Hillsborough county towns of Pelham
Manchester, NH MSA	460	560	659	824	927	Hillsborough county towns of Bedford, Goffstown Manchester Merrimack county towns of Allenstown, Hooksett Rockingham county towns of Auburn, Candia
Nashua, NH PMSA	525	638	754	943	1056	Hillsborough county towns of Amherst, Brookline, Hollis Hudson, Litchfield, Merrimack, Milford, Mont Vernon Nashua, Wilton Rockingham county towns of Londonderry
Portsmouth-Dover-Rochester, NH-ME MSA	478	582	683	856	959	Rockingham county towns of Exeter, Greenland, Hampton New Castle, Newfields, Newington, Newmarket North Hampton, Portsmouth, Rye, Stratham Strafford county towns of Barrington, Dover, Durham Farmington, Lee, Madbury, Milton, Rochester, Rollinsford Somersworth

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	400	484	562	698	782	
Carroll	395	480	565	707	793	
Cheshire	484	586	690	863	967	
Coos	369	448	529	659	740	
Grafton	411	501	590	737	826	
Hillsborough	524	636	749	936	1049	Antrim, Bennington, Deering, Francestown, Greenfield

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

NEW HAMPSHIRE continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Merrimack	524	636	749	936	1049	Greenville, Hancock, Hillsborough, Lyndeborough, Mason New Boston, New Ipswich, Peterborough, Sharon, Temple Weare, Windsor Andover, Boscawen, Bow, Bradford, Canterbury, Chichester Concord, Danbury, Dunbarton, Epsom, Franklin, Henniker Hill, Hopkinton, Loudon, Newbury, New London, Northfield Pembroke, Pittsfield, Salisbury, Sutton, Warner, Webster Wilmot
Rockingham	507	616	723	905	1001	Chester, Deerfield, Epping, Fremont, Hampton Falls Kensington, Northwood, Nottingham, Raymond South Hampton
Strafford	448	548	645	808	891	Middleton, New Durham, Strafford
Sullivan	400	484	564	703	790	

NEW JERSEY

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Allentown-Bethlehem-Easton, PA-NJ MSA	367	446	521	657	732	Warren
Atlantic City, NJ MSA	439	537	630	787	885	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	624	757	898	1123	1258	Bergen, Passaic
Jersey City, NJ PMSA	441	537	632	791	885	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	577	702	825	1034	1158	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	519	630	742	927	1041	Monmouth, Ocean
Newark, NJ PMSA	517	629	740	925	1036	Essex, Morris, Sussex, Union
Philadelphia, PA-NJ PMSA	427	518	610	763	856	Burlington, Camden, Gloucester
Trenton, NJ PMSA	523	636	749	937	1049	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	419	510	599	751	841	Cumberland
Wilmington, DE-NJ-MD PMSA	437	522	622	778	925	Salem

NEW MEXICO

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albuquerque, NM MSA	382	465	546	684	767	Bernalillo
Las Cruces, NM MSA	304	368	433	543	609	Dona Ana
Santa Fe, NM MSA	445	541	638	796	893	Los Alamos, Sante Fe

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

N E W M E X I C O continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Catron	274	332	393	491	549
Cibola	274	332	393	491	549
Curry	282	344	405	507	567
Eddy	327	398	470	588	658
Guadalupe	282	344	405	507	567
Hidalgo	274	332	393	491	549
Lincoln	298	361	426	532	597
Mckinley	380	462	544	682	763
Otero	298	361	426	532	597
Rio Arriba	254	309	364	454	511
Sandoval	321	392	461	576	646
San Miguel	282	344	405	507	567
Socorro	298	361	426	532	597
Torrance	282	344	405	507	567
Valencia	274	332	393	491	549

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Chaves	298	361	426	532	597
Colfax	282	344	405	507	567
De Baca	282	344	405	507	567
Grant	274	332	393	491	549
Harding	282	344	405	507	567
Lea	327	398	470	588	658
Luna	274	332	393	491	549
Mora	282	344	405	507	567
Quay	282	344	405	507	567
Roosevelt	282	344	405	507	567
San Juan	380	462	544	682	763
Sierra	298	361	426	532	597
Taos	305	369	434	544	611
Union	282	344	405	507	567

N E W Y O R K

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Albany-Schenectady-Troy, NY MSA	375	451	532	671	746	Albany, Greene, Montgomery, Rensselaer, Saratoga Schenectady
Binghamton, NY MSA	337	407	481	595	669	Broome, Tioga
Buffalo, NY PMSA	317	386	454	568	636	Erie
Elmira, NY MSA	343	416	490	613	689	Chemung
Glens Falls, NY MSA	353	430	506	632	711	Warren, Washington
Jamestown-Dunkirk, NY MSA	316	386	454	570	636	Chautauqua
Nassau-Suffolk, NY PMSA	614	746	878	1100	1229	Nassau, Suffolk
New York, NY PMSA	461	560	659	826	926	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester, NY	551	668	786	983	1100	Westchester
Niagara Falls, NY PMSA	320	389	459	573	642	Niagara
Orange County, NY PMSA	474	576	677	846	948	Orange
Poughkeepsie, NY MSA	514	625	736	919	1032	Dutchess
Rochester, NY MSA	402	493	580	725	808	Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	354	424	497	622	697	Madison, Onondaga, Oswego
Utica-Rome, NY MSA	325	394	464	580	650	Herkimer, Oneida

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

NEW YORK continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allegany	303	360	424	531	596
Cayuga	353	430	506	632	711
Clinton	336	402	473	588	647
Cortland	360	440	519	650	728
Essex	323	391	458	574	645
Fulton	287	351	412	517	577
Hamilton	322	391	458	574	645
Lewis	346	419	494	617	693
St Lawrence	329	398	471	588	658
Schuyler	332	403	476	596	669
Steuben	332	403	476	596	669
Tompkins	360	440	519	650	728
Wyoming	330	398	471	588	658

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Cattaraugus	297	359	424	531	596
Chenango	350	424	499	626	699
Columbia	332	403	476	596	669
Delaware	325	396	466	581	652
Franklin	322	391	458	574	645
Genesee	329	398	471	588	658
Jefferson	359	439	517	646	724
Otsego	325	396	466	581	652
Schoharie	325	396	466	581	652
Seneca	353	430	506	632	711
Sullivan	376	457	538	673	755
Ulster	415	504	594	741	832
Yates	330	400	473	593	661

NORTH CAROLINA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Asheville, NC MSA	279	340	401	499	560	Buncombe
Burlington, NC MSA	338	410	484	605	679	Alamance
Charlotte-Gastonia-Rock Hill, NC-SC MSA	311	375	441	551	616	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	286	403	421	544	666	Cumberland
Greensboro--Winston-Salem--High Point, NC MSA	291	356	417	524	587	Davidson, Davie, Forsyth, Guilford, Randolph, Stokes Yadkin
Hickory-Morganton, NC MSA	255	309	365	457	514	Alexander, Burke, Catawba
Jacksonville, NC MSA	263	322	380	477	534	Onslow
Raleigh-Durham, NC MSA	335	407	481	601	673	Durham, Franklin, Orange, Wake
Wilmington, NC MSA	279	340	401	499	560	New Hanover

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alleghany	252	304	357	447	490
Ashe	252	304	357	447	490
Beaufort	279	340	401	499	560
Bladen	269	329	387	485	542
Caldwell	252	305	360	452	504
Carteret	261	319	375	472	529
Chatham	335	407	481	601	673
Chowan	269	323	378	469	524
Cleveland	292	355	417	522	584
Craven	288	350	412	520	582
Dare	269	323	378	469	524
Edgecombe	261	319	375	472	529

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anson	254	305	357	448	499
Avery	261	316	371	463	508
Bertie	279	340	401	499	560
Brunswick	253	308	363	455	509
Camden	269	323	378	469	524
Caswell	253	307	362	454	508
Cherokee	217	264	313	394	441
Clay	217	264	313	394	441
Columbus	263	321	379	475	531
Currituck	307	369	423	526	580
Duplin	238	287	338	421	475
Gates	269	323	378	469	524

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Graham	217	264	313	394	441
Greene	262	318	372	469	524
Harnett	245	297	348	438	490
Henderson	274	336	396	494	554
Hoke	238	287	338	421	475
Iredell	253	391	456	526	588
Johnston	258	315	371	463	522
Lee	296	365	422	528	593
Mcdowell	264	322	379	476	531
Madison	274	336	396	494	554
Mitchell	261	316	371	463	509
Moore	254	305	357	448	499
Northampton	261	319	375	472	529
Pasquotank	269	323	378	469	524
Perquimans	269	323	378	469	524
Pitt	279	340	401	499	560
Richmond	254	305	357	448	499
Rockingham	253	307	362	454	508
Sampson	245	297	348	438	490
Stanly	264	322	379	475	530
Swain	217	264	313	394	441
Tyrrell	269	323	378	469	524
Warren	243	294	345	434	486
Watauga	360	434	508	636	698
Wilkes	302	363	426	534	584
Yancey	281	339	399	497	547

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Granville	243	294	345	434	486
Halifax	261	319	375	472	529
Haywood	280	341	403	505	567
Hertford	279	340	401	499	560
Hyde	269	323	378	469	524
Jackson	278	337	397	496	556
Jones	261	319	375	472	529
Lenoir	261	319	375	472	529
Macon	274	335	396	494	555
Martin	279	340	401	499	560
Montgomery	254	305	357	448	499
Nash	268	328	386	484	541
Pamlico	261	319	375	472	529
Pender	230	281	382	478	536
Person	243	294	345	434	486
Polk	264	322	379	476	531
Robeson	249	307	356	440	498
Rutherford	264	322	379	476	531
Scotland	225	273	323	404	453
Surry	240	290	341	427	480
Transylvania	274	336	396	494	554
Vance	243	294	345	434	486
Washington	269	323	378	469	524
Wayne	245	297	348	438	490
Wilson	268	328	386	484	541

NORTH DAKOTA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bismarck, ND MSA	323	393	462	578	649	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	323	393	461	579	649	Cass
Grand Forks, ND MSA	306	372	441	550	616	Grand Forks

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NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	271	332	392	491	548
Benson	280	339	400	501	564
Bottineau	271	332	392	491	548
Burke	271	332	392	491	548
Dickey	280	339	400	501	564
Dunn	271	332	392	491	548
Emmons	246	298	353	443	494
Golden Valley	271	332	392	491	548
Griggs	280	339	400	501	564
Kidder	246	298	353	443	494
Logan	280	339	400	501	564
Mcintosh	280	339	400	501	564
Mclean	246	298	353	443	494
Mountrail	271	332	392	491	548
Oliver	246	298	353	443	494
Pierce	271	332	392	491	548
Ransom	254	307	364	455	509
Richland	254	307	364	455	509
Sargent	254	307	364	455	509
Sioux	246	298	353	443	494
Stark	271	332	392	491	548
Stutsman	280	339	400	501	564
Traill	254	307	364	455	509
Ward	271	332	392	491	548
Williams	271	332	392	491	548

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barnes	280	339	400	501	564
Billings	271	332	392	491	548
Bowman	271	332	392	491	548
Cavalier	280	339	400	501	564
Divide	271	332	392	491	548
Eddy	280	339	400	501	564
Foster	280	339	400	501	564
Grant	246	298	353	443	494
Hettinger	271	332	392	491	548
La Moore	280	339	400	501	564
Mchenry	271	332	392	491	548
Mckenzie	271	332	392	491	548
Mercer	246	298	353	443	494
Nelson	280	339	400	501	564
Pembina	280	339	400	501	564
Ramsey	280	339	400	501	564
Renville	271	332	392	491	548
Rolette	280	339	400	501	564
Sheridan	246	298	353	443	494
Slope	271	332	392	491	548
Steele	254	307	364	455	509
Towner	280	339	400	501	564
Walsh	280	339	400	501	564
Wells	280	339	400	501	564

OHIO

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Akron, OH PMSA	317	385	456	570	638	Portage, Summit
Canton, OH MSA	280	339	400	500	563	Carroll, Stark
Cincinnati, OH-KY-IN PMSA	330	401	472	590	660	Clermont, Hamilton, Warren
Cleveland, OH PMSA	336	408	480	601	672	Cuyahoga, Geauga, Lake, Medina
Columbus, OH MSA	319	383	456	569	640	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway Union
Dayton-Springfield, OH MSA	295	361	420	528	587	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	330	404	474	594	665	Butler
Huntington-Ashland, WV-KY-OH MSA	309	375	444	555	624	Lawrence
Lima, OH MSA	296	361	424	532	597	Allen, Auglaize
Lorain-Elyria, OH PMSA	311	380	448	562	629	Lorain
Mansfield, OH MSA	267	328	383	482	538	Richland

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

O H I O continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Parkersburg-Marietta, WV-OH MSA	292	355	417	525	587	Washington
Steubenville-Weirton, OH-WV MSA	299	365	427	536	603	Jefferson
Toledo, OH MSA	339	414	489	610	684	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	291	355	418	523	585	Belmont
Youngstown-Warren, OH MSA	296	361	424	532	597	Mahoning, Trumbull

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	265	320	374	466	526
Ashtabula	313	380	449	563	629
Brown	265	320	374	466	526
Clinton	269	330	388	487	542
Coshocton	242	295	348	432	487
Darke	269	330	388	487	542
Erie	305	371	438	546	614
Gallia	292	355	417	525	587
Hancock	287	348	410	512	576
Harrison	268	328	385	485	540
Highland	265	320	374	466	526
Holmes	284	346	407	509	571
Jackson	261	318	373	466	526
Logan	287	348	410	512	576
Meigs	258	313	369	461	519
Monroe	289	352	414	521	581
Morrow	261	318	373	466	526
Noble	289	352	414	521	581
Paulding	302	367	432	540	607
Pike	261	318	373	466	526
Putnam	292	355	417	525	587
Sandusky	305	371	438	546	614
Seneca	268	328	385	485	540
Tuscarawas	284	346	407	509	571
Vinton	292	355	417	525	587
Williams	302	367	432	540	607

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashland	293	358	420	527	589
Athens	278	341	403	502	564
Champaign	283	344	406	507	569
Columbiana	278	336	398	497	558
Crawford	268	328	385	485	540
Defiance	302	367	432	540	607
Fayette	269	330	388	487	542
Guernsey	286	347	409	511	574
Hardin	287	348	410	512	576
Henry	302	367	432	540	607
Hocking	258	313	369	461	519
Huron	268	328	385	485	540
Knox	261	318	373	466	526
Marion	261	318	373	466	526
Mercer	269	330	388	487	542
Morgan	289	352	414	521	581
Muskingum	269	328	385	485	540
Ottawa	305	371	438	546	614
Perry	258	313	369	461	519
Preble	294	359	421	529	591
Ross	269	330	388	487	542
Scioto	261	318	373	466	526
Shelby	291	352	415	520	581
Van Wert	292	355	417	525	587
Wayne	293	358	420	527	589
Wyandot	268	328	385	485	540

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

OKLAHOMA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Enid, OK MSA	320	391	460	576	645	Garfield
Fort Smith, AR-OK MSA	265	324	382	480	537	Sequoyah
Lawton, OK MSA	276	336	397	495	555	Comanche
Oklahoma City, OK MSA	299	364	428	536	600	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	349	425	500	626	701	Creek, Osage, Rogers, Tulsa, Wagoner

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adair	215	263	308	385	428
Atoka	188	229	271	339	379
Beckham	239	289	341	427	480
Bryan	226	276	324	407	456
Carter	226	276	324	407	456
Choctaw	188	229	271	339	379
Coal	188	229	271	339	379
Craig	273	334	392	491	551
Delaware	213	260	305	381	428
Ellis	244	298	350	437	492
Grady	225	274	322	405	454
Greer	239	289	341	427	480
Harper	244	298	350	437	492
Hughes	219	267	313	394	440
Jefferson	225	274	322	405	454
Kay	283	343	405	506	568
Kiowa	239	289	341	427	480
Le Flore	188	229	271	339	379
Love	226	276	324	407	456
Mcintosh	219	267	313	394	440
Marshall	226	276	324	407	456
Murray	226	276	324	407	456
Noble	283	343	405	506	568
Okfuskee	219	267	313	394	440
Ottawa	273	334	392	491	551
Payne	281	341	401	501	562
Pontotoc	226	276	324	407	456
Roger Mills	239	289	341	427	480
Stephens	225	274	322	405	454
Tillman	225	274	322	405	454
Washita	239	289	341	427	480
Woodward	244	298	350	437	492

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alfalfa	244	298	350	437	492
Beaver	244	298	350	437	492
Blaine	244	298	350	437	492
Caddo	225	274	322	405	454
Cherokee	215	263	308	385	428
Cimarron	244	298	350	437	492
Cotton	225	274	322	405	454
Custer	239	289	341	427	480
Dewey	244	298	350	437	492
Garvin	226	276	324	407	456
Grant	283	343	405	506	568
Harmon	239	289	341	427	480
Haskell	188	229	271	339	379
Jackson	239	289	341	427	480
Johnston	226	276	324	407	456
Kingfisher	283	343	405	506	568
Latimer	188	229	271	339	379
Lincoln	270	328	386	484	542
Mccurtain	240	292	344	429	482
Major	244	298	350	437	492
Mayes	284	344	407	508	570
Muskogee	219	267	313	394	440
Nowata	273	334	392	491	551
Okmulgee	219	267	313	394	440
Pawnee	270	328	386	484	542
Pittsburg	188	229	271	339	379
Pushmataha	188	229	271	339	379
Seminole	224	273	322	400	445
Texas	244	298	350	437	492
Washington	273	334	392	491	551
Woods	244	298	350	437	492

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

O R E G O N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Eugene-Springfield, OR MSA	404	492	580	725	812	Lane
Medford, OR MSA	401	488	576	719	807	Jackson
Portland, OR PMSA	359	438	516	681	755	Clackamas, Multnomah, Washington, Yamhill
Salem, OR MSA	376	461	542	677	758	Marion, Polk

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Baker	368	447	527	659	739
Clatsop	358	436	513	641	718
Coos	385	467	551	689	772
Curry	385	467	551	689	772
Douglas	385	467	551	689	772
Grant	368	447	527	659	739
Hood River	390	473	558	700	781
Josephine	385	467	551	689	772
Lake	351	428	504	630	706
Linn	374	456	538	673	752
Morrow	368	447	527	659	739
Tillamook	358	436	513	641	718
Union	368	447	527	659	739
Wasco	390	473	558	700	781

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Benton	374	456	538	673	752
Columbia	358	436	513	641	718
Crook	390	473	558	700	781
Deschutes	390	473	558	700	781
Gilliam	368	447	527	659	739
Harney	351	428	504	630	706
Jefferson	390	473	558	700	781
Klamath	351	428	504	630	706
Lincoln	358	436	513	641	718
Malheur	351	428	504	630	706
Sherman	390	473	558	700	781
Umatilla	368	447	527	659	739
Wallowa	368	447	527	659	739
Wheeler	368	447	527	659	739

P E N N S Y L V A N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Allentown-Bethlehem-Easton, PA-NJ MSA	367	446	521	657	732	Carbon, Lehigh, Northampton
Altoona, PA MSA	326	395	467	582	654	Blair
Beaver County, PA PMSA	281	342	403	503	564	Beaver
Erie, PA MSA	374	456	536	673	753	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	389	467	552	689	771	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	316	386	453	566	636	Cambria, Somerset
Lancaster, PA MSA	392	477	560	703	788	Lancaster
Philadelphia, PA-NJ PMSA	427	518	610	763	856	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	307	372	438	548	613	Alleghany, Fayette, Washington, Westmoreland
Reading, PA MSA	367	447	526	657	737	Berks
Scranton--Wilkes-Barre, PA MSA	297	367	428	528	598	Columbia, Lackawanna, Luzerne, Monroe, Wyoming
Sharon, PA MSA	347	421	498	624	699	Mercer
State College, PA MSA	418	510	601	751	842	Centre
Williamsport, PA MSA	316	386	453	566	636	Lycoming
York, PA MSA	352	430	506	633	709	Adams, York

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PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Armstrong	365	443	521	653	731
Bradford	302	368	433	541	606
Cameron	306	372	438	550	616
Clearfield	312	380	448	559	627
Crawford	310	374	444	555	622
Forest	298	365	429	535	601
Fulton	293	358	421	528	590
Huntingdon	293	358	421	528	590
Jefferson	312	380	448	559	627
Lawrence	310	374	444	555	622
Mifflin	303	369	443	545	608
Northumberland	326	380	448	559	627
Potter	306	372	438	550	616
Snyder	303	369	434	545	608
Susquehanna	302	368	433	541	606
Union	350	411	507	629	685
Warren	310	374	444	555	622

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bedford	293	358	421	528	590
Butler	363	440	518	650	727
Clarion	298	365	429	535	601
Clinton	306	370	435	545	608
Elk	306	372	438	550	616
Franklin	335	409	479	602	674
Greene	312	380	448	559	627
Indiana	365	443	521	653	731
Juniata	303	369	434	545	608
Mckean	306	372	438	550	616
Montour	312	380	448	559	627
Pike	434	528	620	775	869
Schuylkill	339	397	484	585	637
Sullivan	302	368	433	541	606
Tioga	302	368	433	541	606
Venango	298	365	429	535	601
Wayne	370	450	530	661	742

RHODE ISLAND

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Fall River, MA-RI PMSA	424	506	607	703	776	Newport county towns of Little Compton, Tiverton
New London-Norwich, CT-RI MSA	469	571	670	838	940	Washington county towns of Hopkinton, Westerly
Pawtucket-Woonsocket-Attleboro, RI-MA PMSA	411	497	586	719	822	Providence county towns of Burrillville, Central Falls Cumberland, Lincoln, North Smithfield, Pawtucket Smithfield, Woonsocket
Providence, RI PMSA	448	544	640	801	897	Bristol county towns of Barrington, Bristol, Warren Kent county towns of Coventry, East Greenwich, Warwick West Warwick Newport county towns of Jamestown Providence county towns of Cranston, East Providence Foster, Glocester, Johnston, North Providence Providence, Scituate Washington county towns of Exeter, Narragansett North Kingstown, Richmond, South Kingstown

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Kent	391	475	560	701	786	West Greenwich
Newport	512	621	732	915	1025	Middletown, Newport, Portsmouth
Washington	391	475	560	701	786	Charlestown, New Shoreham

S O U T H C A R O L I N A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Anderson, SC MSA	253	307	361	454	507	Anderson
Augusta, GA-SC MSA	293	355	413	517	579	Aiken
Charleston, SC MSA	312	381	450	560	630	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	311	375	441	551	616	York
Columbia, SC MSA	316	386	455	569	636	Lexington, Richland
Florence, SC MSA	256	311	368	460	516	Florence
Greenville-Spartanburg, SC MSA	276	336	397	495	556	Greenville, Pickens, Spartanburg

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Abbeville	222	270	320	397	440
Bamberg	230	283	333	417	466
Beaufort	287	349	412	516	578
Cherokee	222	269	318	399	449
Chesterfield	221	268	316	397	446
Colleton	287	349	412	516	578
Dillon	221	268	316	397	446
Fairfield	217	264	312	391	438
Greenwood	222	270	320	397	440
Horry	268	327	385	482	540
Kershaw	251	304	358	450	503
Laurens	222	270	320	397	440
Mccormick	217	264	312	391	438
Marlboro	221	268	316	397	446
Oconee	273	335	395	493	553
Saluda	217	264	312	391	438
Union	222	269	318	399	449

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Allendale	230	283	333	417	466
Barnwell	230	283	333	417	466
Calhoun	239	290	344	421	472
Chester	222	269	318	399	449
Clarendon	251	304	358	450	503
Darlington	221	268	316	397	446
Edgefield	217	264	312	391	438
Georgetown	268	327	385	482	540
Hampton	287	349	412	516	578
Jasper	287	349	412	516	578
Lancaster	240	293	345	427	478
Lee	251	304	358	450	503
Marion	221	268	316	397	446
Newberry	217	264	312	391	438
Orangeburg	230	283	333	417	466
Sumter	251	304	358	450	503
Williamsburg	268	327	385	482	540

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

SOUTH DAKOTA

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Rapid City, SD MSA	294	355	413	512	573	Pennington
Sioux Falls, SD MSA	310	377	443	557	623	Minnehaha

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aurora	264	319	373	468	524
Bennett	240	291	343	430	481
Brookings	259	313	365	455	514
Brule	261	317	373	468	524
Butte	285	347	408	512	573
Charles Mix	261	317	373	468	524
Clay	261	317	373	468	524
Corson	240	291	343	430	481
Davison	264	319	373	468	524
Deuel	234	281	335	416	462
Douglas	261	317	373	468	524
Fall River	285	347	408	512	573
Grant	259	313	365	455	514
Haakon	240	291	343	430	481
Hand	264	319	373	464	518
Harding	285	347	408	512	573
Hutchinson	261	317	373	468	524
Jackson	240	291	343	430	481
Jones	240	291	343	430	481
Lake	227	277	325	407	457
Lincoln	264	319	373	468	524
Mccook	227	277	325	407	457
Marshall	252	309	364	457	511
Mellette	240	291	343	430	481
Moody	227	277	325	407	457
Potter	240	291	343	430	481
Sanborn	264	319	373	468	524
Spink	252	309	364	457	511
Sully	240	291	343	430	481
Tripp	240	291	343	430	481
Union	261	317	373	468	524
Yankton	261	317	373	468	524

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beadle	264	319	373	464	518
Bon Homme	261	317	373	468	524
Brown	282	341	400	501	561
Buffalo	240	291	343	430	481
Campbell	240	291	343	430	481
Clark	234	281	335	416	462
Codington	259	313	365	455	514
Custer	285	347	408	512	573
Day	252	309	364	457	511
Dewey	240	291	343	430	481
Edmunds	252	309	364	457	511
Faulk	252	309	364	457	511
Gregory	240	291	343	430	481
Hamlin	234	281	335	416	462
Hanson	264	319	373	468	524
Hughes	313	383	448	561	627
Hyde	240	291	343	430	481
Jerauld	264	319	373	468	524
Kingsbury	227	277	325	407	457
Lawrence	292	347	408	512	573
Lyman	240	291	343	430	481
Mcpherson	252	309	364	457	511
Meade	294	355	413	512	573
Miner	227	277	325	407	457
Perkins	240	291	343	430	481
Roberts	252	309	364	457	511
Shannon	240	291	343	430	481
Stanley	313	383	448	561	627
Todd	240	291	343	430	481
Turner	264	319	373	468	524
Walworth	240	291	343	430	481
Ziebach	240	291	343	430	481

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E N N E S S E E

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Chattanooga, TN-GA MSA	312	380	448	560	630	Hamilton, Marion, Sequatchie
Clarksville-Hopkinsville, TN-KY MSA	289	364	456	554	615	Montgomery
Jackson, TN MSA	284	341	405	505	570	Madison
Johnson City-Kingsport-Bristol, TN-VA MSA	261	318	374	468	526	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	288	351	412	517	579	Anderson, Blount, Grainger, Jefferson, Knox, Sevier Union
Memphis, TN-AR-MS MSA	308	373	439	547	612	Shelby, Tipton
Nashville, TN MSA	342	418	492	614	690	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Bedford	246	309	351	438	492
Bledsoe	256	312	368	460	516
Campbell	209	254	302	375	418
Carroll	230	281	332	416	464
Claiborne	209	254	302	375	418
Cocke	232	284	333	418	467
Crockett	237	286	336	422	474
Decatur	252	308	363	454	508
Dyer	237	286	336	422	474
Fentress	230	284	335	418	468
Gibson	237	286	336	422	474
Greene	228	279	327	409	460
Hamblen	243	294	348	435	488
Hardeman	252	308	363	454	508
Haywood	242	303	346	434	486
Henry	230	281	332	416	464
Houston	213	258	305	381	427
Jackson	200	247	292	366	406
Lake	237	286	336	422	474
Lawrence	246	309	351	438	492
Lincoln	278	335	395	494	552
Mcminn	256	312	368	460	516
Macon	230	284	335	418	468
Maury	246	309	351	438	492
Monroe	246	303	355	444	496
Morgan	209	254	302	375	418
Overton	230	284	335	418	468
Pickett	230	284	335	418	468
Putnam	239	289	340	427	478
Roane	246	303	355	444	496

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Benton	230	281	332	416	464
Bradley	256	312	368	460	516
Cannon	230	284	335	418	468
Chester	252	308	363	454	508
Clay	200	247	292	366	406
Coffee	246	309	351	438	492
Cumberland	230	284	335	418	468
De Kalb	230	284	335	418	468
Fayette	242	294	346	434	486
Franklin	278	335	395	494	552
Giles	246	309	351	438	492
Grundy	256	312	368	460	516
Hancock	228	279	327	409	460
Hardin	252	308	363	454	508
Henderson	252	308	363	454	508
Hickman	246	309	351	438	492
Humphreys	213	258	305	381	427
Johnson	222	271	319	400	448
Lauderdale	242	303	346	434	486
Lewis	244	297	350	438	492
Loudon	246	303	355	444	496
Mcnairy	252	308	363	454	508
Marshall	246	309	351	438	492
Meigs	256	312	368	460	516
Moore	246	309	351	438	492
Obion	240	294	336	425	474
Perry	244	297	350	438	492
Polk	256	312	368	460	516
Rhea	256	312	368	460	516
Scott	209	254	302	375	418

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

T E N N E S S E E continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Smith	230	284	335	418	468
Trousdale	230	284	335	418	468
Warren	239	289	340	427	478
Weakley	230	281	332	416	464
Stewart	213	258	305	381	427
Van Buren	239	289	340	427	478
Wayne	244	297	350	438	492
White	239	289	340	427	478

T E X A S

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Abilene, TX MSA	311	380	448	560	630	Taylor
Amarillo, TX MSA	288	349	412	515	577	Potter, Randall
Austin, TX MSA	369	444	523	654	732	Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	332	402	475	594	664	Hardin, Jefferson, Orange
Brazoria, TX PMSA	344	417	491	614	688	Brazoria
Brownsville-Harlingen, TX MSA	293	357	419	525	588	Cameron
Bryan-College Station, TX MSA	389	475	556	696	781	Brazos
Corpus Christi, TX MSA	339	411	485	607	681	Nueces, San Patricio
Dallas, TX PMSA	380	463	545	681	762	Collin, Dallas, Denton, Ellis, Kaufman, Rockwall
El Paso, TX MSA	290	350	413	517	580	El Paso
Fort Worth-Arlington, TX PMSA	355	431	509	636	712	Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	309	375	442	553	620	Galveston
Houston, TX PMSA	318	386	455	570	638	Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	286	346	408	510	573	Bell, Coryell
Laredo, TX MSA	269	329	386	484	543	Webb
Longview-Marshall, TX MSA	327	397	466	582	654	Gregg, Harrison
Lubbock, TX MSA	243	304	399	506	558	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	292	356	417	523	586	Hidalgo
Midland, TX MSA	374	456	537	673	753	Midland
Odessa, TX MSA	372	454	534	667	748	Ector
San Angelo, TX MSA	313	382	451	565	634	Tom Green
San Antonio, TX MSA	357	434	511	638	715	Bexar, Comal, Guadalupe
Sherman-Denison, TX MSA	287	347	410	513	575	Grayson
Texarkana, TX-Texarkana, AR MSA	263	320	378	475	530	Bowie
Tyler, TX MSA	331	401	474	592	662	Smith
Victoria, TX MSA	403	489	576	723	809	Victoria
Waco, TX MSA	272	327	383	478	531	Mclennan
Wichita Falls, TX MSA	297	361	426	531	597	Wichita

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

AGE 45

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Anderson	250	303	358	447	501
Angelina	291	351	416	521	582
Archer	240	292	343	430	482
Atascosa	256	311	369	462	516
Bailey	242	296	348	433	483
Bastrop	254	308	364	457	512
Bee	276	337	397	494	555
Borden	233	288	338	422	475
Brewster	214	259	304	381	429
Brooks	276	337	397	494	555
Burleson	256	310	367	459	514
Caldwell	254	308	364	457	512
Callahan	248	301	352	442	497
Carson	260	315	372	466	523
Castro	260	315	372	466	523
Cherokee	250	303	358	447	501
Clay	240	292	343	430	482
Coke	223	272	320	402	449
Collingsworth	260	315	372	466	523
Comanche	248	301	352	442	497
Cooke	274	335	395	492	553
Crane	214	259	304	381	429
Crosby	242	296	348	433	483
Dallam	260	315	372	466	523
Deaf Smith	260	315	372	466	523
De Witt	269	329	386	484	543
Dimmit	230	284	334	416	466
Duval	276	337	397	494	555
Edwards	239	292	342	421	468
Falls	219	267	312	395	440
Fayette	254	308	364	457	512
Floyd	242	296	348	433	483
Franklin	263	320	377	475	529
Frio	256	311	369	462	516
Garza	242	296	348	433	483
Glasscock	233	288	338	422	475
Gonzales	269	329	386	484	543
Grimes	256	310	367	459	514
Hall	260	315	372	466	523
Hansford	260	315	372	466	523

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Andrews	214	259	304	381	429
Aransas	276	337	397	494	555
Armstrong	260	315	372	466	523
Austin	296	359	422	529	594
Bandera	256	311	369	462	516
Baylor	240	292	343	430	482
Blanco	233	288	338	422	476
Bosque	219	267	312	395	440
Briscoe	260	315	372	466	523
Brown	242	296	348	433	483
Burnet	233	288	338	422	476
Calhoun	269	329	386	484	543
Camp	228	278	331	411	462
Cass	263	320	377	475	529
Chambers	305	371	437	547	612
Childress	240	292	343	430	482
Cochran	242	296	348	433	483
Coleman	242	296	348	433	483
Colorado	296	359	422	529	594
Concho	223	272	320	402	449
Cottle	240	292	343	430	482
Crockett	223	272	320	402	449
Culberson	214	259	304	381	429
Dawson	233	288	338	422	475
Delta	263	320	377	475	529
Dickens	242	296	348	433	483
Donley	260	315	372	466	523
Eastland	248	301	352	442	497
Erath	248	301	352	442	497
Fannin	274	335	395	492	553
Fisher	248	301	352	442	497
Foard	240	292	343	430	482
Freestone	219	267	312	395	440
Gaines	214	259	304	381	429
Gillespie	256	311	369	462	516
Goliad	269	329	386	484	543
Gray	260	315	372	466	523
Hale	242	296	348	433	483
Hamilton	233	288	338	422	476
Hardeman	240	292	343	430	482

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091191

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Hartley	260	315	372	466	523
Hemphill	260	315	372	466	523
Hill	272	328	383	482	539
Hood	296	359	422	529	594
Houston	259	313	371	465	522
Hudspeth	214	259	304	381	429
Hutchinson	260	315	372	466	523
Jack	240	292	343	430	482
Jasper	276	337	397	494	555
Jim Hogg	262	317	375	472	527
Jones	248	301	352	442	497
Kendall	256	311	369	462	516
Kent	248	301	352	442	497
Kimble	223	272	320	402	449
Kinney	239	292	342	421	468
Knox	242	296	348	433	483
Lamb	242	296	348	433	483
La Salle	230	284	334	416	466
Lee	254	308	364	457	512
Limestone	219	267	312	395	440
Live Oak	276	337	397	494	555
Loving	214	259	304	381	429
Mcculloch	242	296	348	433	483
Madison	264	320	378	475	530
Martin	233	288	338	422	475
Matagorda	296	359	422	529	594
Medina	256	311	369	462	516
Milam	254	308	364	457	512
Mitchell	248	301	352	442	497
Moore	260	315	372	466	523
Motley	242	296	348	433	483
Navarro	219	267	312	395	440
Nolan	248	301	352	442	497
Oldham	260	315	372	466	523
Panola	250	303	358	447	501
Pecos	214	259	304	381	429
Presidio	214	259	304	381	429
Reagan	223	272	320	402	449
Red River	263	320	377	475	529
Refugio	276	337	397	494	555

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Haskell	248	301	352	442	497
Henderson	250	303	358	447	501
Hockley	242	296	348	433	483
Hopkins	263	320	377	475	529
Howard	233	288	338	422	475
Hunt	274	335	395	492	553
Irion	223	272	320	402	449
Jackson	269	329	386	484	543
Jeff Davis	214	259	304	381	429
Jim Wells	276	337	397	494	555
Karnes	211	256	302	378	423
Kenedy	276	337	397	494	555
Kerr	256	311	369	462	516
King	242	296	348	433	483
Kleberg	276	337	397	494	555
Lamar	263	320	377	475	529
Lampasas	233	288	338	422	476
Lauaca	269	329	386	484	543
Leon	264	320	378	475	530
Lipscomb	260	315	372	466	523
Llano	233	288	338	422	476
Lynn	242	296	348	433	483
Mcmullen	276	337	397	494	555
Marion	228	278	331	411	462
Mason	223	272	320	402	449
Maverick	239	292	342	421	468
Menard	223	272	320	402	449
Mills	242	296	348	433	483
Montague	240	292	343	430	482
Morris	263	320	377	475	529
Nacogdoches	291	351	416	521	582
Newton	276	337	397	494	555
Ochiltree	260	315	372	466	523
Palo Pinto	248	301	352	442	497
Parmer	260	315	372	466	523
Polk	291	351	416	521	582
Rains	238	291	340	420	464
Real	239	292	342	421	468
Reeves	214	259	304	381	429
Roberts	260	315	372	466	523

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

T E X A S continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Robertson	256	310	367	459	514
Rusk	250	303	358	447	501
San Augustine	227	278	329	411	460
San Saba	242	296	348	433	483
Scurry	248	301	352	442	497
Shelby	227	278	329	411	460
Somervell	219	267	312	395	440
Stephens	248	301	352	442	497
Stonewall	248	301	352	442	497
Swisher	260	315	372	466	523
Terry	242	296	348	433	483
Titus	263	320	377	475	529
Tyler	264	320	378	475	530
Upton	233	288	338	422	475
Val Verde	239	292	342	421	468
Walker	301	367	433	542	606
Washington	264	320	378	475	530
Wheeler	260	315	372	466	523
Willacy	276	337	397	494	555
Winkler	214	259	304	381	429
Wood	228	278	331	411	462
Young	240	292	343	430	482
Zavala	239	292	342	421	468

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Runnels	242	296	348	433	483
Sabine	227	278	329	411	460
San Jacinto	291	351	416	521	582
Schleicher	223	272	320	402	449
Shackleford	248	301	352	442	497
Sherman	260	315	372	466	523
Starr	227	277	328	408	458
Sterling	223	272	320	402	449
Sutton	223	272	320	402	449
Terrell	214	259	304	381	429
Throckmorton	248	301	352	442	497
Trinity	264	334	394	490	551
Upshur	228	278	331	411	462
Uvalde	239	292	342	421	468
Van Zandt	238	291	340	420	464
Ward	214	259	304	381	429
Wharton	296	359	422	529	594
Wilbarger	240	292	343	430	482
Wilson	211	256	302	378	423
Wise	296	359	422	529	594
Yoakum	242	296	348	433	483
Zapata	227	277	328	408	458

U T A H

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Provo-Orem, UT MSA	312	380	446	559	627	Utah
Salt Lake City-Ogden, UT MSA	300	365	429	537	601	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Beaver	342	416	491	612	686
Cache	314	382	451	564	633
Daggett	390	474	558	698	782
Emery	390	474	558	698	782
Grand	390	474	558	698	782
Juab	342	416	491	612	686
Millard	342	416	491	612	686
Piute	342	416	491	612	686
San Juan	390	474	558	698	782

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Box Elder	314	382	451	564	633
Carbon	390	474	558	698	782
Duchesne	390	474	558	698	782
Garfield	342	416	491	612	686
Iron	342	416	491	612	686
Kane	342	416	491	612	686
Morgan	390	474	558	698	782
Rich	314	382	451	564	633
Sanpete	342	416	491	612	686

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091191

U T A H continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sevier	342	416	491	612	686
Tooele	314	382	451	564	633
Wasatch	390	474	558	698	782
Wayne	342	416	491	612	686
Summit	390	474	558	698	782
Uintah	390	474	558	698	782
Washington	374	449	530	662	744

V E R M O N T

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Components of MSA/PMSA within STATE
Burlington, VT MSA	469	571	670	838	940	Chittenden county towns of Burlington, Charlotte Colchester, Essex, Hinesburg, Jericho, Milton, Richmond St. George, Shelburne, South Burlington, Williston Winooski Franklin county towns of Georgia Grand Isle county towns of Grand Isle, South Hero

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	375	455	537	670	752	
Bennington	381	469	550	686	773	
Caledonia	320	388	456	572	641	
Chittenden	433	529	622	780	874	Bolton, Buels, Huntington, Underhill, Westford
Essex	320	388	456	572	641	
Franklin	356	433	511	638	715	Bakersfield, Berkshire, Enosburg, Fairfax, Fairfield Fletcher, Franklin, Highgate, Montgomery, Richford St. Albans, St. Albans, Sheldon, Swanton
Grand Isle	320	388	456	572	641	Alburg, Isle La Motte, North Hero
Lamoille	387	470	552	691	774	
Orange	381	465	547	683	766	
Orleans	320	388	456	572	641	
Rutland	415	505	593	741	831	
Washington	381	469	550	686	773	
Windham	401	489	574	718	806	
Windsor	411	498	587	734	823	

V I R G I N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Charlottesville, VA MSA	363	442	520	651	728	Albemarle, Fluvanna, Greene, Charlottesville
Danville, VA MSA	278	337	397	496	556	Pittsylvania, Danville
Johnson City-Kingsport-Bristol, TN-VA MSA	261	318	374	468	526	Scott, Washington, Bristol
Lynchburg, VA MSA	299	371	428	523	600	Amherst, Campbell, Lynchburg
Norfolk-Virginia Beach-Newport News, VA MSA	371	451	531	664	744	Gloucester, James City, York, Chesapeake, Hampton Newport News City, Norfolk, Poquoson, Portsmouth, Suffolk

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Richmond-Petersburg, VA MSA	332	399	465	584	655	Virginia Beach, Williamsburg City Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights, Hopewell, Petersburg, Richmond
Roanoke, VA MSA	291	355	416	522	584	Botetourt, Roanoke, Roanoke, Salem
Washington, DC-MD-VA MSA	580	705	830	1037	1161	Arlington, Fairfax, Loudoun, Prince William, Stafford Alexandria, Fairfax, Falls Church City, Manassas Manassas Park City

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Accomack	274	331	385	476	531
Amelia	241	291	342	430	483
Augusta	290	352	415	520	582
Bedford	250	304	360	449	503
Brunswick	226	276	323	406	455
Buckingham	241	291	342	430	483
Carroll	245	297	349	439	491
Clarke	291	355	416	522	584
Culpeper	302	367	434	541	606
Dickenson	258	301	357	446	498
Fauquier	302	367	434	541	606
Franklin	250	304	360	449	503
Giles	289	351	412	517	579
Greensville	226	276	323	406	455
Henry	291	355	416	521	583
Isle Of Wight	233	286	332	415	455
King George	342	417	491	612	689
Lancaster	262	321	379	475	531
Louisa	306	370	434	541	606
Madison	306	370	434	541	606
Mecklenburg	226	276	323	406	455
Montgomery	352	428	503	633	705
Northampton	274	331	385	476	531
Nottoway	241	291	342	430	483
Page	291	355	416	522	584
Prince Edward	241	291	342	430	483
Rappahannock	302	367	434	541	606
Rockbridge	290	352	415	520	582
Russell	278	337	397	496	557
Smyth	245	297	349	439	491
Spotsylvania	342	417	491	612	689

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Alleghany	290	352	415	520	582
Appomattox	293	352	412	517	579
Bath	290	352	415	520	582
Bland	245	297	349	439	491
Buchanan	278	337	397	496	557
Caroline	342	417	491	612	689
Charlotte	241	291	342	430	483
Craig	226	276	323	405	454
Cumberland	241	291	342	430	483
Essex	262	321	379	475	531
Floyd	289	351	412	517	579
Frederick	291	355	416	522	584
Grayson	245	297	349	439	491
Halifax	241	291	342	430	483
Highland	290	352	415	520	582
King And Queen	262	321	379	475	531
King William	262	321	379	475	531
Lee	248	301	357	446	498
Lunenburg	241	291	342	430	483
Mathews	262	321	379	475	531
Middlesex	262	321	379	475	531
Nelson	254	308	364	455	510
Northumberland	262	321	379	475	531
Orange	306	370	434	541	606
Patrick	250	304	360	449	503
Pulaski	289	351	412	517	579
Richmond	262	321	379	475	531
Rockingham	290	352	415	520	582
Shenandoah	291	355	416	522	584
Southampton	233	286	332	415	455
Surry	233	286	332	415	455

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Sussex	226	276	323	406	455
Warren	291	355	416	522	584
Wise	280	338	399	498	559
Bedford	250	304	360	449	503
Clifton Forge City	290	352	415	520	582
Emporia	226	276	323	406	455
Fredericksburg	405	492	579	724	811
Harrisonburg City	333	404	476	594	665
Martinsville City	291	355	416	521	583
Radford	352	428	503	633	705
Staunton	290	352	415	520	582
Winchester	353	429	505	631	706

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Tazewell	278	337	397	496	557
Westmoreland	262	321	379	475	531
Wythe	264	322	374	463	518
Buena Vista	290	352	415	520	582
Covington	290	352	415	520	582
Franklin	226	276	323	406	455
Galax	245	297	349	439	491
Lexington	290	352	415	520	582
Norton	279	337	398	497	558
South Boston City	241	291	342	430	483
Waynesboro	290	352	415	520	582

W A S H I N G T O N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Bellingham, WA MSA	411	502	590	755	830	Whatcom
Bremerton, WA MSA	384	467	549	685	771	Kitsap
Olympia, WA MSA	397	482	567	710	797	Thurston
Richland-Kennewick-Pasco, WA MSA	318	387	455	568	636	Benton, Franklin
Seattle, WA PMSA	444	541	632	817	900	King, Snohomish
Spokane, WA MSA	347	405	478	611	625	Spokane
Tacoma, WA PMSA	352	428	505	673	749	Pierce
Vancouver, WA PMSA	296	360	473	624	693	Clark
Yakima, WA MSA	349	423	499	625	701	Yakima

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	283	345	405	509	570
Chelan	343	416	492	613	689
Columbia	368	446	527	658	739
Douglas	343	416	492	613	689
Garfield	368	446	527	658	739
Grays Harbor	370	449	530	662	744
Jefferson	370	449	530	662	744
Klickitat	344	418	492	617	693
Lincoln	283	345	405	509	570
Okanogan	313	378	448	562	629
Pend Oreille	283	345	405	509	570
Skagit	376	461	541	677	757
Stevens	283	345	405	509	570

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Asotin	368	446	527	658	739
Clallam	370	449	530	662	744
Cowlitz	313	397	447	632	691
Ferry	283	345	405	509	570
Grant	283	345	405	509	570
Island	376	461	541	677	757
Kittitas	313	378	448	562	629
Lewis	344	418	492	617	693
Mason	370	449	530	662	744
Pacific	370	449	530	662	744
San Juan	376	461	541	677	757
Skamania	344	418	492	617	693
Wahkiakum	344	418	492	617	693

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091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

W A S H I N G T O N continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Walla Walla	368	446	527	658	739
Whitman	368	446	527	658	739

W E S T V I R G I N I A

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Charleston, WV MSA	375	456	538	673	754	Kanawha, Putnam
Cumberland, MD-WV MSA	284	338	396	489	546	Mineral
Huntington-Ashland, WV-KY-OH MSA	309	375	444	555	624	Cabell, Wayne
Parkersburg-Marietta, WV-OH MSA	292	355	417	525	587	Wood
Steubenville-Weirton, OH-WV MSA	299	365	427	536	603	Brooke, Hancock
Wheeling, WV-OH MSA	291	355	418	523	585	Marshall, Ohio

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Barbour	269	327	386	484	540
Boone	268	324	383	480	537
Calhoun	311	365	423	551	607
Doddridge	261	320	378	472	529
Gilmer	287	344	418	518	571
Greenbrier	247	300	355	442	496
Hardy	257	315	370	463	520
Jackson	311	365	423	551	607
Lewis	269	327	386	484	540
Logan	258	315	370	463	520
Marion	318	387	455	571	638
Mercer	253	309	365	456	512
Monongalia	318	387	455	571	638
Morgan	272	331	389	486	544
Pendleton	257	315	370	463	520
Pocahontas	247	300	355	442	496
Raleigh	258	311	360	449	504
Ritchie	227	277	324	405	455
Summers	258	311	365	456	512
Tucker	269	327	386	484	540
Upshur	269	327	386	484	540
Wetzel	272	331	390	488	546
Wyoming	258	311	360	449	504

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Berkeley	315	382	450	563	630
Braxton	237	287	337	423	475
Clay	268	324	383	480	537
Fayette	247	300	355	442	496
Grant	257	315	370	463	520
Hampshire	257	315	370	463	520
Harrison	311	365	423	551	607
Jefferson	305	371	436	546	611
Lincoln	258	315	370	463	520
Mcdowell	250	305	359	449	504
Mason	258	315	370	463	520
Mingo	258	315	370	463	520
Monroe	258	311	365	456	512
Nicholas	247	300	355	442	496
Pleasants	227	277	324	405	455
Preston	318	387	455	571	638
Randolph	269	327	386	484	540
Roane	311	365	423	551	607
Taylor	261	320	378	472	529
Tyler	227	277	324	405	455
Webster	247	300	355	442	496
Wirt	227	277	324	405	455

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

091191

W I S C O N S I N

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Appleton-Oshkosh-Neenah, WI MSA	292	356	421	525	588	Calumet, Outagamie, Winnebago
Duluth, MN-WI MSA	323	385	454	570	640	Douglas
Eau Claire, WI MSA	289	354	418	520	584	Chippewa, Eau Claire
Green Bay, WI MSA	292	356	423	525	588	Brown
Janesville-Beloit, WI MSA	323	394	464	581	651	Rock
Kenosha, WI PMSA	367	448	526	660	738	Kenosha
La Crosse, WI MSA	347	421	495	619	694	La Crosse
Madison, WI MSA	347	423	505	612	705	Dane
Milwaukee, WI PMSA	346	417	494	618	689	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	432	526	619	774	866	St Croix
Racine, WI PMSA	326	397	467	584	655	Racine
Sheboygan, WI MSA	300	363	429	538	603	Sheboygan
Wausau, WI MSA	292	356	421	525	588	Marathon

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adams	298	361	427	536	601
Barron	284	347	407	510	573
Buffalo	270	326	387	482	543
Clark	284	347	407	510	573
Crawford	256	314	367	461	516
Door	269	323	382	471	525
Florence	256	314	367	461	516
Forest	278	338	397	501	557
Green	278	338	395	492	546
Iowa	269	325	385	480	540
Jackson	270	326	387	482	543
Juneau	298	361	427	536	601
Lafayette	269	325	385	480	540
Lincoln	278	338	397	501	557
Marinette	261	316	369	463	516
Menominee	261	319	376	471	526
Oconto	256	314	367	461	516
Pepin	270	326	387	482	543
Polk	284	347	407	510	573
Price	261	319	376	471	526
Rusk	261	319	376	471	526
Sawyer	261	319	376	471	526
Taylor	261	319	376	471	526
Vernon	256	314	367	461	516
Walworth	312	380	446	557	627

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Ashland	261	319	376	471	526
Bayfield	261	319	376	471	526
Burnett	261	319	376	471	526
Columbia	273	329	390	487	547
Dodge	273	329	390	487	547
Dunn	284	347	407	510	573
Fond Du Lac	321	388	441	549	601
Grant	269	325	385	480	540
Green Lake	292	356	421	525	588
Iron	261	319	376	471	526
Jefferson	312	380	446	557	627
Kewaunee	269	323	382	471	525
Langlade	278	338	397	501	557
Manitowoc	269	323	382	471	525
Marquette	261	319	376	471	526
Monroe	270	326	387	482	543
Oneida	278	338	397	501	557
Pierce	270	326	387	482	543
Portage	298	361	427	536	601
Richland	269	325	385	480	540
Sauk	297	362	427	535	598
Shawano	261	319	376	471	526
Trempealeau	270	326	387	482	543
Vilas	278	338	397	501	557
Washburn	261	319	376	471	526

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

W I S C O N S I N continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Waupaca	261	319	376	471	526
Wood	298	361	427	536	601
Waushara	261	319	376	471	526

W Y O M I N G

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Casper, WY MSA	438	532	625	784	878	Natrona
Cheyenne, WY MSA	361	438	518	650	726	Laramie

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Albany	279	344	406	507	563
Campbell	279	344	406	507	563
Converse	279	344	406	507	563
Fremont	279	344	406	507	563
Hot Springs	286	349	413	513	575
Lincoln	279	344	406	507	563
Park	286	349	413	513	575
Sheridan	386	474	558	695	784
Sweetwater	279	344	406	507	563
Uinta	279	344	406	507	563
Weston	286	349	413	513	575
Big Horn	286	349	413	513	575
Carbon	279	344	406	507	563
Crook	279	349	413	513	575
Goshen	279	344	406	507	563
Johnson	279	344	406	507	563
Niobrara	279	344	406	507	563
Platte	279	344	406	507	563
Sublette	279	344	406	507	563
Teton	368	443	524	658	738
Washakie	286	349	413	513	575

G U A M

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Guam	520	625	739	925	1041

P U E R T O R I C O

METROPOLITAN STATISTICAL AREAS	EFF	1 BR	2 BR	3 BR	4 BR	Counties of MSA/PMSA within STATE
Aguadilla, PR MSA	225	275	325	405	455	Aguada, Aguadilla, Isabela, Moca
Arecibo, PR MSA	330	400	470	590	660	Arecibo, Camuy, Hatillo, Quebradillas
Caguas, PR PMSA	275	330	390	490	545	Aguas Buenas, Caguas, Cayey, Cidra, Gurabo, San Lorenzo
Mayaguez, PR MSA	225	275	325	405	455	Anasco, Cabo Rojo, Hormigueros, Mayaguez, San German
Ponce, PR MSA	320	390	460	575	645	Juana Diaz, Ponce
San Juan, PR PMSA	320	390	460	575	645	Bayamon, Barceloneta, Canovanas, Carolina, Catano Corozal, Dorado, Fajardo, Florida, Guaynabo, Humacao Juncos, Las Piedras, Loiza, Luquillo, Manati, Naranjito Rio Grande, San Juan, Toa Alta, Toa Baja, Trujillo Alto Vega Alta, Vega Baja

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

PUERTO RICO continued

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Adjuntas	215	265	310	390	435
Arroyo	215	265	310	390	435
Ceiba	215	265	310	390	435
Coamo	215	265	310	390	435
Culebra	215	265	310	390	435
Guayama	215	265	310	390	435
Jayuya	215	265	310	390	435
Lares	215	265	310	390	435
Maricao	215	265	310	390	435
Morovis	215	265	310	390	435
Orocovis	215	265	310	390	435
Penuelas	215	265	310	390	435
Sabana Grande	215	265	310	390	435
San Sebastian	215	265	310	390	435
Utuado	215	265	310	390	435
Villalba	215	265	310	390	435
Yauco	215	265	310	390	435

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Aibonito	215	265	310	390	435
Barranquitas	215	265	310	390	435
Ciales	215	265	310	390	435
Comerio	215	265	310	390	435
Guanica	215	265	310	390	435
Guayanilla	215	265	310	390	435
Lajas	215	265	310	390	435
Las Marias	215	265	310	390	435
Maunabo	215	265	310	390	435
Naguabo	215	265	310	390	435
Patillas	215	265	310	390	435
Rincon	215	265	310	390	435
Salinas	215	265	310	390	435
Santa Isabel	215	265	310	390	435
Vieques	215	265	310	390	435
Yabucoa	215	265	310	390	435

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	EFF	1 BR	2 BR	3 BR	4 BR
Charlotte Amalie	468	569	669	836	936
St. Thomas	468	569	669	836	936
St. Croix	417	506	597	746	835

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 091191

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: ALABAMA	71	82
MSA: Anniston, AL	74	83
MSA: Birmingham, AL	106	116
MSA: Columbus, GA-AL	96	106
MSA: Decatur, AL	71	82
MSA: Dothan, AL	69	78
MSA: Florence, AL	83	90
MSA: Gadsden, AL	74	83
MSA: Huntsville, AL	106	116
MSA: Mobile, AL	84	91
MSA: Montgomery, AL	84	90
MSA: Tuscaloosa, AL	99	112
EXCEPTION COUNTY: LIMESTONE	81	89
EXCEPTION COUNTY: MARSHALL	81	89
NON METRO STATE: ALASKA	166	166
MSA: Anchorage, AK	190	190
EXCEPTION COUNTY: KETCHIKAN	166	175
NON METRO STATE: ARIZONA	106	136
MSA: Phoenix, AZ	149	177
MSA: Tucson, AZ	106	149
MSA: Yuma, AZ	106	136
NON METRO STATE: ARKANSAS	39	44
MSA: Fayetteville-Springdale, AR	66	70
MSA: Fort Smith, AR-OK	36	39
MSA: Little Rock-North Little Rock, AR	56	58
MSA: Memphis, TN-AR-MS	98	98
MSA: Pine Bluff, AR	28	31
MSA: Texarkana, TX-Texarkana, AR	115	130
EXCEPTION COUNTY: BENTON	53	55
EXCEPTION COUNTY: LITTLE RIVER	88	99
NON METRO STATE: CALIFORNIA	167	219
PMSA: Anaheim-Santa Ana, CA	408	408
MSA: Bakersfield, CA	157	240
MSA: Chico, CA	167	219
MSA: Fresno, CA	240	271
PMSA: Los Angeles-Long Beach, CA	198	333
MSA: Merced, CA	167	219

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

091191

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Modesto, CA	250	271
PMSA: Oakland, CA	277	363
PMSA: Oxnard-Ventura, CA	253	384
MSA: Redding, CA	167	219
PMSA: Riverside-San Bernardino, CA	168	275
MSA: Sacramento, CA	193	230
MSA: Salinas-Seaside-Monterey, CA	240	302
MSA: San Diego, CA	288	315
PMSA: San Francisco, CA	297	387
PMSA: San Jose, CA	353	412
MSA: Santa Barbara-Santa Maria-Lompoc, CA	197	302
PMSA: Santa Cruz, CA	258	323
PMSA: Santa Rosa-Petaluma, CA	258	310
MSA: Stockton, CA	250	271
PMSA: Vallejo-Fairfield-Napa, CA	269	307
MSA: Visalia-Tulare-Porterville, CA	167	219
MSA: Yuba City, CA	167	219
EXCEPTION COUNTY: SAN LUIS OBI	229	271
NON METRO STATE: COLORADO	N/A	N/A
PMSA: Boulder-Longmont, CO	215	236
MSA: Colorado Springs, CO	157	177
PMSA: Denver, CO	245	265
MSA: Fort Collins-Loveland, CO	149	167
MSA: Greeley, CO	149	167
MSA: Pueblo, CO	149	167
EXCEPTION COUNTY: ALAMOSA	124	149
EXCEPTION COUNTY: ARCHULETA	149	167
EXCEPTION COUNTY: BACA	124	149
EXCEPTION COUNTY: BENT	124	149
EXCEPTION COUNTY: CHAFFEE	149	167
EXCEPTION COUNTY: CHEYENNE	124	149
EXCEPTION COUNTY: CLEAR CREEK	149	167
EXCEPTION COUNTY: CONEJOS	124	149
EXCEPTION COUNTY: COSTILLA	124	149
EXCEPTION COUNTY: CROWLEY	124	149
EXCEPTION COUNTY: CUSTER	149	167
EXCEPTION COUNTY: DELTA	149	167
EXCEPTION COUNTY: DELORES	149	167
EXCEPTION COUNTY: EAGLE	241	271
EXCEPTION COUNTY: ELBERT	124	149
EXCEPTION COUNTY: FREMONT	149	167
EXCEPTION COUNTY: GARFIELD	241	271
EXCEPTION COUNTY: GILPIN	164	189
EXCEPTION COUNTY: GRAND	149	167

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 091191

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 57

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: GUNNISON	149	167
EXCEPTION COUNTY: HINSDALE	149	167
EXCEPTION COUNTY: HUERFANO	124	149
EXCEPTION COUNTY: JACKSON	149	167
EXCEPTION COUNTY: KIOWA	124	149
EXCEPTION COUNTY: KIT CARSON	124	149
EXCEPTION COUNTY: LAKE	149	167
EXCEPTION COUNTY: LA PLATA	149	167
EXCEPTION COUNTY: LAS ANIMAS	124	149
EXCEPTION COUNTY: LINCOLN	124	149
EXCEPTION COUNTY: LOGAN	124	149
EXCEPTION COUNTY: MESA	149	167
EXCEPTION COUNTY: MINERAL	124	149
EXCEPTION COUNTY: MOFFAT	241	271
EXCEPTION COUNTY: MONTEZUMA	149	167
EXCEPTION COUNTY: MONTROSE	149	167
EXCEPTION COUNTY: MORGAN	124	149
EXCEPTION COUNTY: OTERO	124	149
EXCEPTION COUNTY: OURAY	149	167
EXCEPTION COUNTY: PARK	149	167
EXCEPTION COUNTY: PHILLIPS	124	149
EXCEPTION COUNTY: PITKIN	241	271
EXCEPTION COUNTY: PROWERS	124	149
EXCEPTION COUNTY: RIO BLANCO	241	271
EXCEPTION COUNTY: RIO GRANDE	124	149
EXCEPTION COUNTY: ROUTT	241	271
EXCEPTION COUNTY: SAGUACHE	124	149
EXCEPTION COUNTY: SAN JUAN	149	167
EXCEPTION COUNTY: SAN MIGUEL	149	167
EXCEPTION COUNTY: SEDGWICK	124	149
EXCEPTION COUNTY: SUMMIT	241	271
EXCEPTION COUNTY: TELLER	124	149
EXCEPTION COUNTY: WASHINGTON	124	149
EXCEPTION COUNTY: YUMA	124	149
NON METRO STATE: CONNECTICUT	167	167
PMSA: Bridgeport-Milford, CT	220	220
PMSA: Bristol, CT	167	167
PMSA: Danbury, CT	168	168
PMSA: Hartford, CT	181	181
PMSA: Middletown, CT	181	181
PMSA: New Britain, CT	181	181
MSA: New Haven-Meriden, CT	163	163
MSA: New London-Norwich, CT-RI	155	155
PMSA: Norwalk, CT	207	207

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 091191

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: Stamford, CT	207	207
MSA: Waterbury, CT	167	167
NON METRO STATE: DELAWARE	72	72
PMSA: Wilmington, DE-NJ-MD	148	148
NON METRO STATE: DIST. OF COLUMBIA	N/A	N/A
MSA: Washington, DC-MD-VA	202	202
NON METRO STATE: FLORIDA	90	90
MSA: Bradenton, FL	130	130
MSA: Daytona Beach, FL	115	115
PMSA: Fort Lauderdale-Hollywood-Pompano Beach, FL	187	187
MSA: Fort Myers-Cape Coral, FL	121	121
MSA: Fort Pierce, FL	87	87
MSA: Fort Walton Beach, FL	90	90
MSA: Gainesville, FL	90	90
MSA: Jacksonville, FL	83	98
MSA: Lakeland-Winter Haven, FL	90	90
MSA: Melbourne-Titusville-Palm Bay, FL	106	106
PMSA: Miami-Hialeah, FL	148	148
MSA: Naples, FL	90	90
MSA: Ocala, FL	90	90
MSA: Orlando, FL	106	106
MSA: Panama City, FL	90	90
MSA: Pensacola, FL	90	90
MSA: Sarasota, FL	121	121
MSA: Tallahassee, FL	83	83
MSA: Tampa-St. Petersburg-Clearwater, FL	121	121
MSA: West Palm Beach-Boca Raton-Delray Beach, FL	154	154
EXCEPTION COUNTY: BAKER	81	95
EXCEPTION COUNTY: COLUMBIA	90	90
EXCEPTION COUNTY: WAKULLA	81	95
NON METRO STATE: GEORGIA	65	65
MSA: Albany, GA	57	61
MSA: Athens, GA	65	65
MSA: Atlanta, GA	102	110
MSA: Augusta, GA-SC	87	90
MSA: Chattanooga, TN-GA	57	83
MSA: Columbus, GA-AL	96	106
MSA: Macon-Warner Robins, GA	58	64

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 091191

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Savannah, GA	72	83
EXCEPTION COUNTY: BRYAN	65	65
EXCEPTION COUNTY: TWIGGS	57	63
NON METRO STATE: HAWAII	N/A	N/A
MSA: Honolulu, HI	N/A	N/A
NON METRO STATE: IDAHO	124	124
MSA: Boise City, ID	134	156
NON METRO STATE: ILLINOIS	117	126
PMSA: Aurora-Elgin, IL	243	262
MSA: Bloomington-Normal, IL	131	131
MSA: Champaign-Urbana-Rantoul, IL	107	107
PMSA: Chicago, IL	257	274
MSA: Davenport-Rock Island-Moline, IA-IL	144	151
MSA: Decatur, IL	144	144
PMSA: Joliet, IL	257	274
MSA: Kankakee, IL	104	104
PMSA: Lake County, IL	243	262
MSA: Peoria, IL	196	215
MSA: Rockford, IL	193	205
MSA: St. Louis, MO-IL	105	121
MSA: Springfield, IL	126	134
NON METRO STATE: INDIANA	64	83
MSA: Anderson, IN	71	71
MSA: Bloomington, IN	67	67
PMSA: Cincinnati, OH-KY-IN	127	133
MSA: Elkhart-Goshen, IN	92	92
MSA: Evansville-Henderson, IN-KY	85	90
MSA: Fort Wayne, IN	78	107
PMSA: Gary-Hammond, IN	124	143
MSA: Indianapolis, IN	100	115
MSA: Kokomo, IN	92	105
MSA: Lafayette-West Lafayette, IN	86	127
MSA: Louisville, KY-IN	90	99
MSA: Muncie, IN	68	76
MSA: South Bend-Mishawaka, IN	105	111
MSA: Terre Haute, IN	67	83
EXCEPTION COUNTY: ADAMS	64	83
EXCEPTION COUNTY: BLACKFORD	72	83

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

091191

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: GIBSON	64	83
EXCEPTION COUNTY: GRANT	72	83
EXCEPTION COUNTY: HENRY	72	83
EXCEPTION COUNTY: JAY	72	83
EXCEPTION COUNTY: MARSHALL	74	83
EXCEPTION COUNTY: RANDOLPH	72	83
EXCEPTION COUNTY: SULLIVAN	65	77
EXCEPTION COUNTY: VERMILLION	65	77
EXCEPTION COUNTY: WAYNE	72	83
EXCEPTION COUNTY: WELLS	64	83
NON METRO STATE: IOWA	100	108
MSA: Cedar Rapids, IA	115	134
MSA: Davenport-Rock Island-Moline, IA-IL	144	151
MSA: Des Moines, IA	123	131
MSA: Dubuque, IA	115	143
MSA: Iowa City, IA	115	131
MSA: Omaha, NE-IA	108	126
MSA: Sioux City, IA-NE	111	111
MSA: Waterloo-Cedar Falls, IA	115	134
NON METRO STATE: KANSAS	88	100
MSA: Kansas City, MO-KS	100	122
MSA: Lawrence, KS	90	103
MSA: Topeka, KS	88	100
MSA: Wichita, KS	103	110
EXCEPTION COUNTY: JEFFERSON	84	97
EXCEPTION COUNTY: OSAGE	84	97
NON METRO STATE: KENTUCKY	78	86
PMSA: Cincinnati, OH-KY-IN	127	133
MSA: Clarksville-Hopkinsville, TN-KY	83	90
MSA: Evansville-Henderson, IN-KY	84	90
MSA: Huntington-Ashland, WV-KY-OH	95	95
MSA: Lexington-Fayette, KY	99	113
MSA: Louisville, KY-IN	90	98
MSA: Owensboro, KY	91	109
NON METRO STATE: LOUISIANA	84	99
MSA: Alexandria, LA	83	98
MSA: Baton Rouge, LA	98	115
MSA: Houma-Thibodaux, LA	82	96

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 091191

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Lafayette, LA	90	106
MSA: Lake Charles, LA	96	113
MSA: Monroe, LA	83	98
MSA: New Orleans, LA	103	119
MSA: Shreveport, LA	90	106
EXCEPTION COUNTY: GRANT	81	95
EXCEPTION COUNTY: WEBSTER	84	99
NON METRO STATE: MAINE	148	170
MSA: Bangor, ME	148	170
MSA: Lewiston-Auburn, ME	112	112
MSA: Portland, ME	184	210
MSA: Portsmouth-Dover-Rochester, NH-ME	148	170
NON METRO STATE: MARYLAND	131	131
MSA: Baltimore, MD	211	211
MSA: Cumberland, MD-WV	131	131
MSA: Hagerstown, MD	201	201
MSA: Washington, DC-MD-VA	202	202
PMSA: Wilmington, DE-NJ-MD	148	148
EXCEPTION COUNTY: ST MARYS	240	240
NON METRO STATE: MASSACHUSETTS	181	181
PMSA: Boston, MA	173	187
PMSA: Brockton, MA	173	173
PMSA: Fall River, MA-RI	112	112
MSA: Fitchburg-Leominster, MA	134	134
PMSA: Lawrence-Haverhill, MA-NH	164	175
PMSA: Lowell, MA-NH	164	175
MSA: New Bedford, MA	155	155
PMSA: Pawtucket-Woonsocket-Attleboro, RI-MA	154	154
MSA: Pittsfield, MA	168	168
PMSA: Salem-Gloucester, MA	173	187
MSA: Springfield, MA	132	132
MSA: Worcester, MA	115	115
NON METRO STATE: MICHIGAN	126	140
PMSA: Ann Arbor, MI	183	197
MSA: Battle Creek, MI	108	126
MSA: Benton Harbor, MI	126	140
PMSA: Detroit, MI	177	191
MSA: Flint, MI	153	153

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

091191

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Grand Rapids, MI	115	124
MSA: Jackson, MI	126	126
MSA: Kalamazoo, MI	132	136
MSA: Lansing-East Lansing, MI	148	172
MSA: Muskegon, MI	115	117
MSA: Saginaw-Bay City-Midland, MI	134	134
EXCEPTION COUNTY: BARRY	103	120
EXCEPTION COUNTY: IONIA	126	140
EXCEPTION COUNTY: OCEANA	110	112
EXCEPTION COUNTY: SHIAWA$SEE	147	147
EXCEPTION COUNTY: VAN BUREN	126	130
NON METRO STATE: MINNESOTA	90	90
MSA: Duluth, MN-WI	92	104
MSA: Fargo-Moorhead, ND-MN	143	161
MSA: Minneapolis-St. Paul, MN-WI	214	227
MSA: Rochester, MN	130	130
MSA: St. Cloud, MN	114	114
EXCEPTION COUNTY: POLK	138	156
NON METRO STATE: MISSISSIPPI	84	99
MSA: Biloxi-Gulfport, MS	98	115
MSA: Jackson, MS	106	130
MSA: Memphis, TN-AR-MS	98	98
MSA: Pascagoula, MS	83	98
EXCEPTION COUNTY: STONE	84	99
NON METRO STATE: MISSOURI	70	77
MSA: Columbia, MO	100	108
MSA: Joplin, MO	70	77
MSA: Kansas City, MO-KS	100	122
MSA: St. Joseph, MO	103	111
MSA: St. Louis, MO-IL	105	121
MSA: Springfield, MO	72	78
EXCEPTION COUNTY: ANDREW	98	105
NON METRO STATE: MONTANA	N/A	N/A
MSA: Billings, MT	186	208
MSA: Great Falls, MT	157	177
EXCEPTION COUNTY: BEAVERHEAD	149	167
EXCEPTION COUNTY: BIG HORN	149	167
EXCEPTION COUNTY: BLAINE	106	124

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

091191

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 63

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: BROADWATER	149	167
EXCEPTION COUNTY: CARBON	149	167
EXCEPTION COUNTY: CARTER	106	124
EXCEPTION COUNTY: CHOUTEAU	106	124
EXCEPTION COUNTY: CUSTER	149	167
EXCEPTION COUNTY: DANIELS	106	124
EXCEPTION COUNTY: DAWSON	149	167
EXCEPTION COUNTY: DEER LODGE	149	167
EXCEPTION COUNTY: FALLON	106	124
EXCEPTION COUNTY: FERGUS	106	124
EXCEPTION COUNTY: FLATHEAD	149	167
EXCEPTION COUNTY: GALLATIN	149	167
EXCEPTION COUNTY: GARFIELD	106	124
EXCEPTION COUNTY: GLACIER	106	124
EXCEPTION COUNTY: GOLDEN VALLE	106	124
EXCEPTION COUNTY: GRANITE	149	167
EXCEPTION COUNTY: HILL	106	124
EXCEPTION COUNTY: JEFFERSON	149	167
EXCEPTION COUNTY: JUDITH BASIN	106	124
EXCEPTION COUNTY: LAKE	149	167
EXCEPTION COUNTY: LEWIS+ CLARK	149	167
EXCEPTION COUNTY: LIBERTY	106	124
EXCEPTION COUNTY: LINCOLN	149	167
EXCEPTION COUNTY: MCCONE	106	124
EXCEPTION COUNTY: MADISON	149	167
EXCEPTION COUNTY: MEAGHER	149	167
EXCEPTION COUNTY: MINERAL	149	167
EXCEPTION COUNTY: MISSOULA	149	167
EXCEPTION COUNTY: MUSSELSHELL	149	167
EXCEPTION COUNTY: PARK	149	167
EXCEPTION COUNTY: PETROLEUM	106	124
EXCEPTION COUNTY: PHILLIPS	106	124
EXCEPTION COUNTY: PONDERA	106	124
EXCEPTION COUNTY: POWDER RIVER	149	167
EXCEPTION COUNTY: POWELL	149	167
EXCEPTION COUNTY: PRAIRIE	106	124
EXCEPTION COUNTY: RAVALLI	149	167
EXCEPTION COUNTY: RICHLAND	106	124
EXCEPTION COUNTY: ROOSEVELT	106	124
EXCEPTION COUNTY: ROSEBUD	149	167
EXCEPTION COUNTY: SANDERS	149	167
EXCEPTION COUNTY: SHERIDAN	106	124
EXCEPTION COUNTY: SILVER BOW	149	167
EXCEPTION COUNTY: STILLWATER	106	124
EXCEPTION COUNTY: SWEET GRASS	106	124
EXCEPTION COUNTY: TETON	106	124

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 091191

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: TOOLE	106	124
EXCEPTION COUNTY: TREASURE	149	167
EXCEPTION COUNTY: VALLEY	106	124
EXCEPTION COUNTY: WHEATLAND	106	124
EXCEPTION COUNTY: WIBAUX	106	124
EXCEPTION COUNTY: YL-ST-NT-PK	149	167
NON METRO STATE: NEBRASKA	91	112
MSA: Lincoln, NE	124	131
MSA: Omaha, NE-IA	108	126
MSA: Sioux City, IA-NE	111	111
NON METRO STATE: NEVADA	118	136
MSA: Las Vegas, NV	250	279
MSA: Reno, NV	250	279
NON METRO STATE: NEW HAMPSHIRE	133	148
PMSA: Lawrence-Haverhill, MA-NH	164	175
PMSA: Lowell, MA-NH	164	175
MSA: Manchester, NH	152	167
PMSA: Nashua, NH	187	187
MSA: Portsmouth-Dover-Rochester, NH-ME	148	170
NON METRO STATE: NEW JERSEY	137	137
MSA: Allentown-Bethlehem-Easton, PA-NJ	134	134
MSA: Atlantic City, NJ	211	211
PMSA: Bergen-Passaic, NJ	290	292
PMSA: Jersey City, NJ	282	282
PMSA: Middlesex-Somerset-Hunterdon, NJ	331	331
PMSA: Monmouth-Ocean, NJ	253	306
PMSA: Newark, NJ	272	282
PMSA: Philadelphia, PA-NJ	233	233
PMSA: Trenton, NJ	205	205
PMSA: Vineland-Millville-Bridgeton, NJ	181	181
PMSA: Wilmington, DE-NJ-MD	148	148
NON METRO STATE: NEW MEXICO	110	128
MSA: Las Cruces, NM	110	128
MSA: Albuquerque, NM	124	144
MSA: Santa Fe, NM	110	128
EXCEPTION COUNTY: SANDOVAL	118	134

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

091191

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) AGE 65

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: NEW YORK	160	160
MSA: Albany-Schenectady-Troy, NY	199	199
MSA: Binghamton, NY	119	119
PMSA: Buffalo, NY	145	145
MSA: Elmira, NY	127	127
MSA: Glens Falls, NY	160	160
MSA: Jamestown-Dunkirk, NY	303	303
PMSA: Nassau-Suffolk, NY	222	287
PMSA: New York, NY	230	230
PMSA: Niagara Falls, NY	138	138
PMSA: Orange County, NY	159	159
MSA: Poughkeepsie, NY	303	303
MSA: Rochester, NY	182	182
MSA: Syracuse, NY	147	147
MSA: Utica-Rome, NY	149	149
EXCEPTION COUNTY: WESTCHESTER	269	269
NON METRO STATE: NORTH CAROLINA	58	72
MSA: Asheville, NC	83	98
MSA: Burlington, NC	83	98
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	83	98
MSA: Fayetteville, NC	83	98
MSA: Greensboro--Winston-Salem--High Point, NC	83	98
MSA: Hickory-Morganton, NC	58	72
MSA: Jacksonville, NC	58	72
MSA: Raleigh-Durham, NC	83	98
MSA: Wilmington, NC	83	98
EXCEPTION COUNTY: BRUNSWICK	64	76
EXCEPTION COUNTY: CURRITUCK	101	101
EXCEPTION COUNTY: HAYWOOD	75	75
EXCEPTION COUNTY: MADISON	64	76
NON METRO STATE: NORTH DAKOTA	114	131
MSA: Bismarck, ND	162	179
MSA: Fargo-Moorhead, ND-MN	143	161
MSA: Grand Forks, ND	123	152
NON METRO STATE: OHIO	82	82
PMSA: Akron, OH	121	121
MSA: Canton, OH	88	88
PMSA: Cincinnati, OH-KY-IN	127	133
PMSA: Cleveland, OH	129	129

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

091191

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Columbus, OH	115	134
MSA: Dayton-Springfield, OH	88	88
PMSA: Hamilton-Middletown, OH	103	106
MSA: Huntington-Ashland, WV-KY-OH	96	96
MSA: Lima, OH	115	115
PMSA: Lorain-Elyria, OH	138	138
MSA: Mansfield, OH	108	108
MSA: Parkersburg-Marietta, WV-OH	96	96
MSA: Steubenville-Weirton, OH-WV	86	86
MSA: Toledo, OH	145	196
MSA: Wheeling, WV-OH	88	88
MSA: Youngstown-Warren, OH	108	108
EXCEPTION COUNTY: CHAMPAIGN	82	82
EXCEPTION COUNTY: OTTAWA	100	134
EXCEPTION COUNTY: PREBLE	82	82
EXCEPTION COUNTY: PUTNAM	82	82
EXCEPTION COUNTY: VAN WERT	82	82
NON METRO STATE: OKLAHOMA	81	87
MSA: Enid, OK	81	87
MSA: Fort Smith, AR-OK	36	39
MSA: Lawton, OK	82	90
MSA: Oklahoma City, OK	84	93
MSA: Tulsa, OK	90	98
EXCEPTION COUNTY: LE FLORE	35	38
EXCEPTION COUNTY: MAYES	81	87
NON METRO STATE: OREGON	158	167
MSA: Eugene-Springfield, OR	186	192
MSA: Medford, OR	158	167
PMSA: Portland, OR	212	235
MSA: Salem, OR	186	192
NON METRO STATE: PENNSYLVANIA	95	95
MSA: Allentown-Bethlehem-Easton, PA-NJ	134	134
MSA: Altoona, PA	124	124
PMSA: Beaver County, PA	95	95
MSA: Erie, PA	124	124
MSA: Harrisburg-Lebanon-Carlisle, PA	141	141
MSA: Johnstown, PA	124	124
MSA: Lancaster, PA	128	128
PMSA: Philadelphia, PA-NJ	233	233
PMSA: Pittsburgh, PA	99	99

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

091191

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Reading, PA	128	128
MSA: Scranton--Wilkes-Barre, PA	113	113
MSA: Sharon, PA	95	95
MSA: State College, PA	95	95
MSA: Williamsport, PA	95	95
MSA: York, PA	128	128
EXCEPTION COUNTY: SUSQUEHANNA	95	95
NON METRO STATE: RHODE ISLAND	148	148
PMSA: Fall River, MA-RI	112	112
MSA: New London-Norwich, CT-RI	155	155
PMSA: Pawtucket-Woonsocket-Attleboro, RI-MA	155	155
PMSA: Providence, RI	155	155
NON METRO STATE: SOUTH CAROLINA	65	65
MSA: Anderson, SC	65	65
MSA: Augusta, GA-SC	87	90
MSA: Charleston, SC	83	83
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	83	98
MSA: Columbia, SC	72	83
MSA: Florence, SC	65	65
MSA: Greenville-Spartanburg, SC	72	72
NON METRO STATE: SOUTH DAKOTA	97	114
MSA: Rapid City, SD	97	114
MSA: Sioux Falls, SD	137	153
NON METRO STATE: TENNESSEE	65	65
MSA: Chattanooga, TN-GA	57	83
MSA: Clarksville-Hopkinsville, TN-KY	83	90
MSA: Jackson, TN	65	65
MSA: Johnson City-Kingsport-Bristol, TN-VA	90	90
MSA: Knoxville, TN	72	72
MSA: Memphis, TN-AR-MS	98	98
MSA: Nashville, TN	98	115
NON METRO STATE: TEXAS	70	87
NON METRO STATE: TEXAS	70	87
MSA: Abilene, TX	61	68

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

091191

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Amarillo, TX	113	119
MSA: Austin, TX	103	121
MSA: Beaumont-Port Arthur, TX	106	121
PMSA: Brazoria, TX	113	132
MSA: Brownsville-Harlingen, TX	83	98
MSA: Bryan-College Station, TX	103	115
MSA: Corpus Christi, TX	87	115
PMSA: Dallas, TX	81	104
MSA: El Paso, TX	117	133
PMSA: Fort Worth-Arlington, TX	81	104
PMSA: Galveston-Texas City, TX	109	122
PMSA: Houston, TX	116	136
MSA: Killeen-Temple, TX	106	115
MSA: Laredo, TX	72	90
MSA: Longview-Marshall, TX	98	112
MSA: Lubbock, TX	112	115
MSA: Mc Allen-Edinburg-Mission, TX	96	115
MSA: Midland, TX	115	121
MSA: Odessa, TX	115	121
MSA: San Angelo, TX	98	106
MSA: San Antonio, TX	83	98
MSA: Sherman-Denison, TX	90	106
MSA: Texarkana, TX-Texarkana, AR	115	130
MSA: Tyler, TX	90	95
MSA: Victoria, TX	70	87
MSA: Waco, TX	93	106
MSA: Wichita Falls, TX	65	72
EXCEPTION COUNTY: CALLAHAN	60	66
EXCEPTION COUNTY: CLAY	64	70
EXCEPTION COUNTY: HOOD	70	88
EXCEPTION COUNTY: JONES	60	66
EXCEPTION COUNTY: WISE	70	88
NON METRO STATE: UTAH	N/A	N/A
MSA: Provo-Orem, UT	149	167
MSA: Salt Lake City-Ogden, UT	167	186
EXCEPTION COUNTY: BEAVER	106	124
EXCEPTION COUNTY: BOX ELDER	106	124
EXCEPTION COUNTY: CACHE	106	124
EXCEPTION COUNTY: CARBON	149	167
EXCEPTION COUNTY: DAGGETT	106	124
EXCEPTION COUNTY: DUCHESNE	106	124
EXCEPTION COUNTY: EMERY	149	167
EXCEPTION COUNTY: GARFIELD	106	124
EXCEPTION COUNTY: GRAND	149	167

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

091191

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 69

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: IRON	106	124
EXCEPTION COUNTY: JUAB	106	124
EXCEPTION COUNTY: KANE	106	124
EXCEPTION COUNTY: MILLARD	106	124
EXCEPTION COUNTY: MORGAN	106	124
EXCEPTION COUNTY: PIUTE	106	124
EXCEPTION COUNTY: RICH	106	124
EXCEPTION COUNTY: SAN JUAN	106	124
EXCEPTION COUNTY: SANPETE	106	124
EXCEPTION COUNTY: SEVIER	106	124
EXCEPTION COUNTY: SUMMIT	106	124
EXCEPTION COUNTY: TOOELE	108	120
EXCEPTION COUNTY: UINTAH	149	167
EXCEPTION COUNTY: WASATCH	106	124
EXCEPTION COUNTY: WASHINGTON	106	124
EXCEPTION COUNTY: WAYNE	106	124
NON METRO STATE: VERMONT	138	160
MSA: Burlington, VT	167	191
EXCEPTION COUNTY: CHITTENDEN	168	194
EXCEPTION COUNTY: FRANKLIN	143	165
EXCEPTION COUNTY: GRAND ISLE	157	180
EXCEPTION COUNTY: ORANGE	155	179
EXCEPTION COUNTY: WASHINGTON	171	197
EXCEPTION COUNTY: WINDHAM	205	237
EXCEPTION COUNTY: WINDSOR	221	253
NON METRO STATE: VIRGINIA	93	93
MSA: Charlottesville, VA	93	93
MSA: Danville, VA	93	93
MSA: Johnson City-Kingsport-Bristol, TN-VA	90	90
MSA: Lynchburg, VA	83	83
MSA: Norfolk-Virginia Beach-Newport News, VA	132	132
MSA: Richmond-Petersburg, VA	130	130
MSA: Roanoke, VA	90	90
MSA: Washington, DC-MD-VA	202	202
EXCEPTION COUNTY: APPOMATTOX	81	81
EXCEPTION COUNTY: CRAIG	87	87
NON METRO STATE: WASHINGTON	136	158
MSA: Bellingham, WA	136	176
MSA: Bremerton, WA	136	176
MSA: Olympia, WA	136	176

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 091191

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Richland-Kennewick-Pasco, WA	186	186
PMSA: Seattle, WA	180	254
MSA: Spokane, WA	149	167
PMSA: Tacoma, WA	161	190
PMSA: Vancouver, WA	198	217
MSA: Yakima, WA	149	157
NON METRO STATE: WEST VIRGINIA	90	90
MSA: Charleston, WV	98	98
MSA: Cumberland, MD-WV	131	131
MSA: Huntington-Ashland, WV-KY-OH	95	95
MSA: Parkersburg-Marietta, WV-OH	95	95
MSA: Steubenville-Weirton, OH-WV	85	85
MSA: Wheeling, WV-OH	87	87
EXCEPTION COUNTY: BERKELEY	129	129
EXCEPTION COUNTY: JEFFERSON	129	129
EXCEPTION COUNTY: MORGAN	129	129
EXCEPTION COUNTY: WIRT	87	87
NON METRO STATE: WISCONSIN	100	108
MSA: Appleton-Oshkosh-Neenah, WI	126	134
MSA: Duluth, MN-WI	92	104
MSA: Eau Claire, WI	117	127
MSA: Green Bay, WI	123	131
MSA: Janesville-Beloit, WI	123	131
PMSA: Kenosha, WI	140	151
MSA: La Crosse, WI	111	121
MSA: Madison, WI	185	195
PMSA: Milwaukee, WI	146	156
MSA: Minneapolis-St. Paul, MN-WI	214	227
PMSA: Racine, WI	138	145
MSA: Sheboygan, WI	100	108
MSA: Wausau, WI	100	108
NON METRO STATE: WYOMING	N/A	N/A
MSA: Casper, WY	250	271
MSA: Cheyenne, WY	149	179
EXCEPTION COUNTY: ALBANY	149	179
EXCEPTION COUNTY: BIG HORN	149	179
EXCEPTION COUNTY: CAMPBELL	250	271
EXCEPTION COUNTY: CARBON	250	271
EXCEPTION COUNTY: CONVERSE	250	271
EXCEPTION COUNTY: CROOK	149	179

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

091191

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 71

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: FREMONT	250	271
EXCEPTION COUNTY: GOSHEN	149	179
EXCEPTION COUNTY: HOT SPRINGS	149	179
EXCEPTION COUNTY: JOHNSON	149	179
EXCEPTION COUNTY: LARAMIE	149	179
EXCEPTION COUNTY: LINCOLN	149	179
EXCEPTION COUNTY: PARK	149	179
EXCEPTION COUNTY: PLATTE	149	179
EXCEPTION COUNTY: SHERIDAN	250	271
EXCEPTION COUNTY: SUBLETTE	149	179
EXCEPTION COUNTY: SWEETWATER	250	271
EXCEPTION COUNTY: TETON	149	179
EXCEPTION COUNTY: UINTA	149	179
EXCEPTION COUNTY: WASHAKIE	149	179
EXCEPTION COUNTY: WESTON	149	179

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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Thursday
September 26, 1991

Part XI

Department of Health and Human Services

Food and Drug Administration

Silicone Gel-Filled Breast Prostheses; Silicone Inflatable Breast Prostheses: Patient Risk Information; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N-0372]

Silicone Gel-Filled Breast Prostheses; Silicone Inflatable Breast Prostheses: Patient Risk Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice to promote the dissemination of information on risks associated with silicone gel-filled breast prostheses and silicone inflatable ("saline-filled") breast prostheses to women considering having the devices implanted. This notice addresses an important public health issue presented by the continued marketing and implantation of these unapproved devices. FDA has identified significant deficiencies in premarket approval applications for silicone gel-filled breast prostheses. FDA will regard breast prostheses as misbranded under the Federal Food, Drug, and Cosmetic Act (the act) if their labeling does not provide adequate written information to patients on the risks associated with these devices. Such information should be written so as to be easily comprehensible to most patients and should be provided to patients prior to scheduling implantation, so that patients have sufficient time to review the information and discuss it with their physicians. To satisfy the requirements of the act, such patient risk information must set out the known, suspected, and potential risks associated with implantation of these devices. This notice includes suggested patient risk information sheets as guidance.

DATES: Effective September 26, 1991; to ensure sufficient time for printing and dissemination of appropriate risk information, FDA does not intend to take any enforcement action under the act relating to this notice until October 28, 1991.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Silicone gel-filled breast prostheses and saline-filled breast prostheses are medical devices used to augment or reconstruct the female breast. These devices are defined in §§ 878.3530 and 878.3540 (21 CFR 878.3530 and 878.3540). FDA estimates that 80 percent of these devices are used in augmentation, while the remaining 20 percent are used for reconstruction following mastectomy. Approximately 150,000 women undergo surgery for augmentation or reconstruction each year.

FDA has required that manufacturers of silicone gel-filled breast prostheses submit data on the safety and effectiveness of their devices, and FDA is currently in the process of reviewing the data submitted by several manufacturers. FDA has identified significant deficiencies in premarket approval applications for these devices. By early January 1992, FDA will issue its decisions on whether to approve these products for continued marketing. FDA has announced its intent to require manufacturers of saline-filled breast prostheses to submit safety and effectiveness data also (54 FR 550 at 551, January 6, 1989).

Pending completion of FDA's review of the safety and effectiveness data for breast prostheses, the agency believes that it is crucial for women contemplating implantation to be provided with information on the known, suspected, and potential risks associated with these devices. FDA has received reports that women considering implantation are not receiving the information they need to make informed decisions about whether to undergo implantation.

Because breast prostheses are implanted at the patient s own choosing after breast cancer surgery or for cosmetic purposes, it is of particular concern to FDA that patients receive all of the information pertinent to their decision. Indeed, both physicians and women considering implants are entitled to disclosure by implant manufacturers of information on known, suspected, and potential risks associated with breast implants.

The information that is currently available on possible risks does not warrant removing the implants, especially considering that any surgical procedure carries a risk of its own. Nonetheless, a woman who is concerned about the possible risks or who is experiencing problems she thinks are associated with her implants should consult with her doctor to decide what is best in her case.

It is FDA's position that a manufacturer misbrands a breast prosthesis under section 502(a) of the act because its labeling fails to contain facts material to the consequences of its use, unless the labeling provides patients with patient risk information, written so as to be easily comprehensible to most patients, that adequately addresses the nature of the device and its known, suspected, and potential risks. In the interests of patients, physicians also should take an active role in helping patients to make informed decisions by providing them with timely information. FDA believes that the physician with his or her expertise and specific knowledge of each patient's particular condition is the best person to provide risk information to patients and to discuss with patients the relative risks and benefits, which may vary depending on the condition for which the implant is used.

FDA is making available to manufacturers patient risk information sheets on silicone gel-filled and saline-filled breast prostheses. Manufacturers may print these and send them to physicians so that they can provide them to patients. These sheets include the type of information that FDA believes is required to prevent a breast prosthesis from being misbranded. They are provided for guidance only. The text of these sheets is printed at the end of this document.

Copies of these patient risk information sheets are available from the Food and Drug Administration, Office of Consumer Affairs (HFE-88), 5600 Fishers Lane, Rockville, MD 20857, 301-443-5006.

Dated: September 20, 1991.

David A. Kessler,

Commissioner of Food and Drugs.

Silicone Gel-Filled Breast Implants

The Food and Drug Administration believes that a patient considering silicone gel-filled breast implants should receive the following information about the possible risks involved. The patient should receive the information before surgery is scheduled, so that she has time to review the material and discuss it with her doctor. Each woman, with her doctor's help, must decide whether she is willing to accept the risks in order to achieve the expected benefits, which may vary, depending on the condition for which the implant is used.

In addition to posing the general risks associated with any surgical procedure (infection, delayed wound healing, etc.), silicone gel-filled breast implants have certain specific risks, including:

- Capsular contracture. The scar tissue that normally forms around the implant can tighten and squeeze the implant. This can cause unnatural firmness, pain and, in severe cases, a misshapen appearance.
- Calcium deposits in the tissue around the implant. This too can cause hardening and pain.
- Rupture of the implant. The implant can break due to injury or normal wear over time, releasing the silicone gel filling.
- Changes in nipple and breast sensation. There can be increased or decreased sensation, which can be temporary or permanent.
- Interference with mammography. The implant can interfere with the detection of early breast cancer through mammography because it can "hide" suspicious lesions in the breast. This makes it difficult to perform mammography and to interpret the results.

Although they may occur in only a small percentage of patients, some of these adverse effects, such as capsular contracture, calcium deposits and rupture, can require removing the implants.

In addition to these known risks, there are unanswered questions about silicone gel-filled breast implants. For example, even if the implant does not rupture, tiny amounts of the gel filling can gradually escape from the implant and may migrate to other parts of the body. It is unknown whether this is harmful to health in the long run. Questions have been raised about whether the escaped gel might cause autoimmune diseases such as lupus, scleroderma and rheumatoid arthritis in some women, or whether it might increase the risk of cancer. There is no scientific evidence at present that women with breast implants have an increased risk of these diseases, but the possibility cannot be ruled out. FDA has required the manufacturers of silicone gel-filled breast implants to submit data to answer these questions. (In contrast to the silicone-gel filled breast implants, saline-filled implants contain only salt water, so any risk that might be related to the gel would not occur with these products. But since both types of implants have a silicone rubber envelope, an increased risk of autoimmune diseases or cancer is possible even for the saline-filled implants.)

Saline-Filled Breast Implants

The Food and Drug Administration believes that a patient considering saline-filled breast implants should receive the following information about the possible risks involved. The patient should receive the information before surgery is scheduled, so that she has time to review the material and discuss it with her doctor. Each woman, with her doctor's help, must decide whether she is willing to accept the risks in order to achieve the expected benefits, which may vary, depending on the condition for which the implant is used.

In addition to posing the general risks associated with any surgical procedure (infection, delayed wound healing, etc.), saline-filled breast implants have certain specific risks, including:

- Capsular contracture. The scar tissue that normally forms around the implant can tighten and squeeze the implant. This can cause unnatural firmness, pain and, in severe cases, a misshapen appearance.
- Calcium deposits in the tissue around the implant. This too can cause hardening and pain.
- Rupture of the implant. The implant can break due to injury or normal wear over time, releasing the saline solution (salt water) filling. Rupture may be more likely to occur with saline-filled implants than with the silicone gel-filled type. When a saline-filled implant ruptures, it usually deflates quickly and requires removal.
- Changes in nipple and breast sensation. There can be increased or decreased sensation, which can be temporary or permanent.
- Interference with mammography. The implant can interfere with the detection of early breast cancer through mammography because it can "hide" suspicious lesions in the breast. This makes it difficult to perform mammography and to interpret the results.

Although they may occur in only a small percentage of patients, some of these adverse effects, such as capsular contracture, calcium deposits and rupture, can require removing the implants.

In addition to these known risks, there are unanswered questions about saline-filled breast implants. For example, questions have been raised about whether these devices might cause autoimmune diseases such as lupus, scleroderma and rheumatoid arthritis in some women, or whether they might increase the risk of cancer. There is no scientific evidence at present that women with either silicone gel-filled or saline-filled breast implants have an increased risk of these diseases, but the possibility cannot be ruled out. (Because, unlike silicone gel-filled breast implants, the saline-filled implants contain only salt water, any risk that might be related to the gel would not occur with this product. But since both types of implants have a silicone rubber envelope, an increased risk of autoimmune diseases or cancer is possible even for the saline-filled implants.)

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Thursday
September 26, 1991

Part XII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AA24

Migratory Bird Hunting; Final Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rules prescribes final late-season frameworks from which states may select season dates, limits, and other options for the 1991–92 migratory bird hunting season. These late seasons include most waterfowl seasons, the earliest of which generally commence on or about October 1, 1991. The effects of this final rule are to facilitate the selection of hunting seasons by the states to further the annual establishment of the late-season migratory bird hunting regulations. State selections will be published in the **Federal Register** as amendments to §§ 20.104 through 20.107 and § 20.109 of Title 50 CFR Part 20.

EFFECTIVE DATE: September 26, 1991.

ADDRESSES: Season selections from states are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634–Arlington Square, Washington, DC 20240. Comments received are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634–Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION: .

Regulations Schedule for 1991

On March 6, 1991, the Service published for public comment in the **Federal Register** (56 FR 9462) a proposal to amend 50 CFR 20, with comment periods ending July 25, 1991, for early-season proposals, and September 6, 1991, for late-season proposals. A supplemental proposed rulemaking for both early and late hunting season frameworks appeared in the **Federal Register** dated May 31, 1991 (56 FR 24984). On June 20,1991, a public hearing was held in Washington, DC, as announced in the **Federal Register** of March 6 (56 FR 9462) and May 31 (56 FR 24984), 1991, to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 15, 1991, the Service published in the **Federal Register** (56 FR 32264) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1991–92 season. On August 2, 1991, a public hearing was held in Washington, DC, as announced in the **Federal Register** of March 6 (56 FR 9462), May 31 (56 FR 24984), and July 15 (56 FR 32275), 1991, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 21, 1991, the Service published a fourth document (56 FR 41608) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the states, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1991–92. The fifth document in the series, published August 26, 1991, in the **Federal Register** (56 FR 42198), dealt specifically with proposed frameworks for the 1991–92 late-season migratory bird hunting regulations. On August 29, 1991, the Service published in the **Federal Register** (56 FR 42806) a sixth document consisting of a final rule amending Subpart K of Title 50 CFR part 20 to set hunting seasons, hours, areas, and limits for early seasons. This document, which establishes final frameworks for late-season migratory bird hunting regulations for the 1991–92 season, is the seventh in the series.

Review of Comments and the Service's Response

Public hearing and written comments received through September 6, 1991, relating to proposed late-season frameworks are discussed and addressed here. These late-season comments are summarized and discussed in the order used in the March 6, 1991, **Federal Register** (56 FR 9462). Only the numbered items pertaining to late seasons for which comments were received are included.

General

Council Recommendations: The Pacific Flyway Council recommended no change in shooting hours.

Public Hearing Comments: Mr. Frank Anderson, representing the Concerned Coastal Sportsman's Club of Massachusetts, the Andover Sportsman's Club, the Hudson River Waterfowl Protection Association, and the New Jersey Waterfowler's Association, supported the Service's proposal for shooting hours. Mr. Wayne Pacelle, representing the Fund For Animals, opposed presunrise shooting hours. Dr. Rollin Sparrowe, representing the Wildlife Management Institute, supported the Service's proposed frameworks.

Written Comments: Organizations in Massachusetts and New York and two individuals in Massachusetts supported the proposed shooting hours of one-half hour before sunrise to sunset for all seasons, unless otherwise specified. An individual in Louisiana supported shooting hours beginning at one-half hour before sunrise, but suggested eliminating afternoon hunting to reduce "double-tripping". The Humane Society of the United States opposed presunrise shooting hours.

Service Response: The Service recognizes the general support for the proposed frameworks, including the proposed shooting hours. The Service believes that there is sufficient evidence to demonstrate that, for most seasons, shooting hours beginning at one-half hour before sunrise do not contribute significantly to the harvest of nontarget species or illegal kill. Consistent with the Service's long-term strategy for shooting hours, published in the September 21, 1990, **Federal Register** (at 55 FR 38901), the frameworks herein provide for shooting hours of one-half hour before sunrise to sunset, unless otherwise specified.

Regarding the suggestion to discontinue afternoon hunting, the Service notes that half-day shooting is a management technique used in some areas to hold birds in order to prolong and increase harvest opportunities. There is a small, unknown number of hunters who practice "double-tripping"; some of these would continue this practice during morning-only hunting as well. It is doubtful that the effect of morning-only hunting on reducing "double-tripping" could be measured or that it would offset the otherwise increased harvest opportunity.

1. Ducks

A. *General Harvest Strategy:*

Public Hearing Comments: Mr. Douglas B. Inkley, representing the National Wildlife Federation, recommended that most frameworks be similar to those of last year. Mr. Jim Phillips suggested that the Service reduce both hunter numbers and harvest. Mr. John M. Anderson, representing the National Audubon Society, indicated that duck populations remain well below objective levels

identified in the North American Waterfowl Management Plan, and essentially the same restrictive regulations as were in place last year should be adopted this year.

Written Comments: A member of Congress from New Jersey indicated that conditions in the Atlantic Flyway would seem to argue for increasing hunting opportunities. Many of the written comments received regarding other frameworks for ducks also indicated that the harvest is not properly distributed and that the Service should manage the Atlantic Flyway separately from the other Flyways.

Service Response: The Service concurs with the recommendations to continue the restrictive harvest strategies used in recent years. Because most duck populations remain at levels below both long-term averages and the population objectives in the North American Waterfowl Management Plan, the Service believes that restrictive regulations should be continued until a strong recovery in duck numbers is evident. Therefore, the frameworks contained herein do not differ substantially from those in effect during 1990–91.

The Service also believes that liberalized frameworks in the Atlantic Flyway are not warranted without proper consideration for ducks derived from all breeding areas. Although some areas of the Flyway receive the majority of their birds from eastern Canada and northeastern United States, the harvest of these populations cannot be managed independently from those derived from the surveyed areas until improved databases are obtained in the eastern production areas and some management decisions regarding goals and objectives have been developed.

B. *Framework Dates:*

Council Recommendations: The Atlantic Flyway Council and the Upper and Lower Region Regulations Committees of the Mississippi Flyway Council recommended framework dates of October 1 through January 20, and that these dates remain fixed and not be used for management purposes on an annual basis.

The Central Flyway Council recommended that framework dates be the Saturday nearest October 1 to the Sunday nearest January 20. The Council does not favor using framework dates as a means of regulating duck harvest.

The Pacific Flyway Council recommended that the framework dates for the upcoming season be October 5 through January 5, essentially no change from last year.

Public Hearing Comments: Mr. Bobby G. Alexander, representing the Central Flyway Council and the Texas Parks and Wildlife Department, requested that framework dates be the Saturday nearest October 1 to the Sunday nearest January 20 and not be used annually to regulate harvest. Mr. Douglas B. Inkley, representing the National Wildlife Federation, opposed extending the season later into January or earlier into October.

Written Comments: The Florida Game and Freshwater Fish Commission opposed the proposed framework closing date of January 5 because they believe it to be overly restrictive. They prefer January 12 as a framework closing date. A local organization and two individuals in Mississippi requested that the framework closing date for ducks be January 20 and that frameworks not be treated as annual regulations. An individual in Louisiana requested that both framework opening and closing dates be liberalized. Seven individuals in California requested that the framework closing date in Southern California be extended to January 15 or later. The Humane Society of the United States requested that the framework opening date be delayed for 2 more weeks in northern states.

Service Response: Framework dates for the 1991–92 duck season, October 5 through January 5, are essentially unchanged from the 1988–89, 1989–90, and 1990–91 seasons. The Service did not complete its review of framework dates in time for the development of the regulations for the 1991–92 duck season. However, the Service will complete its review and will distribute it to the Flyway Council Technical Sections in time for their winter meetings. The Service again solicits technical information useful for this review from the states and Flyway Councils.

C. Season Length

Council Recommendations: The Atlantic Flyway Council recommended a 35-day season for most ducks; but recommended a 30-day season for black ducks and an 11-day season for canvasback. The Upper and Lower Region Regulations Committees of the Mississippi Flyway Council recommended a 30-day season. The Central Flyway Council recommended no change. The Pacific Flyway Council recommended increasing the season length from 59 to 60 days, to allow Pacific Flyway states with 2-way splits to open on a Saturday and close on a Sunday during both segments.

Public Hearing Comments: Mr. John M. Anderson, representing the National Audubon Society, recommended that the pintail season be reduced to 16 days which could include 3 weekends in the Pacific Flyway and 9 days which could include 2 weekends in the Central, Mississippi, and Atlantic Flyways. Mr. Frank Anderson, representing the Concerned Coastal Sportsman's Club of Massachusetts, the Andover Sportsman's Club, the Hudson River Waterfowl Protection Association, and the New Jersey Waterfowler's Association, requested a 35-day duck season.

Written Comments: The Florida Game and Freshwater Fish Commission supported the proposed 30-day season in the Atlantic Flyway. Organizations in Tennessee and New York requested a 40-day season. An individual in Minnesota remarked that all states in the Mississippi Flyway should be provided with the same number of days. Two individuals in Massachusetts requested 35-day seasons, two individuals in California requested 75-day seasons when populations recover, while an individual in Washington requested an extended season on diving ducks.

Service Responses: The Service believes that longer seasons are not warranted in any flyway during the 1991–92 season, because most duck populations remain at levels below long-term averages.

The Service believes that increasing the season length on ducks to 35 days in the Atlantic Flyway is not warranted. This was discussed under item *1. Ducks, a. General Harvest Strategy.* The Service supports the continuation of harvest restrictions on black ducks.

D. Closed Seasons

Public Hearing Comments: Mr. Douglas B. Inkley, representing the National Wildlife Federation, urged a complete closure on pintails, noting both the marked decline in and poor recruitment to the population, and he supported retaining the closure until the population has sufficiently recovered. Mr. John Grandy, representing the Humane Society of the United States, recommended a closed season on pintails and on all ducks wherever pintails occur in significant numbers. Mr. Wayne Pacelle, representing the Fund for Animals, suggested a complete closure for the hunting of black ducks and pintails, if the hunting seasons for all duck species are not closed.

Written Comments: The Humane Society of the United States requested closed seasons for all ducks, but especially for mallards, pintails, black ducks, redheads, and canvasbacks. An individual in Nevada requested a closed

season for pintails. Ducks Unlimited remarked that a closed season was not warranted for pintails at this time, while the Wildlife Management Institute remarked that a closed season on pintails may be necessary next year if the population declines further.

Service Response: The Service considered the option of a nationwide closure on duck hunting in the Environmental Assessment, "Waterfowl Hunting Regulations for 1991". Due to any compensatory mortality that might occur and the extremely small proportion of the total mortality that occurred form hunting in 1990 and will likely occur from hunting in 1991, few additional ducks would be added to the 1992 breeding population with a closed season. A closed season would eliminate most of the revenue that is currently received from license and stamp sales, as well as eliminate private-landowner incentives to maintain habitat. The Service will continue the restrictive regulations of recent years. As further protection, the Service may institute specific closures if the need arises. Numbers of black ducks appear to have increased slightly in recent years, and the Service believes a limited harvest is warranted. Because of the very low harvest rates of recent years and because of prospects for improved pintail breeding habitat and a consequent improvement in the status of this species in 1992, the Service believes that frameworks governing the take of pintails should remain unchanged from those of last year. However, if the status of pintails does not improve in 1992, the Service likely will institute further restrictions.

E. Bag Limits

Council Recommendations: The Atlantic Flyway Council and the Upper and Lower Region Regulations Committees of the Mississippi Flyway Council recommended continuation of a 3-duck daily bag limit.

The Central Flyway Council recommended that another drake mallard be allowed in the conventional and point-system bag limits. They remarked that, in 1985, the Central Flyway received a disproportionate reduction in mallard bag limits and requested that this inequity be rectified.

The Pacific Flyway Council recommended no change in the daily bag limit and no change in the within-bag restrictions.

Public Hearing Comments: Mr. Bobby G. Alexander, representing the Central Flyway Council and the Texas Parks and Wildlife Department, requested an additional drake mallard in the bag—an increase to three from the current limit of two. He stated that hunters throughout the Flyway have been unduly and unfairly limited in their opportunity to harvest an additional drake, and asked the Service to again carefully review the biological justification for changes in duck bag-limit regulations. Mr. Jim Phillips suggested the Service limit mallard harvest to no more than two per season. Mr. John M. Anderson, representing the National Audubon Society, recommended a daily bag limit of 1 pintail per day. Mr. Frank Anderson, representing the Concerned Coastal Sportsman's Club of Massachusetts, the Andover Sportsman's Club, the Hudson River Waterfowl Protection Association, and the New Jersey Waterfowler's Association, requested the same limits as last year.

Written Comments: The Florida Game and Freshwater Fish Commission and an organization in New York supported the 3-duck limit in the Atlantic Flyway. The California Department of Fish and Game requested that the bag limit be increased to include 2 male pintails during the last 36 days of the season. Two individuals in Colorado requested that the bag limit for drake mallards in the Central Flyway be returned to 3, as in previous years. An individual from Nevada suggested allowing an extra gadwall, wigeon, and green-winged teal in the bag limit in lieu of opening the pintail season. The Humane Society of the United States requested reduced bag limits for ring-necked ducks, ruddy ducks, goldeneyes, and buffleheads.

Service Response: The Service believes that because of the currently low population and recruitment levels of mallards and other prairie-nesting duck species, any changes in bag limits that could increase harvests are not warranted at this time. Since the 1991 fall-flight index is similar to the 1990 index, the Service believes that continuation of the same bag limits is appropriate. With respect to the Central Flyway Council recommendation to allow an additional drake mallard in the conventional and point-system bag limits, the Service believes that in addition to substantial improvement in mallard breeding population levels and recruitment, the Central Flyway's "High Plains Mallard Management Report" should be completed before bag-limit changes are considered. This report will provide an opportunity to cooperatively examine the recent biological information necessary to assess historical flyway bag-limit differences for drake mallards.

F. Zones and Split Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the Service approve the zoning proposal from Pennsylvania.

The Lower Region Regulations Committee of the Mississippi Flyway Council recommended a temporary exception to the duck-zoning criteria for the establishment of a separate zone for Catahoula Lake in Louisiana to help reduce lead-poisoning losses on the lake. This zone would have a continuous season while the East and West Zones would be allowed to continue with split seasons. Under the current water-management plan for the lake, water levels are raised immediately following the final closing of the duck-hunting season. With the shorter seasons in recent years, the longer closed periods between season segments have allowed waterfowl, unmolested by hunting activity, to more actively feed on the lake, thus increasing the potential for lead-poisoning die-offs. The Committee believes that a continuous season for Catahoula Lake would reduce the probability of lead-poisoning mortality without significantly increasing annual harvest.

The Pacific Flyway Council recommended that the Service approve the zoning requests from Idaho, Arizona, and California.

Public Hearing Comments: Mr. Frank Anderson, representing the Concerned Coastal Sportsman's Club of Massachusetts, the Andover Sportsman's Club, the Hudson River Waterfowl Protection Association, and the New Jersey Waterfowler's Association, supported the Service's zoning criteria. Mr.Wayne Pacelle, representing the Fund For Animals, opposed the use of zones and split seasons.

Written Comments: The Service received written proposals from all states. Most states declined to make any modification to their existing zone/split-season configurations, proposed to "grandfather" existing configurations, or selected new configurations, according to the published criteria. However, Pennsylvania, Indiana, Ohio, Nebraska, and California initially presented proposals that did not completely conform to the criteria. In Pennsylvania, Indiana, and Ohio, the proposal to grandfather existing zones included moving entire counties from one zone to another. In Nebraska, two of the proposed zone boundaries were not contiguous. California's proposal included not only grandfathering

excising zones but also creating two new zones.

The Alaska Department of Fish and Game supported California's zoning proposal. Twelve individuals in California requested creation of a San Joaquin Zone, preferring a late continuous season. A local organization in California requested creation of a Suisun Marsh Zone; the California Waterfowlers Association and an another individual in California requested creation of both zones; while another individual in California requested 2-5 new zones, but especially supported the San Joaquin Zone.

An individual in Louisiana opposed the temporary exception for the Catahoula Lake Zone. He cited that both the East and West Zones of Louisiana will be closed while the season on Catahoula Lake will be open. Such a situation will create an unprecedented amount of hunting pressure. Two individuals in Nebraska requested formation of a Missouri River Zone.

The Humane Society of the United States requested that split seasons be discontinued or subject to substantial penalty. The New York State Conservation Council supported the Service's criteria for zones and splits. An individual from Louisiana requested that additional season splits be allowed.

Service Response: The zone-boundary modifications proposed by Pennsylvania for their Northwest Zone and by Indiana and Ohio involved moving entire counties from one zone to another, which exceeded the Service's criterion to allow only minor changes in conjunction with the grandfather clause. The Service does accept the above states' boundary modifications involving less than entire counties.

The Nebraska Game and Parks Commission submitted a proposal for a new zoning configuration for the Low-Plains portion of the State. This proposal would establish three zones, two of which would have noncontiguous boundaries. However, the criteria established by the Service indicated that zone boundaries must be contiguous, unless there is strong justification to warrant an exception. The Service did not believe that the areas of Nebraska in question were sufficiently unique in terms of physiography, climate, or biology to justify the use of noncontiguous zones; thus, the Service denied the proposal.

The Service allowed California to grandfather a total of 4 zones and modify the boundary of the Northeast Zone. However, the proposal to add two additional zones in California did not meet the criteria.

Following discussions with the fish and wildlife agencies in the individual states mentioned above, the frameworks herein include provisions for zones and split seasons that conform to the zoning criteria published in 1990.

The Service concurs with the request for a temporary exception to the zoning criteria for Catahoula Lake in Louisiana. The Service supports the various efforts currently in progress to reduce lead-poisoning losses on this important waterfowl area.

The Service considers the drought conditions in the Southern San Joaquin Valley as justification for a temporary exception to the criteria. This exception will allow seasons to coincide with times that are more economical for flooding fields. Hopefully, this increase in pumping efficiency will be translated into more habitat for a longer time period. The temporary zone will be subject to the following conditions:

1. The temporary zone would be justified solely in recognition of the severe drought that has markedly reduced the availability of fall and winter wetland habitat for waterfowl in California.

2. The temporary zone would be established and reviewed on a year-to-year basis.

3. Prior to the start of the 1992–93 season, and any subsequent seasons, the State would be responsible for demonstrating that drought conditions had not abated in the region sufficiently to warrant discontinuance of the zone.

4. The State indicated that the impact of this zone on overall waterfowl hunter activity and waterfowl harvest would be minimal. Consequently, the State will be responsible for estimating hunter activity and harvest in the Southern San Joaquin Valley and reporting these results to the Service annually, as long as this temporary exception is continued.

G. Special/Species Management

i. Canvasback Harvest Management

Council Recommendations: In its March 1991 meeting, the Atlantic Flyway Council recommended that canvasbacks be managed as a single continental population with a threshold level for harvest management to be a 3-year average breeding population index of 500,000 birds. The Council stated that the proper management of the canvasback resource requires a continental approach with harvest divided equitably among all flyways, in accordance with approved hunt plans, when the 3-year average breeding population index reaches the 500,000 threshold. Later, as a result of their summer meetings, the Atlantic Flyway Council recommended an 11-day season on canvasbacks to be held within the regular duck season, with a daily bag limit of 2 drakes, and that this season continue until the 3-year running average breeding population index falls below 450,000.

The Upper Region Regulations Committee of the Mississippi Flyway Council recommended that canvasback populations should continue to be separated into a Western and an Eastern Population based on breeding population survey strata as documented in the current canvasback harvest guidelines. Delineation of the boundaries between the two populations should be re-evaluated as new information becomes available. Canvasback harvest guidelines should be based on specific breeding population index levels as contained in the current canvasback harvest guidelines, and current threshold levels are appropriate, pending further review of information.

The Central Flyway Council recommended that states in the Central Flyway be allowed to hunt canvasbacks when the 3-year running average for the continental breeding population index exceeds 500,000 and the breeding habitat in survey strata 1–50 is capable of production such that an age ratio of at least 1.0 young per adult would be expected in the harvest. The Council remarked that annual recruitment can be estimated based on the May Pond index, that harvest in the Central Flyway averaged only 10,000 per year during the period of 1980 through 1985, that research indicates no conclusive evidence that a restricted hunting season would result in significantly lower survival rates beyond those occurring during a closed season, and finally that the focus of harvest regulation should be one of restrictive bag limits rather than area closures.

The Pacific Flyway Council recommended no change for canvasbacks and retention of the two-per-day bag limit as part of an aggregate bag limit with redheads.

Public Hearing Comments: Mr. Douglas B. Inkley, representing the National Wildlife Federation, expressed dismay at the absence of recovery for canvasbacks. He recommended frameworks no more liberal than those of last year for the Pacific Flyway and retention of the closure in the three other flyways.

Written Comments: The Wisconsin Department of Natural Resources supported the current canvasback harvest guidelines but asked the Service

to reconsider the current breeding areas assigned to the two population units based on banding information through 1990. The Wyoming Department of Fish and Game requested reinstatement of the canvasback season for the Central Flyway. The New York State Conservation Council requested a bag limit of 1 male canvasback.

Service Response: In the preliminary proposals published on March 6, 1991, in the **Federal Register** (at 56 FR 9464), the Service gave notice of its intent to review the decision criteria for harvesting canvasbacks stated in the "1983 Environmental Assessment on Canvasback Hunting" as a basis for managing Eastern and Western Populations. The Service requested that Flyway Councils review the bases for these harvest guidelines and to determine whether these criteria are still appropriate. The Service identified a number of considerations for review and comment in addition to the fundamental issue of managing this species as two discrete populations. For some of the identified considerations, few comments have been received to date, particularly whether the use of specific breeding population estimates is the most appropriate strategy for managing harvest. Until the review is completed, the Service will continue to use existing guidelines to develop harvest regulations for canvasbacks. The proposed 11-day season in the Atlantic Flyway does not meet the existing guidelines.

ii. Northern Pintails

Public Hearing Comments: Mr. Douglas B. Inkley, representing the National Wildlife Federation, urged a complete closure on pintails, noting both the marked decline and poor recruitment to the population, and he supported retaining the closure until the population recovered sufficiently. He urged the Service, by next year, to complete a study to identify specific and scientifically-based population objectives by which season openings and closures on pintails could be implemented. Mr. John M. Anderson, representing the National Audubon Society, indicated that the pintail is of special concern and a significant reduction in shooting pressure is needed. He recommended a daily bag limit of 1 pintail per day, and a season length of 16 days, which could include 3 weekends, in the Pacific Flyway and 9 days, which could include 2 weekends, in the Central, Mississippi, and Atlantic Flyways. Mr. John Grandy, representing the Humane Society of the United States, recommended a closed season on pintails and on all ducks wherever pintails occur in significant numbers. Mr. Wayne Pacelle, representing the Fund For Animals, suggested a complete closure for the hunting of pintails. Mr. Jeff Nelson, representing Ducks Unlimited, suggested that restrictive harvest regulations already in place have effectively reduced the take of pintails, and cautioned against regulatory overreaction to short-term population fluctuations. Dr. Rollin Sparrowe, representing the Wildlife Management Institute, supported the proposed frameworks but requested that the Service plan early for what they would do next year should the status of pintails become either worse or better.

Written Comments: The California Department of Fish and Game requested that the bag limit be increased to include 2 male pintails during the last 36 days of the season. The Florida Game and Freshwater Fish Commission was concerned about pintail populations. Because current harvest rates on pintails are very low and any additional restrictions on harvest will require unconventional, complex regulations, they support maintaining one pintail in the bag limit for the 1991–92 season. The Wildlife Management Institute supported the proposed frameworks, but urged the Service to develop a contingency plan for next year. Ducks Unlimited supported the proposed frameworks. An individual in Nevada and the Humane Society of the United States suggested a closed season on pintails.

Service Response: The Service acknowledges the comments expressed by the Flyway Councils that, due to the already restrictive regulations and low harvest rates, any further restrictive action for pintails short of complete season closure would have limited benefit. Because of prospects for improved pintail breeding habitat and a consequent improvement in the status of this species in 1992, the Service believes that frameworks governing the take of pintails should remain unchanged from those of last year. However, if the status of pintails does not improve in 1992, the Service likely will institute further restrictions.

iii. Other Species

Public Hearing Comments: Mr. John Grandy, representing the Humane Society of the United States, said that while minor regulations changes have apparently stopped the decrease in black duck numbers, he asked when regulatory measures would be imposed to allow the population to increase. Mr. Wayne Pacelle, representing the Fund For Animals, suggested a complete closure for the hunting of black ducks. Mr. Frank Anderson, representing the Concerned Coastal Sportsman's Club of Massachusetts, the Andover Sportsman's Club, the Hudson River Waterfowl Protection Association, and the New Jersey Waterfowler's Association, requested that the Service consider special green-winged teal and scaup seasons in the future.

Written Comments: Organizations in Massachusetts and New York and two individuals in Massachusetts requested either a bonus bag limit or a special season for green-winged teal. An organization in New York and an individual from Massachusetts requested extra opportunities to harvest scaup, while an individual from Washington requested either a bonus bag limit or an extended season on diving ducks.

Service Response: The Service believes that harvest restrictions for black ducks that have been in effect since 1983 are appropriate for the current status of this species. The Service does not believe additional restrictions are necessary to allow further recovery.

In the September 21, 1990, **Federal Register** (55 FR 38901), the Service concluded that certain groups of ducks (due to their unique biological circumstances, temporal or spatial distributions, and population status) potentially could provide additional harvest opportunities beyond those afforded in regular hunting seasons through the use of special seasons. Initially, a special season would be considered experimental and its use would be contingent upon careful design and evaluation by the Service and Flyway Councils. If the experimental period adequately demonstrated the desirability of the season, then the Service and Councils would cooperate to establish operational criteria and a review schedule. With respect to a special season for green-winged teal, the Service has a concern that this species may not meet the basic requirements. Unlike blue-winged teal, which migrate through many states prior to the opening of the regular duck season, green-winged teal do not exhibit a unique temporal or spatial distribution, which would allow additional harvest without the possibility of increasing harvest pressure on nontarget duck species. The Service is also concerned that much of the green-winged teal harvest in the Atlantic and Mississippi Flyways is derived from eastern production areas where survey and banding programs are currently inadequate to assess population status. Before any special season for green-winged teal could be

considered, a thorough review of available databases and the prospects for an adequate evaluation are needed.

Also in the September 21, 1990, Federal Register, the Service concluded that special scaup seasons, as conducted in the past, could not be adequately evaluated with existing data. However, additional information can be obtained and a proper evaluation of this season is feasible. A key component of this evaluation must be consideration of the species composition in the harvest (i.e., proportion of lesser scaup, greater scaup, ring-necked duck, and goldeneyes) and their population status. The Service is continuing the suspension of special scaup seasons pending the cooperative development of such an evaluation plan.

In the same document, the Service concluded that the use of bonus bag limits would be discontinued because bonus limits have not been adequately evaluated, offer limited potential for adequate evaluation, and can increase harvest of nontarget species.

3. Mergansers

Council Recommendations: The Upper and Lower Region Regulations Committees of the Mississippi Flyway Council and the Central Flyway Council supported the proposed regulations for mergansers. The Pacific Flyway Council recommended no charge for mergansers and retention of mergansers as part of the regular duck bag limits in that Flyway.

Public Hearing Comments: Mr. John Grandy, representing the Humane Society of the United States, remarked that limits on mergansers should be within the regular duck limit in all flyways. Mr. Wayne Pacelle, representing the Fund For Animals, indicated that large bag limits for mergansers are not justified.

Written Comments: A local organization and an individual in Massachusetts requested liberalization of merganser bag limits, citing the impacts that mergansers may be having on fisheries. The Humane Society of the United States requested reduced bag limits for mergansers.

Service Response: The Service is not aware of any documented problems with mergansers impacting fisheries. If such problems exist, the problem areas should be delineated and the extent of the impacts determined before any corrective actions are considered. The Service doubts that liberalizing hunting regulations is likely to be a proper or effective means of addressing localized depredations on fisheries.

Concerning comments that mergansers should be included in the regular duck bag limit, the Service has no information to suggest that the population status or harvest of any merganser species warrants additional restrictions at this time. A 1-bird bag-limit restriction on hooded mergansers is already in place in the Central, Mississippi, and Atlantic Flyways.

4. Canada Geese

A. *Special-Season Criteria:*

Council Recommendations: The Mississippi Flyway Council recommended several changes to the proposed special-season criteria. They indicated that more liberal proportions of migrant to resident geese should apply in instances where a nontarget population exceeds stated population objectives, that collection of morphological information to ascertain probable source populations of harvest be required, and that federal harvest surveys should provide adequate monitoring for seasons that continue beyond the experimental period. They further recommended that the Service increase efforts to study migrant populations, further define target populations of nuisance geese to include both resident and nonlocal giant Canada goose populations, and consider the precision of the evaluation techniques when reviewing the results of experimental seasons.

The Pacific Flyway Council supported the Service's criteria for establishing and monitoring these special seasons.

Public Hearing Comments: Mr. John M. Anderson, representing the National Audubon Society, agreed with the Service that management of goose populations should, wherever possible, be done on a population basis, that these population definitions should be based on breeding ground distributions, and that the status of these populations should be monitored. Furthermore, these populations should be managed under plans cooperatively developed with the various states and Flyway Councils.

Written Comments: The Alabama Department of Conservation and Natural Resources expressed concern about the criteria and suggested that the harvest of nontarget geese not exceed 10 percent of the total harvest during early seasons or 20 percent during late seasons. They further suggested that as total harvest increases during special seasons, so does the number of nontarget birds even though the percentage remains the same.

The Wisconsin Department of Natural Resources believed the criteria to be too rigid where nontarget populations are at or above population objectives. They further suggested reconsideration of specific dates, maximum allowable season length, and evaluation requirements.

The Illinois Department of Conservation strongly urged the Service to adopt the recommendation of the Mississippi Flyway Council.

The West Virginia Division of Natural Resources remarked that a 10-day framework is unreasonably short for a 10-day season. Ten consecutive days between September 1 and September 30 would allow some flexibility and still provide adequate protection for nontarget populations. They further recommend reducing requirements for evaluations and annual reporting.

The Connecticut Bureau of Fisheries and Wildlife expressed strong support for implementation of formal criteria. However, the validity of morphology data for determining the source of goose populations in the Atlantic Flyway remains questionable. Collecting and processing goose parts for morphological measurements is labor intensive. They also suggest extending the closing season date to September 20.

The Missouri Department of Conservation supported the concept of special seasons and agreed that these seasons should be evaluated. However, they felt that the criteria are unnecessarily restrictive and inflexible. They opposed limiting the seasons to the first 10 days of September. States should have the flexibility to establish the location and timing of special seasons if they can demonstrate that nontarget Canada geese will not be impacted adversely.

The Minnesota Department of Natural Resources supported the recommendation of the Mississippi Flyway Council. Further, they suggested allowing early seasons beyond September 10, opposed the annual reporting requirement, and suggested that the criteria should allow expansion of current zone boundaries without conducting new experiments. They also recommended that the 10 percent and 20 percent criteria should not apply to giant Canada geese and that the best method to determine the proportion of migrant Canada geese in the harvest is by collecting morphometric measurements from a representative sample of hunter-taken birds.

The Michigan Department of Natural Resources requested that more liberal proportions apply in instances where a nontarget population exceeds stated population objectives. They stated that the criteria must be flexible enough to adequately control the resident geese, while allowing proper protection and reasonable harvest of migrating populations. They said the proposed

criteria do not meet the above stipulations and objected to the methods used in developing the criteria and the short comment period.

Service Response: In a **Federal Register** document dated June 7, 1988 (at 53 FR 20877), the Service published criteria for special early-September Canada goose seasons. In the July 15, 1991, **Federal Register** (at 56 FR 32267), the Service proposed to expand the criteria to include all special Canada goose seasons.

The primary purpose of special Canada goose seasons is to provide additional harvest opportunity on specific populations or flocks of Canada geese in situations where these geese are creating nuisance or other problems. Otherwise, harvests of these populations or flocks should be managed through regular hunting seasons. The Service believes that the proportions in the criteria are necessary to control harvests to non-target populations and are consistent with the intent of the special seasons.

The Service appreciates the willingness to make morphological measurements of Canada geese harvested in the special seasons mandatory. However, the Service does not feel that, in all cases where special seasons are currently being conducted, databases exist that would allow valid interpretation of morphological measurement data. The present wording will permit other means of assessing the composition of the special-season harvest where appropriate.

Concerns were also expressed by the Mississippi Flyway Council about the need for continued monitoring of harvest and hunter activity during special seasons after the end of the experimental period. The Service appreciates that there is a certain cost to a state to maintain their harvest monitoring activities for these special seasons. However, for states with operational special seasons, the Service believes that maintaining the requirement to continue to provide annual estimates of hunter activity and harvest is necessary for sound stewardship of the resource. The Service is presently instituting revisions in the waterfowl harvest survey that may provide the capability of obtaining these estimates routinely. If these estimates become available through the Service's annual waterfowl harvest survey, this requirement will be reviewed.

Following are the guidelines which will govern the use of special seasons:

Criteria for Special Canada Goose Seasons

The Service believes that most Canada goose harvests can be addressed through the regular Canada goose hunting-season frameworks in accordance with flyway management plans. However, the Service recognizes the need for special seasons in certain circumstances to control local breeding and/or nuisance populations of Canada geese. These seasons are to be directed only at Canada goose populations that nest primarily in the conterminous United States. Beginning in 1992, special Canada goose seasons must conform to the following criteria.

1. A state may hold a special Canada goose season, in addition to its regular season, for the purpose of controlling local breeding populations or nuisance geese. The special season must target a specific population of Canada geese. The harvest of nontarget Canada geese must not exceed 10 percent of the special-season harvest during early seasons or 20 percent during late seasons. More restrictive proportions may apply in instances where a nontarget Canada goose population of special concern is involved.

2. Early seasons may be no more than 10 consecutive days between September 1 and September 10 in the Atlantic and Mississippi Flyways, where seasons are focused primarily on local breeding populations of giant Canada geese. In the Central and Pacific Flyways, seasons may be held for no more than 30 consecutive days between September 1 and September 30 and must be directed at local breeding populations or nuisance situations that cannot be addressed through the regular-season frameworks.

3. Late seasons must be held prior to February 15.

4. The daily bag and possession limits may be no more than 5 and 10 Canada geese, respectively.

5. The area(s) open to hunting will be described in state regulations.

6. All seasons will be conducted under a specific Memorandum of Agreement. Provisions for discontinuing, extending, or modifying the season will be included in the Agreement.

7. All seasons will initially be considered experimental. The evaluation required of the state will be incorporated into the Memorandum of Agreement and will include at least the following:

A. Conduct neck-collar observations and/or population surveys beginning a year prior to the requested season and continuing during the experiment.

B. Determine derivation of neck-collar codes and/or leg-band recoveries from observations and harvested geese.

C. Collect morphological information from harvested geese, where possible, to ascertain probable source population(s) of the harvest.

D. Analyze relevant band-recovery data.

E. Estimate hunter activity and harvest.

F. Prepare annual and final reports of the experiment.

8. If the results of the evaluation warrant continuation of the season beyond the experimental period, the state will continue to estimate hunter activity and harvest and report these to the Service annually for all years the season is offered. This requirement will become effective during the 1992–93 season.

9. The season will be subject to periodic re-evaluations when circumstances or special situations warrant.

B. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that South Carolina be permitted a 3-year experimental resident Canada goose season in the Central Piedmont, Western Piedmont, and Mountain Hunt Units of the State. The season would be 4 days in length, occurring after the regular waterfowl season. The bag limit would be 1 goose per season. This proposed season would provide recreational waterfowl hunting opportunity while alleviating nuisance and depredation problems. Historically, migrant goose use of the proposed hunt area has been insignificant. The Council also recommended that Georgia be permitted to enlarge their experimental Canada goose hunting zone to include Hull County, except Lake Sidney Lanier. The Council further recommended continuing the late seasons in Connecticut and in the Coastal Zone of Massachusetts on an operational basis, and initiating a new late season in the Central Zone of Massachusetts on an experimental basis. The Council recommended that Pennsylvania use special seasons to harvest increasing resident flocks in eastern and southwestern Pennsylvania.

The Upper Regulations Committee of the Mississippi Flyway Council recommended operational status for the late special season in one area of Minnesota.

Public Hearing Comments: Mr. John Grandy, representing the Humane Society of the United States, was opposed to special Canada goose

seasons, especially the special goose season being proposed for Back Bay, Virginia. Mr. Frank Anderson, representing the Concerned Coastal Sportsman's Club of Massachusetts, the Andover Sportman's Club, the Hudson River Waterfowl Protection Association, and the New Jersey Waterfowler's Association, supported the expansion of the special season for resident Canada geese in Massachusetts.

Written Comments: One organization from Massachusetts requested that the special late season for Canada geese be expanded statewide.

Service Response: The Service notes that there is no special season proposed for the Back Bay of Virginia. The Service concurs with the proposals for special seasons on resident Canada geese in the Central Zone of Massachusetts and in a specified area of South Carolina on an experimental basis, the boundary change in Georgia, and the continuance of seasons in Connecticut and in the Coastal Zone of Massachusetts on an operational basis. During this next year, the Service will work with Pennsylvania to develop a special season to alleviate localized problems of increasing resident flocks. The Service also concurs with the recommendation for Minnesota.

C. Regular Seasons

Council Recommendations: The Atlantic Flyway Council recommended no change for seasons designed to harvest migrant Canada geese. However, they recommended that the seasons in Crawford, Erie, Mercer, and Butler Counties extend for 70 days, with a daily bag limit of Canada geese in Erie, Mercer, and Butler Counties and 1 Canada goose in Crawford County.

The Upper Region Regulations Committee of the Mississippi Flyway Council recommended extending the framework closing date for dark geese in the northern portion of the flyway to January 31, which is consistent with the southern portion of the Flyway. The Committee recommended that Minnesota be allowed to expand the Southeast Goose Zone to include two additional counties, Chisago and Isanti, at the north end of the zone. They also recommended including the eastern part of Michigan's Upper Peninsula in the area that is subject to less-restrictive regulations, and expanding the possession limit in Wisconsin to 10 Canada geese statewide.

The Upper and Lower Region Regulations Committees of the Mississippi Flyway Council recommended numerous minor adjustments to bag limits, season lengths, and quotas.

The Central Flyway Council recommended that dark-goose seasons in the Eastern Tier extend for either 72 to 79 days. The bag limit would be no more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days under the 79-day option and 37 consecutive days under the 72-day option; and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remainder of the season. There were several exceptions to the above recommended frameworks. The justification provided includes a projected increase in harvest by state and population that would result from the proposed changes.

For the Western Tier, the Council recommended increasing the season length from 100 to 107 days with a daily bag limit of 3 dark geese in most areas. The aggregate bag limit of light and dark geese in the Western Tier would be discontinued. The Council recommended extending the framework closing date from January 20 to January 31 for dark geese throughout the Flyway. The Council further recommended that, in lieu of zoning, statewide goose seasons may be divided into three segments; and that, based on the distribution of Short Grass Prairie Canada geese, a portion of Oklahoma should be governed by Western-Tier regulations.

The Pacific Flyway Council recommended that the possession limits in Arizona, Clark County of Nevada, Washington County of Utah, and the Colorado River Zone of California be increased from 2 to 4, which would be twice the daily bag limit. They further recommended that the bag and possession limits for southeastern Idaho and the remainder of Nevada be increased from 2 and 4, to 3 and 6, respectively.

Public Hearing Comments: Mr. Bobby G. Alexander, representing the Central Flyway Council and the Texas Parks and Wildlife Department, indicated that Central Flyway states have experienced recent increases in several Eastern-Tier Canada goose populations and increases in harvest opportunity are justified. The recommended changes reflect increased hunting opportunity directed at large Canada geese in the Western Prairie and Great Plains Populations. Mr. Alexander stated that Western-Tier goose populations are above objective levels and would support an extension of the framework dates to January 31. The proposed boundary change in western Oklahoma is also appropriate, as the proposed boundary corresponds with the boundary in Texas and largely follows county boundaries, shifting several counties into the Short Grass Prairie Canada Goose Population Area. Mr. Richard Elden, representing the Michigan Department of Natural Resources, suggested that perhaps the Service was not giving enough consideration to information generated by the Technical Sections and Flyway Councils. He described the actions taken by his Department to reduce the harvest of Canada geese from the Southern James Bay Population (SJBP) in Michigan and noted the considerable commitment in both time and resources that his and other state organizations make to waterfowl management. He asked the Service to reconsider its decision to continue the SJBP harvest zone in the Upper Peninsula of Michigan. He also indicated that Michigan was convinced that such action would not increase the harvest of SJBP Canada geese.

Written Comments: A member of Congress from Pennsylvania expressed concern about the regulations in the northwest portion of the State. The Barton County, Missouri, Soil and Water Conservation District remarked that extending the framework for geese through February would help alleviate crop damage. Two local organizations in Michigan opposed the restriction of hunting opportunity in that state. Eight individuals opposed restrictions in northwestern Pennsylvania, while a local sportmen's organization supported the restrictive regulations.

The New York State Conservation Council supported the 90-day season for 1991–92 but suggested that the Service consider liberalizations in season length and bag limit if the upward trend in populations continues. Two individuals from Massachusetts requested a 90-day season for their State.

Service Response: Pennsylvania requested changes in harvest zone boundaries for areas that previously were defined as within the range of SJBP. This request would have resulted in liberalized regulations for the areas in question. Presently, the Service does not believe there is sufficient data to warrant changing these zone boundaries in Pennsylvania. For the eastern portion of the Upper Peninsula of Michigan, where harvest strategies for the SJBP have applied in recent years, the Service believes that restrictive regulations should continue in 1991. All of the existing data for SJBP Canada geese should be reviewed before any changes in current designations of SJBP harvest areas are made.

The Service notes that both the Atlantic and Mississippi Flyway Councils have recommended

continuation of the present restrictive regulations in place throughout the range of the SJBP due to concerns about population status and the poor recruitment experienced in recent years. Additionally, the Service notes that Canada has also taken actions to restrict the harvest of these geese this year.

The Councils agreed to a thorough review of the existing data regarding this population and to an accelerated research program directed at providing additional information on which to base management decisions. This study is scheduled for completion in 1994 with a final report due in 1995. In the interim, the Service has agreed to help review zone boundaries and harvest strategies for this population. It is the Service's intent to help establish area descriptions that will be used for harvest management until the current study has been completed and a management plan (including harvest management strategies) is adopted by both Flyways. Currently, no management plan exists for this population of Canada geese. The Service will work on this interim boundary description during the coming year in conjunction with technical representatives from both Flyways involved with the management of this goose population.

The Service concurs with most of the other recommendations for geese in the Mississippi Flyway. However, in Wisconsin, the Service believes that the larger possession limits should be limited to quota zones where tags are used. The Service notes that current possession limits in Illinois are greater than twice the daily bag limit statewide and will discuss this situation with the State during the coming year. Concerning framework dates, the Service believes that closing dates later than those provided in the current frameworks are not warranted at this time.

The Service commends the Central Flyway Council for attempting to minimize potential increases in harvest on the Tall Grass Population of Canada Geese and eliminate additional harvest on the Western Segment of the Mid-Continent Population of Greater White-fronted Geese, while attempting to increase harvest on the Western Prairie/Great Plains Population of Canada Geese. The Service suggests that the Central Flyway Council assess the increase in harvest that results from these changes to ensure compliance with existing management plans for all populations of dark geese in the Eastern Tier of the Flyway. The Service again points out that the management plans for several of these populations should be revised. The Service concurs with the proposed changes in the frameworks for dark geese in the Eastern Tier.

The Service recognizes that all goose populations in the Western Tier are above management objectives and increases in harvest are consistent with current management plans. The Service again suggests that the management plan for the Short Grass Prairie Population of Canada Geese should be revised and that possible mixing with the Tall Grass Prairie Population be addressed. The Service agrees with the proposed changes in frameworks for geese in the Western Tier.

The Central Flyway Council recommended that, in lieu of zoning, the Service permit statewide goose seasons to be divided into three segments. In the past, the Atlantic and Central Flyway frameworks have allowed statewide goose seasons to be split into three segments in lieu of zoning. However, this option originated for ducks as an alternative to zoning for duck hunting. Geese were included at the request of some states that wished to have more consistent seasons for ducks and geese if they selected the option for duck hunting. Criteria for the use of zones and split seasons for duck hunting were established in 1990, and states now select duck zone/split-season configuration for 5-year periods. Because of this, the Service believes that the use of zones and split seasons to manage goose harvests should be considered independently from ducks. Until the relationship of 3-way splits to independent goose and duck zones can be determined, this option is being discontinued for geese.

In regard to the recommendation that a portion of Oklahoma be governed by Western-Tier regulations instead of the Eastern-Tier regulations, as is currently the case, the Service defers action on the request until band-recovery data, neck-collar sightings, and other information can be reviewed to determine the current ranges of these populations, and until any indicated range changes are incorporated into existing management plans. These frameworks include provisions for the Rocky Mountain Population of Western Canada geese requested by the Pacific Flyway Council.

5. White-fronted Geese

Council Recommendations: The Upper Region Regulations Committee of the Mississippi Flyway Council recommended that the Service extend the dark goose framework closing date to January 31 for northern states. They further recommended a 93-day seasons for all geese in Wisconsin. The Central Flyway Council recommended that dark-goose seasons in the Eastern Tier extend for either 72 or 79 days. The bag limit would be no more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days under the 79-day option and 37 consecutive days under the 72-day option; and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining days in the season. There were several exceptions to the above-recommended frameworks. For the Western Tier, a season length of 107 days with a daily bag limit of 3 dark geese in most areas was recommended. The aggregate bag limit for light and dark geese in the Western Tier would be discontinued. The Council recommended extending the framework closing date from January 20 to January 31 for dark geese in the Eastern and Western Tiers. The Council further recommended that, in lieu of zoning, statewide goose seasons may be divided into three segments; and that, based on the distribution of Short Grass Prairie Canada geese, a portion of Oklahoma should be governed by Western-Tier regulations.

The Pacific Flyway Council recommended that the framework opening date be advanced from November 1 to October 25 in Lake and Klamath Counties of Oregon; and that the daily bag limit in the Northeastern Zone of California be increased from 1 to 2 white-fronted geese, within a 2-dark-goose daily bag limit.

Written Comments: The Wisconsin Department of Natural Resources requested a 93-day season for all geese. They cite the low harvest of white-fronted geese and white geese since 1986 and suggest that the additional harvest would not significantly affect any populations of these geese. The Alaska Department of Fish and Game supported the recommendations of the Pacific Flyway Council. Forty individuals in the Northeastern Zone of California requested liberalization of the bag limit for white-fronted geese. They cited increasing population levels and the negative effect on the economy of restrictive regulations.

Service Response: The Service concurs with the Mississippi Flyway recommendation to extend the framework closing date for dark geese to January 31 in northern states. In the Mississippi Flyway, Canada geese are managed by population and regulations vary among states according to the harvest strategies developed for each population. However, white-fronted geese are managed on a flyway basis

and the Service believes the current season length is appropriate for this species. The Central Flyway Council recommended several changes in frameworks for dark geese in the Eastern Tier. Some of these changes will concern white-fronted geese. However, most of the changes should not result in additional harvest and the Service concurs with those recommended changes. See Item *4. Canada Geese, C. Regular Seasons.*

In regard to the Pacific Flyway Council's recommendation, while the management plan provides for minor adjustments in harvest, the Service believes that the population objective and a range-wide relaxation of regulations would be obtained quicker without the proposed liberalization. The objective level is 300,000 whitefronts as measured by a 3-year moving average. The 1990 fall index was 240,800 whitefronts, with a 3-year average index of 207,000. Should the Pacific Flyway Council continue to seek minor liberalizations prior to attaining the population objective, it is urged to gain support from all parties involved in the management of these geese.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended a 50-day season with a 4-bird daily bag limit, an increase of 2 birds in the daily bag limit over last year. The Pacific Flyway Council recommended no change.

Public Hearing Comments: Mr. Frank Anderson, representing the Concerned Coastal Sportsman's Club of Massachusetts, the Andover Sportsman's Club, the Hudson River Waterfowl Protection Association, and the New Jersey Waterfowler's Association, requested a 50-day brant season with a 4-bird bag limit.

Service Response: Atlantic brant populations have historically fluctuated widely between "boom or bust" and, since the 1930's, these trends have often necessitated closed seasons to restrict harvests. Hunting seasons were closed throughout most of the 1970's and brant numbers have only recently obtained satisfactory levels. Presently, midwinter estimates over the last 3 years average 140,000. The Service continues to be concerned when brant populations are below 150,000, because over-harvest at critical times may subsequently cause unnecessary loss of hunting opportunity. High-harvest years followed by years of poor recruitment could reduce populations below satisfactory levels. The Service favors a more sustained approach, at lower harvest levels, to maintain hunting opportunities on brant.

7. Snow and Ross's Geese

Council Recommendations: The Atlantic Flyway Council recommended no change in greater snow goose regulations. The Upper Region Regulations Committee of the Mississippi Flyway Council recommended a 93-day season for all geese in Wisconsin. The Central Flyway Council recommended that the possession limit for light geese be three times the daily bag limit and that the aggregate bag limit of light and dark geese in the Western Tier be discontinued. They further recommended that the season length in the Western Tier be increased from 100 to 107 days. The Pacific Flyway Council recommended no change.

Written Comments: The Wisconsin Department of Natural Resources requested a 93-day season for all geese. They cite the low harvest of white-fronted geese and white geese since 1986 and suggest that the additional harvest would not significantly affect any populations of these geese.

Service Response: In the Mississippi Flyway, Canada geese are managed by populations and regulations vary among states according to the harvest strategies developed for each population. However, light geese are managed on a flyway basis and the Service believes the current season length is appropriate for this group of geese. The Service believes that possession limits should remain at twice the daily bag limit except in areas that utilize a harvest quota and require tagging.

8. Tundra Swans

Council Recommendations: The Atlantic Flyway Council recommended no change in permit swan hunts. The Central Flyway Council recommended that 1,500 of the swan permits allocated to the Mississippi Flyway be redistributed in order to increase the number of permits available in North Dakota by 1,000 and South Dakota by 500. The Eastern Population of Tundra Swans is currently well above the management objective. Sportsmen in North and South Dakota continue to request additional hunting opportunity on swans, and the sport hunting plan provides for this redistribution. The Mississippi Flyway Council concurred with this reallocation for the 1991–92 season only. The Pacific Flyway Council recommended no change.

Public Hearing Comments: Mr. Wayne Pacelle, representing the Fund For Animals, indicated that swan hunting should be discontinued. Mr. Dale Caswell, representing the Canadian Wildlife Service, briefly reviewed the tundra swan hunting program and the distribution of hunting permits among breeding, migration, and wintering areas contained in the hunting plan. He cautioned that when reallocation of permits is considered, the potential impacts not only on the entire population but also on population segments should be considered.

Written Comments: The Service received 6 letters from individuals during the comment period that opposed swan hunting. The Humane Society of the United States requested that hunting seasons be closed for swans.

Service Response: Since tundra swan populations are currently at satisfactory levels, the Service believes that controlled hunting programs should be continued. The Service notes that 200 of the Central Flyway's allocated swan permits are not currently being used; therefore, 1,300 permits will be reallocated from the Mississippi Flyway to fill the Central Flyway Council's request.

10. Coots

Council Recommendations: The Central and Pacific Flyway Councils recommended no change in coot hunting regulations.

Public Hearing Comments: Mr. John Grandy, representing the Humane Society of the United States, said that coot limits should be reduced because the current limits encourage wanton waste. Mr. Wayne Pacelle, representing the Fund For Animals, indicated that large bag limits for coots are not justified.

Written Comments: The Wisconsin Department of Natural Resources suggested that the Service reexamine the coot breeding population data as this species probably has also been severely impacted by the prolonged drought in the prairies.

Service Response: The Service has no evidence to suggest that current regulations are adversely impacting coot populations or that current limits encourage wanton waste. The frameworks contained in this document are the same as those offered during the 1990–91 season.

22. Other

A. *Compensation for Sunday-Hunting Prohibition.*

Council Recommendations: The Pacific Flyway Council recommended that additional days of hunting be allowed to those states that lose Sunday hunting because of state-mandated/legislated requirements, provided that

the requirements were not imposed in order to benefit hunting.

Public Hearing Comments: Mr. Frank Anderson, representing the Concerned Coastal Sportsman's Club of Massachusetts, the Andover Sportsman's Club, the Hudson River Waterfowl Protection Association, and the New Jersey Waterfowler's Association, requested that Atlantic Flyway states be compensated for hunting days lost due to Sunday-hunting prohibitions. He indicated that hunters have been unsuccessful in resolving the issue at the state level.

Written Comments: The Service received 10 written comments from Members of Congress during the open comment period urging the Service to consider compensating states that lose days of hunting due to prohibitions on Sunday hunting. The Maryland Wildlife Advisory Commission, a local organization from Pennsylvania, and an individual in Massachusetts also requested compensation for these Sunday closures.

Service Response: Requests of the Service for compensatory days in those states prohibiting Sunday hunting has been a long-standing issue in the Atlantic Flyway. Currently, 13 states in that Flyway have some form of prohibition on Sunday hunting. Although this question has surfaced on numerous occasions since the 1960's, the Service has not supported compensatory days for a number of reasons, but mainly because Sunday closures have been implemented by state action and states may be more restrictive whenever they deem appropriate for whatever reason. Federal regulations do not prohibit hunting on Sundays.

The Federal regulatory frameworks for waterfowl hunting seasons are developed so that opportunities to harvest waterfowl within a flyway are as equitable as other conditions allow (e.g., weather, natural migration patterns, and the quantity and quality of waterfowl habitat). All states in a flyway (with few exceptions) are offered the same regulatory frameworks for duck season length, outside dates of the season, and bag limits.

If compensatory days were offered, the frameworks would vary by states and the Service would be placed in the untenable position of having to evaluate hunter compliance and judge a state's effectiveness in enforcing Sunday closures. Not all states enforce Sunday closures equally. Also, the Service may need to readjust frameworks to account for the added harvest pressure on various species of migratory birds. Increased harvest pressure due to compensatory days would be most significant for those species with longer seasons (e.g., geese, snipe, and sea ducks).

The issue is further complicated by the sometimes uneven application of Sunday closures within a state. In some states, the restrictions are at the county level. In at least one state, Sunday hunting is prohibited on freshwater areas but not on tidal waters. In another, Sunday hunting is permitted on state-licensed shooting preserves but not elsewhere in the State. Finally, some states do not have the same prohibition on resident game as those imposed on migratory game.

The Service understands the problem confronting hunters in states where hunting is prohibited on Sundays but believes that this problem can best be solved by each state's removing its self-imposed restriction. Many other "blue laws" have been overturned in the concerned states, and some other states have removed bans on Sunday hunting. Return of Sunday hunting would provide equitable opportunity to all migratory bird hunters; while compensatory days would not benefit those hunters whose only opportunity for recreation is on Sundays.

Therefore, the Service position is that there is no biological reason for Sunday-hunting restrictions. If the loss of hunting days becomes an issue, it is the obligation of the affected state to remove the restriction as it is state action that is causing the loss of hunting opportunity.

B. Regulations-Setting Process

Public Hearing Comments: Mr. John Grandy, representing the Humane Society of the United States, expressed concern that the Service's process for establishing late-season migratory bird hunting regulations, including the Waterfowl Status Meeting held in Denver, Colorado, precluded significant input from the nonhunting public. He noted that the process had not changed from a year ago. He asked the Service to develop a system that would allow for nonhunting public involvement in duck management. Mr. Wayne Pacelle, representing the Fund for Animals, echoed the presentation made by Mr. Grandy. He indicated that he did not believe past waterfowl regulations had been conservative in nature and indicated concern over the annual "tinkering" with regulations just to appease hunters. Mr. Richard Elden, representing the Michigan Department of Natural Resources, made several comments concerning the lack of partnership between the Service and the states in the regulations development process. He indicated that the commitment of time and resources made by state organizations on behalf of waterfowl management would be difficult to maintain if the partnership were perceived as one-sided. Dr. Rollin Sparrowe, representing the Wildlife Management Institute, observed that the process by which migratory bird hunting regulations are developed and finalized was established by the Service in 1981 in response to criticism by nonhunting and antihunting organizations for increased opportunity in that process. He observed that, by choice, certain groups only involve themselves at one stage in the regulatory process, i.e., the public hearing, and are conspicuously absent at other times and in other activities related to the conservation of migratory birds, such as the Farm Bill, Clean Water Act, and the North American Waterfowl Management Plan. He supported the regulations-setting process and indicated the many opportunities for public comment. He also stated that if the process merits re-evaluation, his organization would want to participate in that effort.

Service Response: The current process has been designed to provide the general public with the maximum opportunity possible to comment on the annual migratory bird hunting regulations, and for the Service to work cooperatively with state wildlife agencies and other organizations in the management of this resource. Regulations governing public participation, announcement of meetings, and maintenance of a public file are found in 50 CFR 20 Subpart N—"Special Procedures for Issuance of Annual Hunting Regulations". A brief synopsis of this process follows.

Each year, the Service seeks public comment on hunting regulations, beginning with the publication of a preliminary proposed rule in the Federal Register, usually in March. The early-season comment period generally closes in late July and the late-season comment period closes in late August.

Over the years, the migratory bird regulatory process has developed into a model of state, provincial, Federal, and international cooperation in the management of a migratory resource. The deliberations are well announced, and the public is broadly involved. Although the Director of the Service is ultimately responsible for the hunting regulations in the United States, the Service strives to cooperate with the states and other organizations to share resources, expertise, and information. The Service works cooperatively with Flyway Councils and state fish and

wildlife agencies in all aspects of migratory bird management because these organizations provide not only technical expertise but also information gathered through state and flyway research and management programs, both of which contribute significantly to the assessment and maintenance of migratory bird populations. In an effort to keep the public apprised of joint deliberations on regulations, all meetings of the Service's Migratory Bird Regulations Committee attended by any person outside the Department of Interior are open to public observation and are announced in the **Federal Register**. Likewise, notice of Flyway Council meetings attended by the Department of the Interior officials are published in the **Federal Register**. In addition, the Waterfowl Status Meeting, held each year in Denver, Colorado, is also open to the general public and announced in the **Federal Register**. The primary purpose of the Waterfowl Status Meeting is to present information gathered by the Service and others about the current status of waterfowl, and for the Service to present general guidelines for harvest strategies for the upcoming hunting seasons. Finally, two public hearings are held in which regulatory proposals are reviewed and public testimony is invited. One of these hearings, held in late June, deals with the early seasons; while the other, held in early August, deals with the late seasons.

All interested parties have several opportunities to provide input into the development of regulations. They may submit written comments during the 6-month comment period, provide oral testimony or written documents during the public hearings, or participate in the development of recommendations at the state or flyway level.

The views of the hunting and nonhunting community are both fully considered in the regulations development process. As an example, in 1991, the views of nonhunters were expressed at both public hearings and the Waterfowl Status Meeting. In addition, written comments received that opposed hunting were openly discussed during the Service Regulations Committee meetings.

The Service believes that the current process is open and receptive to all public comments. There is equal opportunity for the public to provide comments regarding the development of annual and basic regulations. However, the Service welcomes suggested improvements to the process.

Nontoxic Shot Regulations

In the May 13, 1991, **Federal Register** (56 FR 22100), the Service published a final rule prohibiting the use and/or possession of lead shot while hunting waterfowl, coots, and certain other species throughout the United States. Migratory bird hunters are advised to become familiar with additional state and local regulations regarding the use of nontoxic shot for migratory bird hunting.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)", filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations; those are developed annually. The annual regulations and options were considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1991". Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

On July 31, 1991, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Order 12291, 12612, and 12630; and the Paperwork Reduction Act

In the **Federal Register** dated March 6, 1991 (56 FR 9462), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Orders. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. This determination is detailed in the aforementioned documents, which are available upon request from the Office of Migratory Bird Management. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated August 21, 1991 (56 FR 41608).

Authorship

The primary authors of this proposed rule are Robert J. Blohm and William O. Vogel, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed late-season rulemaking was published on August 26, 1991, the Service established what it believed was the longest period possible for public comment. In doing this, the Service recognized that at the close of the comment period time would be of the essence. That is, if there was a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the states would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures that implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. 701–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season

lengths, the earliest opening and latest closing season dates, and hunting areas, from which state conservation agency officials may select hunting season dates and other options. Upon receipt of the season and option selections from state officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1991–92 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1991–92 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. 701–711), and the Fish and Wildlife Improvement Act of November 8, 1978, as amended (16 U.S.C. 712).

Dated: September 19, 1991.

Mike Hayden,

Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1991–92 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which states may select seasons for hunting waterfowl and coots. Late-season frameworks are summarized below:

General

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily, for all species and seasons.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by flyway.

Atlantic Flyway

The Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Coots, and Mergansers

Hunting Season: Not more than 30 days.

Outside Dates: Between October 5, 1991, and January 5, 1992.

Duck Limits: The daily bag limit is 3 and may include no more than 1 hen mallard, 2 wood ducks, 2 redheads, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous whistling duck.

Closures: The seasons on canvasbacks and harlequin ducks are closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Maryland, North Carolina, Rhode Island, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may zone and may split their seasons into two segments in each zone; while Florida, Georgia, and South Carolina may split their statewide seasons into two segments. Zone descriptions are contained in a later portion of this document.

Canada Geese

Season Lengths, Outside Dates, and Limits: Unless specified otherwise, seasons may be split into two segments. Seasons in states, and independently in described goose management units within states, may be as follows:

Connecticut:

North Zone—90 days between October 1 and January 31, with a daily bag limit of 3.

South Zone—90 days between October 1 and February 5, with a daily bag limit of 3 through January 14, and a daily bag limit of 5 thereafter.

Delaware: 60 days between October 31 and January 20, with a daily bag limit of 2.

Florida: Closed season.

Georgia: In specific areas, an 8-day experimental season may be split into 2 segments of 4 days each between November 15 and February 5, with a limit of 1 Canada goose per season.

Maine: 70 days between October 1 and January 20, with a daily bag limit of 3.

Maryland: 60 days between October 31 and January 30, with a daily bag limit of 2.

Massachusetts: 70 days between October 1 and January 20 in the Berkshire and Coastal Zones, and between October 1 and January 31 in the Central Zone, with a daily bag limit of 3. In addition, a special 16-day season for resident Canada geese may be held in the Coastal and Central Zones during January 21 to February 5, with a daily bag limit of 5. The season in the Central Zone is experimental.

New Hampshire: 70 days between October 1 and January 20, with a daily bag limit of 3.

New Jersey: 90 days between October 1 and January 31, with a daily bag limit of 1 through October 15, and a daily bag limit of 3 thereafter.

New York: 90 days between October 1 and January 31, with a daily bag limit of 1 through October 15 and a daily bag limit of 3 thereafter.

North Carolina:

East of I–95—11 days between January 20 and January 31, with a daily bag limit of 1.

West of I–95—Closed.

Pennsylvania:

Southeast Zone—90 days between October 1 and January 31, with a daily bag limit of 1 through October 15 and 3 thereafter.

Erie, Mercer, and Butler Counties—50 days between October 1 and January 20, with a daily bag limit of 2.

Crawford County—70 days between October 1 and January 20, with a daily bag of 1.

Remainder of State—70 days between October 1 and January 20, with a daily bag limit of 3.

Rhode Island: 90 days between October 1 and January 31, with a daily bag limit of 3.

South Carolina: 11 days between January 20 and January 31, with a daily bag limit of 1. In addition, a special 4-day season for resident Canada geese may be held in the Central Piedmont, Western Piedmont, and Mountain Hunt Units during January 15 to February 15 with a limit of 1 Canada goose per season.

Vermont: 70 days between October 1 and January 20, with a daily bag limit of 3.

Virginia:

Back Bay—11 days between January 20 and January 31, with a daily bag limit of 1.

Remainder—60 days between October 31 and January 20, with a daily bag limit of 2.

West Virginia: 70 days between October 1 and January 20, with a daily bag limit of 3.

White Geese

Definition: For purpose of hunting regulations listed below, the collective term "white" geese includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1, 1991, and February 10, 1992, with a daily bag limit of 5. States may split their seasons into two segments.

Atlantic Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between October 1, 1991, and January 20, 1992, with a daily bag limit of 2.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Coots, and Mergansers

Hunting Seasons: Not more than 30 days.

Outside Dates: Between October 5, 1991, and January 5, 1992.

Duck Limits: The daily bag limit is 3, and may include no more than 2 mallards (no more than 1 of which may be a female, 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, black duck, redhead, hooded merganser

50 points—male mallard, wood duck

35 points—all other ducks and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Closures: The season on canvasbacks is closed.

Merganser Limits: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zooning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons for ducks, coots, and mergansers by zones described later in these frameworks.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Mississippi, the season may be split into two segments.

In Arkansas and Minnesota, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania.

Geese

Definition: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese—Canada geese, white-fronted geese, and brant.

Light geese—lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Split Seasons: Seasons for geese may be split into two segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (September 28, 1991) and January 31, 1992, and 80 days for light geese between the Saturday nearest October 1 (September 28, 1991), and February 14, 1992. The daily bag limit is 7 geese, to include no more than 3 Canada and 2 white-fronted geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days. The daily bag limit is 2 Canada geese.

Illinois: The total harvest of Canada geese in the State will be limited to 144,800 birds. In the:

(a) *Southern Illinois Quota Zone*—The season for Canada geese will close after 84 days or when 72,400 birds have been harvested, whichever occurs first. Limits are 3 Canada geese daily and 10 in possession. If any of the following conditions exist after Dec. 20, 1991, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.

2. 10 consecutive days of daily high temperatures less than 20 degrees F.

3. Average body weights of adult female geese less than *3,200* grams as measured from a weekly sample of a minimum of 50 geese.

4. Starvation or a major disease outbreak resulting in observed mortality exceeding 500 birds per day for 10 consecutive days, or a total mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

(b) *Rend Lake Quota Zone*—The season for Canada geese will close after 84 days or when 21,700 birds have been harvested, whichever occurs first. Limits are 3 Canada geese daily and 10 in possession.

(c) *Tri-County Zone*—The season for Canada geese may not exceed 73 days. Limits are 2 Canada geese daily and 10 in possession.

(d) *Remainder of the State*—The season for Canada geese may extend for 90 days in the respective duck-hunting zones. Limits are 3 Canada geese daily and 10 in possession.

Indiana: The total harvest of Canada geese in the State will be limited to 25,500 birds. In:

(a) *Posey County*—The season for Canada geese will close after 70 days or when 6,000 birds have been harvested, whichever occurs first. The daily bag limit is 4 Canada geese.

(b) *Remainder of the State*—The season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese, except in LaGrange and Steuben Counties and on the Kankakee and Jasper-Pulaski Fish and Wildlife Areas where the daily bag limit is 1.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky: In the:

(a) *Western Zone*—The season for Canada geese may extend for 93 days, and the harvest will be limited to 43,200 birds. Of the 43,200-bird quota, 28,000 birds will be allocated to the Ballard Reporting Area and 8,200 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 93-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the

respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 93 days. The season in Fulton County may extend to February 15, 1992. The daily bag limit is 3 Canada geese.

(b) *Remainder of the State*—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Lousiana: Louisiana may hold 80-day seasons on light geese and 70-day seasons on white-fronted geese and brant between the Saturday nearest October 1 (September 28, 1991), and February 14, 1992, in the respective duch-hunting zones. The daily bag limit is 7 geese, to include no more than 2 white-fronted geese, except as noted below. In the Southwest Zone, an experimental 9-day season for Canada geese may be held during January 22–30, 1992. During the experimental season, the daily bag limit for Canada and white-fronted geese in the Southwest Zone is 2, no more than 1 of which may be a Canada goose. Hunters participating in the experimental Canada goose season must posses a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 97,900 birds. In the:

(a) —*North Zone:*

(1) *West of Forest Highway 13*—The framework opening date for all geese is September 21 and the season for Canada geese may extend for 71 days. The daily bag limit is 3 Canada geese.

(2) *Remainder of North Zone*—The framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(b) *Middle Zone*—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) *South Zone:*

(1) *Allegan County GMU*—The season for Canada geese will close after 58 days or when 6,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose through November 14 and 2 Canada geese thereafter.

(2) *Muskegon Wastewater GMU*—The season for Canada geese will close after 50 days or when 1,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) *Saginaw County GMU*—The season for Canada geese will close after 40 days or when 4,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(4) *Tuscola/Huron GMU*—The season for Canada geese will close after 40 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(5) *Remainder of South Zone:*

(i) *West of U.S. Highway 27/127*—The season Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(ii) *East of U.S. Highway 27/127*—The season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(d) *Southern Michigan GMU*—A late Canada goose season of up to 30 days may be held between January 4 and February 3, 1992. The daily bag limit is 2 Canada geese.

Minnesota: In the:

(a) *West Central Goose Zone*—The season for Canada geese may extend for 40 days. In the Lac Qui Parle Goose Zone the season will close after 40 days or when a harvest of 6,000 birds has been achieved, whichever occurs first. Throughout the West-Central Zone, the daily bag limit is 1 Canada goose.

(b) *Southeast Goose Zone*—The season for Canada geese may extend for 70 consecutive days. The daily bag limit is 2 Canada geese. In selected areas of the Metro Goose Management Block and in Olmsted County, 10-day late seasons may be held during December to harvest giant Canada geese. The season in the Metro Goose Management Block is experimental. During these seasons, the daily bag limit is 2 Canada geese.

(c) *Remainder of the State*—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: In the:

(a) *Swan Lake Zone*—The season for Canada geese closes after 50 days or when 10,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) *Schell-Osage Zone*—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) *Remainder of the State*—The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days, with a daily bag limit of 2 Canada geese, except in the counties of Ashtabula, Trumbull, Ottawa, and that portion of Lucas County east of the Maumee River, where the daily bag limit will be 1 Canada goose.

Tennessee: In the:

(a) *Northwest Tennessee Zone*—The season for Canada geese may extend for 72 days, and the harvest will be limited to 22,500 birds. Of the 22,500 bird quota, 15,500 birds will be allocated to the Reelfoot Quota Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 72-day season, the season in the quota zone will be closed. If this occurs, the season in the remainder of the Northwest Tennessee Zone may continue for an additional 7 days, not to exceed a total of 72 days. The season may extend to February 15, 1992. The daily bag limit is 3 Canada geese.

(b) *Southwest Tennessee Zone*—The season for Canada geese may extend for 55 days, and the harvest will be limited to 2,500 birds. The daily bag limit is 2 Canada geese.

(c) *Kentucky Lake Zone*—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(d) *Remainder of the State*—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The framework opening date for all geese is September 21. The total harvest of Canada geese in the State will be limited to 190,100 birds. In the:

(a) *Horicon Zone*—The harvest of Canada geese is limited to 135,800 birds. The season may not exceed 93 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee. The possession limit is 10 Canada geese.

(b) *Theresa Zone*—The harvest of Canada geese is limited to 6,000 birds. The season may not exceed 84 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the overall limit for each identified time period will be the number of tags issued to each permittee for that time period. The possession limit is 10 Canada geese.

(c) *Pine Island Zone*—The harvest of Canada geese is limited to 800 birds. The season may not exceed 72 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee. The possession limit is 10 Canada geese.

(d) *Collins Zone*—The harvest of Canada geese is limited to 3,000 birds. The season may not exceed 67 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee. The possession limit is 10 Canada geese.

(e) *Exterior Zone*—The harvest of Canada geese is limited to 40,000 birds. The season may not exceed 93 days, except as noted below. The daily bag limit is 2 Canada geese, except as noted

below. In the Mississippi River Subzone, the season for Canada geese may extend for 74 days in each duck zone. In the North-Duck-Zone portion of the Subzone, the daily bag limit is 1 Canada goose through October 13, and 2 thereafter; in the South-Duck-Zone portion, the daily bag limit is 1 Canada goose through October 8, and 2 thereafter. In the Brown County Subzone, a special late season to control local populations of giant Canada geese may be held during December 1–31. The daily bag limit during this special season is 3. In the Rock Prairie Subzone, a special late season to harvest giant Canada geese may be held between November 4 and December 15. During this late season, the daily bag limit is 1 Canada goose. The progress of the harvest in the Exterior Zone must be monitored, and the zone's season closed, if necessary, to ensure that the harvest does not exceed the limit stated above. This closure will not apply to the special late-season giant Canada goose seasons in the Brown County and Rock Prairie Subzones.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,000 Canada geese in the Horicon Zone and 500 in the Theresa Zone may be taken under special agricultural permits.

Illinois, Indiana, Kentucky, Missouri, and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Swan Lake Zone in Missouri, and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the state through state regulations with such notice and time (not less than 48 hours) as they deem necessary.

Shipping Restrictions: In Illinois and Missouri, and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle, geese may not be transported, shipped, or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks (Including Mergansers) and Coots

Hunting Seasons: Seasons in the High Plains Mallard Management Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, may include no more than 51 days, provided that the last 12 days may start no earlier than the Saturday closest to December 10 (December 7, 1991). Seasons in the Low Plains Unit may include no more than 39 days.

Outside Dates: October 5, 1991, through January 5, 1992.

Duck Limits: The daily bag limit is 3, including no more than 2 mallards, no more than 1 of which may be a female, 1 mottled duck, 1 pintail, 1 redhead, and 2 wood ducks.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, redhead, hooded merganser, mottled duck.

50 points—male mallard, wood duck.

35 points—all other ducks and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Closures: The season on canvasbacks is closed.

Merganser Limits: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily limit is 15 coots.

Zoning and Split Seasons: Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), and South Dakota (Low Plains portion) may select hunting seasons for ducks, coots, and mergansers by zones described later in these frameworks.

In Montana, Nebraska (Low and High Plains portions), New Mexico, North Dakota (Low Plains portion), Oklahoma (Low and High Plains portions), South Dakota (High Plains portion), and Texas (Low Plains portion), the season may be split into two segments.

In Colorado, Kansas (Low and High Plains portions), North Dakota (High Plains portion), and Wyoming, the season may be split into three segments.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant; "dark geese" includes Canada and white-fronted geese and black brant; and "light geese" includes all others.

Season Lengths, Outside Dates, and Limits: Seasons may be split into two segments. The Saturday nearest October 1 (September 28, 1991), through January 31, 1992, for dark geese and the Saturday nearest October 1 (September 28, 1991), through the Sunday nearest February 15 (February 16, 1992), *except* in New Mexico where the closing date is February 28, for light geese. Seasons in states, and independently in described goose management units within states, may be as follows:

Colorado: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

Kansas: For dark geese, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For Light Goose Units 1 and 2, no more than 100 days, with a daily bag limit of 5, or no more than 86 days, with a daily bag limit of 7.

Montana: No more than 107 days, with daily bag limits of 2 dark geese and 5 light geese in Sheridan County and 4 dark geese and 5 light geese in the remainder of the Central Flyway portion.

Nebraska: For dark geese in the North Unit, no more than 79 days, with daily bag limits of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 9, 1991), and no more than 2 Canada geese or 1

Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the East and West Units, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose for no more than 37 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 100 days, with a daily bag limit of 5, or no more than 86 days with a daily bag limit of 7.

New Mexico: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

North Dakota: For dark geese, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese until October 19, and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 100 days, with a daily bag limit of 5, or no more than 86 days with a daily bag limit of 7.

Oklahoma: For dark geese, no more than 79 days, with a daily bag limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 100 days, with a daily bag limit of 5, or no more than 86 days with a daily bag limit of 7.

South Dakota: For dark geese in the Missouri River Unit, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 9, 1991), and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 100 days, with a daily bag limit of 5, or no more than 86 days with a daily bag limit of 7.

Texas: West of U.S. 81, no more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

For dark geese east of U.S. 81, no more than 79 days. The daily bag limit is 1 Canada goose and 1 white-fronted goose during the first 72 days; during the last 7 days, the season is closed on white-fronted geese and the daily bag limit is 2 Canada geese.

For light geese east of U.S. 81, no more than 100 days, with a daily bag limit of 5, or 86 days with a daily bag limit of 7.

Wyoming: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks, Coots, and Common Moorhens

Hunting Seasons: Concurrent 59-day seasons on ducks (including mergansers), coots, and common moorhens may be selected except as subsequently noted. In the Columbia Basin Mallard Management Unit the seasons may be an additional 7 days. In those States or zones that split their season on ducks, the season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

Outside Dates: Between October 5, 1991, and January 5, 1992.

Duck and Merganser Limits: The basic daily bag limit is 4 ducks, including no more than 3 mallards, no more than 1 of which may be a female, 1 pintail, and either 2 canvasbacks, 2 redheads or 1 of each. The possession limit is twice the daily bag limit.

Coot and Common Moorhen Limits: The daily bag and possession limits to coots and common moorhens are 25, singly or in the aggregate.

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons for ducks (including mergansers), coots, and common moorhens by zones described later in these frameworks.

Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments either statewide or in each zone.

Colorado and Montana may split their duck seasons into three segments.

Colorado River Zone, California: Duck, coot, and common moorhen seasons and limits shall be the same as seasons and limits selected by Arizona.

Southern San Joaquin Valley Zone, California: The temporary zone is approved for the 1991–92 season, but must be justified in each subsequent year on the basis of drought conditions. The State will provide the Service with an annual report of hunter activity and harvest.

Geese (including Brant)

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 93-day seasons may be selected, with outside dates between the Saturday closest to October 1 (September 28, 1991), and the Sunday closest to Janaury 20 (January 19, 1992), and the basic daily bag and possession limits are 6 geese, provided that the daily bag limit includes no more than 3 white geese (including snow, blue, and Ross) and 3 dark geese (all other species of geese, including brant). In only California, Oregon, and Washington, the daily bag limit is 2 brant and is additional to dark goose limits, and the open season on brant in those States may differ from that for other geese.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway and no open season on cackling Canada geese in California, Oregon, and Washington; and those three States must include a statement on the closure for both those subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese may not include more than 2 Canada geese.

California:

Northeastern Zone—White-fronted geese may be taken only during the first 23 days of such season. The daily bag limit is 3 geese and may include no more than 2 Canada geese or 1 white-fronted goose, but not 1 of each.

Colorado River Zone—The seasons and limits must be the same as those selected by Arizona.

Southern Zone—The daily bag and possession limits for dark geese may not include more than 2 Canada geese, except in that portion of California Department of Fish and Game District 22 within the Southern Zone (i.e., Imperial Valley) where daily bag and possession limits for Canada geese are 1 and 2, respectively.

Southern San Joaquin Valley and Balance-of-the-State Zones—A 79-day season may be selected, except that white-fronted geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the counties of *Del Norte* and *Humboldt* there will be no open season for Canada geese.

(2) In the *Sacramento Valley Area,* the season on white-fronted geese must end on or before November 30, 1991, and, except in the *Western Canada Goose Hunt Area,* there will be no open season for Canada geese. In the *Western Canada Goose Hunt Area,* the take of Canada geese other than cackling and Aleutian Canada geese is allowed.

(3) In the *San Joaquin Valley Area,* the hunting season for Canada geese will close no later than November 23, 1991.

Brant Season: A statewide, 30-consecutive-day season on brant may be selected.

Colorado: The season must end on or before the second Sunday in January (January 12, 1992). The daily bag limit for dark geese may not include more than 2 Canada geese.

Idaho:

10 Northern Counties Area—The daily bag limit may not include more than 3 geese.

Southwestern Area—The season must end on or before the first Sunday in January (January 5, 1992) with a daily bag limit of 3 geese, that may not include more than 2 Canada geese.

Southeastern Area, including the *Ft. Hall-American Falls Zone*—The season must end on or before the second Sunday in January (January 12, 1992); the daily bag limit is 3 geese.

Montana:

East of Divide Zone—The season must end on or before the second Sunday in January (January 12, 1992).

West of Divide Zone—The season must end on or before the first Sunday in January (January 5, 1992). The daily bag limit on dark geese may not include more than 2 Canada geese.

Nevada:

Clark County Zone—The daily bag limit of dark geese may not include more than 2 Canada geese.

New Mexico: The daily bag limit for dark geese may not include more than 2 Canada geese.

Oregon:

Eastern Zone—In the *Columbia Basin Goose Area,* the season may be an additional 7 days.

Western Zone—In the *Special Canada Goose Management Area,* except for designated areas, there shall be no open season on Canada geese. In those designated areas, seasons must end upon attainment of their individual quotas which collectively equal 210 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

Baker and Malheur Counties Zone—The season must end on or before the first Sunday in January (January 5, 1992). The daily bag limit of dark geese may not include more than 2 Canada geese.

Lake and Klamath Counties Zone—White-fronted geese may not be taken before November 1 during the regular goose season.

Brant Season—A 16-consecutive-day season on brant may be selected.

Utah:

Washington County Zone—The season must end on or before the Sunday closest to January 20 (January 19, 1992). The daily bag limit for dark geese may not include more than 2 Canada geese.

Remainder-of-the-State Zone—The season must end on or before the second Sunday in January (January 12, 1992). The daily big limit for dark geese may not include more than 2 Canada geese. in Cache County, the combined special September Canada goose season and the regular goose season shall not exceed 93 days.

Washington: The daily bag limit in 3 geese.

Eastern Zone—In the *Columbia Basin Goose Area,* the season may be an additional 7 days.

Western Zone—In the *Lower Columbia River Special Canada Goose Management Area,* except for designated areas, there shall be no open season on Canada geese. For designated areas, seasons on Canada geese must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

Brant Season—A 16-consecutive-day season on brant may be selected.

Wyoming: In Lincoln, Sweetwater, and Sublette Counties, the combined special September Canada goose seasons and the regular goose season shall not exceed 93 days. The season must end on or before the second Sunday in January (January 12, 1992).

Tundra Swans

In Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the states and will authorize each permittee to take no more than 1 tundra swan per season. These seasons will be subject to the following conditions:

In the *Atlantic Flyway*

—The season will be experimental.

—The season may be 90 days, must occur during the white goose season, but may not extend beyond January 31.

—The states must obtain harvest and hunter participation data.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the *Central Flyway*

—In the Central Flyway portion of Montana, no more than 500 permits may be issued. The season must run concurrently with the season for taking geese.

—In North Dakota, no more than 2,000 permits may be issued. The experimental season must run concurrently with the season for taking light geese.

—In South Dakota, no more than 1,000 permits may be issued. The experimental season must run concurrently with the season for taking light geese.

In the *Pacific Flyway*

—A 93-day season may be selected between the Saturday closest to October 1 (September 28, 1991), and the Sunday closest to January 20 (January 19, 1992). Seasons may be split into 2 segments.

—The states must obtain harvest and hunter participation data.

—In Utah, no more than 2,500 permits may be issued.

—In Nevada, no more than 650 permits may be issued. Permits will be valid for Churchill, Lyon, and Pershing Counties.

—In the Pacific Flyway portion of Montana, no more than 500 permits may be issued. Permits will be valid for Cascade, Hill, Liberty, Pondera, Teton, and Toole Counties.

Special Falconry Frameworks

Framework for extended falconry seasons were published in the early-season final frameworks document on August 21, 1991 (56 FR 41608).

Area, Unit and Zone Descriptions

Ducks

Atlantic Flyway

Connecticut:

North Zone: That portion of the State north of I–95.

South Zone: That portion of the State south of I–95.

Maine:

North Zone: Game Management Zones 1 through 5.

South Zone: Game Management Zones 6 through 8.

Massachusetts:

Western Zone: That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, South on Route 10 to Route 202, south on Route 202 to the Connecticut line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending from the New Hampshire line at Interstate 95 south to Route 1, south on Route 1 to I–93, south on I–93, to Route 3, south on Route 3 to Route 6, west on Route 6 to Route 28, west on Route 28 to I–195, west to the Rhode Island line; except the waters, and the lands 150 yards along the high-water mark, of the Assonet River to the Route 24 bridge, and the Taunton River to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire:

Coastal Zone: That portion of the State east of a boundary formed by State Highway 4 beginning at the Maine-New Hampshire line in Rollinsford west to the city of Dover, south to the intersection of State Highway 108, south along State Highway 108 through Madbury, Durham and Newmarket to the junction of State Highway 85 in Newfields, south to State Highway 101 in Exeter, east to State Highway 51 (Exeter-Hampton Expressway), east to Interstate 95 (New Hampshire Turnpike) in Hampton, and south along Interstate 95 to the Massachusetts line.

Inland Zone: That portion of New Hampshire north and west on the above boundary.

New Jersey:

Coastal Zone: That portion of the State seaward of a continuous line beginning at the New York State boundary line in Raritan Bay; then west along the New York boundary line to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with the Garden State Parkway; then south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware boundary in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a boundary formed by Route 70 beginning at the Garden State Parkway west to the New Jersey Turnpike, north on the turnpike to Route 206, north on Route 206 to Route 1, Trenton, west on Route 1 to the Pennsylvania State boundary in the Delaware River.

South Zone: That portion of New Jersey not within the North Zone or the Coastal Zone.

New York:

Lake Champlain Zone: Includes the U.S. portion of Lake Champlain and that area east and north of a continuous line extending along Route 9B from the New York-Canadian boundary to Route 9, then south along Route 9 to Route 22 south of Keesville; then south along Route 22 to the west shore of South Bay, then along and around the shoreline of South Bay to Route 22 on the east shore of South Bay; then southeast along Route 22 to Route 4, then northeast along Route 4 to the New York-Vermont boundary.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of Interstate Route 95, and their tidal waters.

Western Zone: That area west of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate Route 81, and then south along Interstate Route 81 to the New York-Pennsylvania boundary.

Northeastern Zone: That area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate Route 81, then south along Interstate Route 81 to Route 49, then east along route 49 to Route 365, then east along Route 365 to Route 28, then east along Route 28 to Route 29, then east along Route 29 to Interstate Route 87, then north along Interstate Route 87 to Route 9 (at Exit 20), then north along Route 9 to Route 149, then east along Route 149 to Route 4, then north along Route 4 to the New York-Vermont boundary, exclusive of the Lake Champlain Zone.

Southeastern Zone: That area east of Interstate Route 81, that is south of a continuous line extending from Interstate Route 81 east along Route 49 to Route 365, then east along Route 365 to Route 28, then east along Route 28 to Route 29, then east along Route 29 to Interstate Highway 87, then north along Interstate Highway 87 to Route 9 (at Exit 20), then north along Route 9 to Route 149, then east along Route 149 to Route 4, then north along Route 4 to the New York-Vermont boundary, and northwest of Interstate Route 95 in Westchester County.

Pennsylvania:

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of Interstate Highway 80.

North Zone: That portion of the State east of the Northwest Zone and north of I–80 to Route 220, north of Route 220 from I–80 to I–180, north and east of I–180 from Route 220 to I–80, and north of I–80 from I–180 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont:

Lake Champlain Zone: Includes the United States portion of Lake Champlain and that portion of Vermont lying north and west of the line extending from the New York border at U.S. Highway 4; along U.S. Highway 4 to Vermont Route 22A at Fair Haven; Route 22A to U.S. Highway 7 at Vergennes; U.S. Highway 7 to the Canadian border.

Interior Vermont Zone: The remaining portion of Vermont.

West Virginia:

Zone 1 (Remainder of the State): That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): The eastern boundary extends south along U.S. Route 220 through Keyser, West Virginia, to the intersection of U.S. Route 50, follows U.S. Route 50 to the intersection with State Route 93; follows State Route 93 south to the intersection with State Route 42 and continues south on State Route 42 to Petersburg; follows State Route 28 south to Minnehaha Springs; then follows State Route 39 west to U.S. Route 219; and follows U.S.

Route 219 south to the intersection of Interstate 64. The southern boundary follows I–64 west to the intersection with U.S. Route 60, and follows Route 60 west to the intersection of U.S. Route 19. The western boundary follows: Route 19 north to the intersection of I–79, and follows I–79 north to the intersection of U.S. Route 48. The northern boundary follows U.S. Route 48 east to the Maryland State line and the State line to the point of beginning.

Mississippi Flyway

Alabama:

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois:

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State between the North and South Zone boundaries.

South Zone: That portion of the State south of a line extending east from the Missouri border along the Modoc Ferry route to Randolph County Highway 12, north along County 12 to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, then east along I–70 to the Indiana border.

Indiana:

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa:

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky:

West Zone: That portion of the State west of a line extending north from the Tennessee border along Interstate Highway 65 to Bowling Green, northwest along the Green River Parkway to Owensboro, southwest along U.S. Bypass 60 to U.S. Highway 231, then north along U.S. 231 to the Indiana border.

East Zone: The remainder of Kentucky.

Louisiana:

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan:

North Zone: The Upper Peninsula.

South Zone: That portion of the State south of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and east and south along the south shore of, Stony Creek to Webster Road, east and south on Webster Road to Stony Lake Road, east on Stony Lake and Garfield Roads to Michigan Highway 20, east on Michigan 20 to U.S. Highway 10B.R. in the city of Midland, east on U.S. 10B.R. to U.S. 10, east on U.S. 10 and Michigan 25 to the Saginaw River, downstream along the thread of the Saginaw River to Saginaw Bay, then on a northeasterly line, passing one-half mile north of the Corps of Engineers confined disposal island offshore of the Carn Power Plant, to a point one mile north of the Charity Islands, then continuing northeasterly to the Ontario border in Lake Huron.

Middle Zone: The remainder of Michigan.

Missouri:

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I–55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio:

North Zone: The counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Ohio River Zone: The counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

Tennessee:

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin:

North Duck Zone: That portion of the State north of a line extending northerly from the Minnesota border along the center line of the Chippewa River to State Highway 35, east along State 35 to State 25, north along State 25 to U.S. Highway 10, east along U.S. 10 to its junction with the Manitowoc Harbor in the city of Manitowoc, then easterly to the eastern State boundary in Lake Michigan.

South Duck Zone: The remainder of Wisconsin.

Central Flyway

Kansas:

High Plains: That area west of US–283.

Low Plains: That area east of US–283.

Montana (Central Flyway Portion):

Zone 1: The counties of Blaine, Carbon, Daniels, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Richland, Roosevelt, Sheridan, Stillwater, Sweetgrass, Valley, Wheatland and Yellowstone.

Zone 2: The counties of Big Horn, Carter, Custer, Dawson, Fallon, Powder River, Prairie, Rosebud, Treasure and Wibaux.

Nebraska:

High Plains: West of Highways US–183 and US–20 from the northern State line to Ainsworth, N–7 and N–91 to Dunning, N–2 to Merna, N–92 to Arnold, N–40 and N–47 through Gothenburg to N–23, N–23 to Elwood, and US–283 to the southern State line.

Low Plains: East of the High Plains boundary.

Zone 1: Those portions of Burt, Dakota, and Thurston Counties north and east of a line starting on NE 51 on the Iowa-Nebraska border to U.S. 75, north on U.S. 75 to U.S. 20, west on U.S. 20 to NE 12; west on NE 12 to the Boyd County line; to include those portions of Dakota, Dixon, Cedar, and Knox Counties north of NE 12; all of Boyd County; Keya Paha County east of U.S. 183. Where the Niobrara River forms the southern boundary of Keya Paha and Boyd Counties, both banks of the river shall be included in Zone 1.

Zone 2: The area bounded by designated highways and political boundaries starting on NE 2 at the State line near Nebraska City; west to U.S. 75; north to U.S. 34; west to NE 63; north and west to U.S. 77; north to NE 92; west to U.S. 81; south to NE 66; west to NE 14; south to U.S. 34; west to NE 2; south to I–80; west to U.S. 34; west to U.S. 136; east on U.S. 136 to NE 10; south to the State line; west to U.S. 283; north to NE 23; west to NE 47; north to U.S. 30; east to NE 14; north to NE 52; northwesterly to NE 91; west to U.S. 281, north to NE 91 in Wheeler County; west to U.S. 183; north to northerly boundary of Loup County; east along the north boundaries of Loup, Garfield, and Wheeler Counties; south along the east Wheeler County line to NE 70; east on NE 70 from Wheeler County to NE 14; south to NE 39; southeast to NE 22; east to U.S. 81; southeast to U.S. 30; east to the State line; and south and west along the State line to the point of beginning.

Zone 3: The area, excluding Zone 1, north of Zone 2.

Zone 4: The area south of Zone 2.

New Mexico (Central Flyway Portion):

Zone 1: The Central Flyway portion of New Mexico north of Interstate Highway 40 and U.S. Highway 54.

Zone 2: The remainder of the Central Flyway portion of New Mexico.

North Dakota:

High Plains: That portion of North Dakota west of the following line: beginning at the South Dakota border, then north on U.S. 83 and I–94 to ND 41, then north to ND 53, then west to U.S. 83, then north to ND 23, then west to ND 8, then north to U.S. 2, then west to U.S. 85, then north to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma:

High Plains: Beaver, Cimarron, and Texas Counties.

Low Plains:

Zone 1: That portion of northwestern Oklahoma, except the Panhandle, bounded by the following highways: starting at the Texas-Oklahoma border, OK 33 to OK 47, OK 47 to U.S. 183, U.S. 183 to I–40, I–40 to U.S. 177, U.S. 177 to OK 33, OK 33 to I–35, I–35 to U.S. 60, U.S. 60 to U.S. 64, U.S. 64 to OK 132, and OK 132 to the Oklahoma-Kansas State line.

Zone 2: The remainder of the Low Plains portion of Oklahoma.

South Dakota:

High Plains: West of highways and political boundaries starting at the State line north of Herreid; US–83 and US–14 to Blunt, Blunt-Canning Road to SD–34, a line across the Missouri River to the northwestern corner of the Lower Brule Indian Reservation, the Reservation Boundary and Lyman County Road through Presho to I–90, and US–183 to the southern State line.

Low Plains:

North Zone: In that portion of northeastern South Dakota bounded by the following highways: starting at the North Dakota-South Dakota border, US 83 south to US 212, US 212 east to I–29, I–29 north to South Dakota Highway 15, South Dakota Highway 15 east to Hartford Beach, due east of Hartford Beach to the Minnesota border.

South Zone: Charles Mix County south of South Dakota Highway 44 to the Douglas County line, south on South Dakota Highway 50 to Geddes, east on Geddes Highway to US 281, south on US 281 and US 18 to South Dakota Highway 50, south and east on South Dakota Highway 50 to the Bon Homme County line, the counties of Bon Homme, Yankton and Clay south of South Dakota Highway 50, and Union County south and west of South Dakota Highway 50 and I–29.

Middle Zone: The remainder of the Low Plains portion.

Texas:

High Plains: West of highways US–183 from the northern State line to Vernon, US–283 to Albany, T–6 and T–351 to Abilene, US–277 to Del Rio, and the Del Rio International Toll Bridge access road.

Low Plains: The remainder of Texas.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 11, 12B, 13B, and 14–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 lying within Coconino County, and GMUs 7, 9, 10, 12A, and 13A.

California:

Northeastern Zone: In that portion of the State lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to its intersection with Forest Service Road 46N10; south and east along Forest Service Road 46N10 to its junction with Forest Service Road 45N22; west and south along Forest Service Road 45N22 to its junction with Highway 97 at Grass Lake Summit; south and west along Highway 97 to its junction with Interstate 5 at the town of Weed; south along Interstate 5 to its junction with Highway 89; east and south along Highway 89 to the junction with Highway 49; east and north on Highway 49 to the junction of Highway 70; east on Highway 70 to Highway 395; south and east of Highway 395 to the point of intersection with the California-Nevada State line.

Colorado River Zone: In those portions of San Bernardino, Riverside, and Imperial Counties lying east of the following lines: Beginning at the intersection of Highway 95 with the California-Nevada State line; south along Highway 45 to Vidal Junction; south through the town of Rice to the San Bernardino-Riverside County line on a road known as "Aqueduct Road" in San Bernardino County; south from the San Bernardino-Riverside County line on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on Interstate 10 to its intersection with the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on Blythe-Brawley paved road to its intersection with the Ogilby and Tumco Mine Road; south on this road to Highway 80; east seven miles on Highway 80 to its intersection with the Andrade-Algodones Road; south on this paved road to the intersection of the

Mexican boundary line at Algodones, Mexico.

Southern Zone: In that portion of southern California (but excluding the Colorado River zone) lying south and east of a line beginning at the mouth of the Santa Maria River at the Pacific Ocean; east along the Santa Maria River to where it crosses Highway 166 near the City of Santa Maria; east on Highway 166 to the junction of Highway 99; south on Highway 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to where it intersects Highway 178 at Walker Pass; east on Highway 178 to the junction of Highway 395 at the town of Inyokern; south on Highway 395 to the junction of Highway 58; east on Highway 58 to the junction of Interstate 15; east on Interstate 15 to the junction with Highway 127; north on Highway 127 to the point of intersection with the California-Nevada State line.

Southern San Joaquin Valley Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern California Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, Southern San Joaquin Valley, and the Colorado River Zones.

Idaho:

Zone 1 (Ft. Hall-American Falls Zone): Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of State Highway 37 and State Highway 39.

Zone 2: Includes the following counties or portions of counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of State Highway 75, south and east of U.S. Highway 93 including the Minidoka National Wildlife Refuge, and between State Highway 75 and U.S. Highway 93 north of U.S. Highway 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou EXCEPT the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Minidoka within the Minidoka National Wildlife Refuge; New Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Ada includes the counties of: Blaine between State Highway 75 and U.S. Highway 93 south of U.S. Highway 20 and that additional area between State Highway 75 and U.S. Highway 93 north of U.S. Highway 20 within the Silver Creek drainage; Boise; Canyon; Cassia EXCEPT that portion within the Minidoka NWR; Elmore EXCEPT that portion within the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minideka EXCEPT that portion within the Minidoka National Wildlife Refuge; Owyhee; Payette; Power west of State Highway 37 and State Highway 39 EXCEPT that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada:

Clark County Zone: All of Clark County.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon:

Zone 1: All counties except Deschutes, Klamath, and Lake Counties.

Zone 2: Deschutes, Klamath and Lake Counties.

Columbia Basin Mallard Management Unit: Morrow and Umatilla Counties.

Utah:

Zone 1: All of Box Elder, Cache, Davis, Morgan, Rich, Salt Lake, Summit, Utah, Wasatch, and Weber Counties and that part of Toole County lying north of I–80.

Zone 2: The remainder of Utah.

Washington:

East Zone: Includes all areas lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

West Zone: Includes all areas lying to the west of the East Zone.

Columbia Basin Mallard Management Unit: Same as East Zone.

Geese

Atlantic Flyway

Connecticut:

Same Zones as for ducks.

Georgia:

Special Area for Canada Geese: See State Regulations.

Massachusetts:

Same zones as for ducks.

New Hampshire:

Same zones as for ducks.

New Jersey:

Same zones as for ducks.

New York:

Same zones as for ducks, but in addition:

Early-Season Goose Area: All or portions of St. Lawrence County; see State Hunting Regulations for area descriptions.

North Carolina:

Canada Geese:

East of I–95 Zone: That portion of North Carolina east of I–95.

West of I–95 Zone: That portion of North Carolina west of I–95.

Early-season Canada Goose Area— That portion of the State west of Interstate 95; see State hunting regulations for area descriptions.

Pennsylvania:

Same zones as for ducks but in addition:

Southeast Zone: That portion of the State lying east and south of a boundary beginning at Interstate Highway 83 at the Maryland border and extending north to Harrisburg, then east on I–81 to Route 443, east on 443 to Leighton, then east via 208 to Stroudsburg, then east on I–80 to the New Jersey line; and that portion of the Susquennah River from Harrisburg north to the confluence of the west and north branches at Northumberland, including a 25-yard zone of land adjacent to the waters of the river.

South Carolina:

Canada Goose Area: The Central Piedmont, Western Piedmont, and Mountain Hunt Units. These designated areas include: Oconee, Pickens, Greenville, Spartanburg, Anderson, Abbeville, McCormick, Edgefield, Greenwood, Saluda, Laurens, Newberry, Union, Fairfield, Chester, Lancaster, Cherokee, and York Counties.

Virginia:

Back Bay Area: Defined for *Canada geese* as those portions of the cities of Virginia Beach and Chesapeake lying east of U.S. Highway 17 and Interstate 64. Defined for *white geese* as the waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia:

Same zones as for ducks.

Mississippi Flyway

Alabama:

Same zones as for ducks.

Arkansas:

Special Area for Canada Geese: Canada geese may be hunted only in the following counties: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett,

Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff.

Illinois:

Same zones as for ducks, but in addition:

Central Zone:

Tri-County Zone: The following counties or portions of counties: Fulton (Buckheart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, and Putnam Townships, and that portion of Banner Township bounded on the north by Illinois highway 9 and on the east by U.S. Highway 24) and Knox Counties.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Early Canada Goose Seasons:

Northeastern Illinois Canada Goose Zone: Cook, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

Indiana:

Same zones as for ducks, but in addition:

Early-season Canada Goose Area—Adams, Allen, DeKalb, Elkhart, Huntington, Kosciusko, LaGrange, Noble, Steuben, Wabash, Wells, and Whitley Counties.

Iowa:

Southwest Zone: That portion of the State lying south and west of a line extending north from the Missouri border along U.S. Highway 71 to Interstate Highway 80, west on I–80 to U.S. 59, north on U.S. 59 to State Highway 37, then northwest on State 37 to State 175, then west on State 175 to the Nebraska border.

Kentucky:

Western Zone: That portion of the state west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Louisiana:

Southwest Zone: That portion of the State bounded by a line extending east from the Texas border along Louisiana Highway 12 to Ragley, then along U.S. Highway 190 to Opelousas, then on I–49 to Lafayette, then south along U.S. 167 to Louisiana 82, then west along Louisiana 82 to the Texas border.

Michigan:

Same zones as for ducks but in addition:

South Zone:

Tuscola/Huron GMU: Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bayport Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township, then easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ½ mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon County Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, 32 and R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–96, westerly along I–96 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Early Canada Goose Seasons:

Lower Peninsula—All areas except Huron, Saginaw, and Tuscola Counties and the Allegan State Game Area in Allegan County.

Upper Peninsula—That area bounded by a line beginnng at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. Highway 2 to Interstate Highway 75, north along Interstate 75 to State Highway 28, west along State Highway 28 to State Highway 221, then north along State Highway 221 to Brimley, then north to the Michigan/Ontario border.

Minnesota:

West Central Goose Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County Road 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac Qui Parle Goose Zone—That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac

qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County Road 65 to County Road 34 in Chippewa County, south along County Road 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Southeast Goose Zone: The Counties of Anoka, Carver, Chisgo, Dakota, Dodge, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Isanti, Mower, Olmsted, Ramsey, Rice, Scott, Steele, Wabasha, Washington, and Winona.

Special Canada Goose Seasons:

Fergus Falls/Alexandria Canada Goose Zone: That area encompased by a line beginning at the intersection of State Trunk Highway (STH) 55 and THS 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail Conty, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Southwest Border Canada Goose Zone: All of Martin County and that portion of Jackson County south and east of U.S. Highway 60.

Twin Cities Metropolitan Canada Goose Zone: All of Hennepin and Ramsey Counties. In Anoka County; the municipalities of Andover, Anoka, Blaine, Centerville, Circle Pines, Columbia Heights, Coon Rapids, Fridley, Hilltop, Lexington, Lino Lakes, Ramsey, and Spring Lake Park; that portion of Columbus Township lying south of County State Aid Highway (CSAH) 18; and all of the municipality of Ham Lake except that portion described as follows:

Beginning at the intersection of CSAH 18 and U.S. Highway 65, then east along CSAH 18 to the eastern boundary of Ham Lake, north along the eastern boundary of Ham Lake to the north boundary of Ham Lake, west along the north boundary of Ham Lake to U.S. 65, and south along U.S. 65 to the point of beginning.

In Carver County; the municipalities of Carver, Chanhassen, Chaska, and Victoria; the Townships of Chaska and Laketown; and those portions of the municipalities of Cologne Mayer, Waconia, and Watertown and the Townships of Benton, Dahlgren, Waconia, and Watertown lying north and east of the following described line:

Beginning on U.S. 212 at the southwest corner of the municipality of Chaska, then west along U.S. 212 to State Trunk Highway (STH) 284, north along STH 284 to CSAH 10, north and west along CSAH 10 to CSAH 30, north and west along CSAH 30 to STH 25, west and north along STH 25 to CSAH 10, north along CSAH 10 to the Carver County line, and east along the Carver County line to the Hennepin County line.

In Dakota County; the municipalities of Apple Valley, Burnsville, Eagan Farmington, Hastings, Inver Grove Heights, Lakeville, Lilydale, Mendota, Mendota Heights, Rosemont, South St. Paul, Sunfish Lake, and West St. Paul; and the Township of Nininger.

In Scott County; the municipalities of Jordan, Prior Lake, Savage and Shakopee; and the Townships of Credit River, Jackson, Louisville, St. Lawrence, Sand Creek, and Spring Lake.

In Washington County; the municipalities of Afton, Bayport, Birchwood, Cottage Grove, Dellwood, Forest Lake, Hastings, Hugo, Lake Elmo, Lakeland, Lakeland Shores, Landfall, Mahtomedi, Marine, Newport, Oakdale, Oak Park Heights, Pine Springs, St. Croix Beach, St. Mary's Point, St. Paul Park, Stillwater, White Bear Lake, Willernie, and Woodbury; the Townships of Baytown, Denmark, Grant, Gray Cloud Island, May, Stillwater, and West Lakeland; that portion of Forest Lake Township lying south of STH 97 and CSAH 2; and those portions of New Scandia Township lying south of STH 97 and a line due east from the intersection of STH 97 and STH 95 to the eastern border of the State.

Missouri:

Same zones as for ducks but in addition:

North Zone:

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, U.S. 65 on the west.

Middle Zone:

Schell-Osage Zone: That portion of the State encompassed by a line running east from the Kansas border along U.S. Highway 54 to Missouri 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, North along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

Ohio:

Pymatuning Area; Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Early-season Canada Goose Area— Ashtabula, Cuyahoga, Geauga, Lake Lorain, Medina, Portage, Summit, and Trumbull Counties.

Tennessee:

Southwest Tennessee Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Tennessee Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lake Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Tennessee Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Wisconsin:

Horicon Zone: The area encompassed by a border commencing at the intersection of Highway 21 and the Fox River in Winnebago County, then running westerly along Highway 21 to its intersection with the west boundary of Winnebago County, then southerly along the west boundary of Winnebago County to its intersection with the north boundary of Green Lake County, then westerly along the north boundary of Green Lake County to its intersection with the north boundary of Marquette County, then westerly along the north boundary of Marquette County to its intersection with Highway 22, then southerly along Highway 22 to its intersection with Highway 33, then westerly along Highway 33 to its intersection with Highway 78, then southerly along Highway 78 to its intersection with Interstate 90/94, then southerly along Interstate 90/94 to its intersection with Highway 60, then easterly along Highway 60 to its intersection with Highway 83, then northerly along Highway 83 to its intersection with Highway 175, then northerly along Highway 175 to its intersection with Highway 28, then

westerly along Highway 28 to its intersection with County Highway AY, then northerly and then westerly along County Highway AY to its intersection with County Highway Y, then northerly along County Highway Y to its intersection with County Highway H, then easterly along County Highway H to its intersection with Highway 67, then easterly along Highway 67 to its intersection with Highway 45, then northwesterly along Highway 45 to its intersection with the east shore of the Fond Du Lac River, then northerly along the east shore of the Fond Du Lac River to its intersection with Lake Winnebago, then northerly along the western shoreline of Lake Winnebago to its intersection with the Fox River, then westerly along the Fox River to its intersection with Highway 21.

Pine Island Zone: The area encompassed by a border commencing at the intersection of Highway 16 and Highway 78 in Columbia County, then running westerly along Highway 16 to its intersection with Weyh Road, then southerly along Weyh Road to the most southerly point of its intersection with the West Boundary of Section 31, then southerly along the West Boundary of Section 31 to its intersection with the Sauk County/Columbia County boundary, then southerly along Sauk County/Columbia County boundary to its intersection with Highway 33, then westerly along Highway 33 to its intersection with Interstate 90/94, then southeasterly along Interstate 90/94 to its intersection with Highway 78, then northerly along Highway 78 to its intersection with Highway 16.

Collins Zone: The area encompassed by a border commencing at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County, then running westerly along Hilltop Road to its intersection with Humpty Dumpty Road, then southerly along Humpty Dumpty Road to its intersection with Poplar Grove Road, then easterly and then southerly along Poplar Grove Road to its intersection with County Highway JJ, then southeasterly along County Highway JJ to its intersection with Collins Road, then southerly along Collins Road to its intersection with the Manitowoc River, then southeasterly along the Manitowoc River to its intersection with Quarry Road, then northerly along Quarry Road to its intersection with Einberger Road, then northerly along Einberger Road to its intersection with Moschel Road, then westerly along Moschel Road to its intersection with Collins Marsh Road, then northerly along Collins Marsh Road to its intersection with Hilltop Road.

Theresa Zone: The area encompassed by a border commencing at the intersection of Highways 45 and 67 in Fond Du Lac County, then running westerly along Highway 67 to its intersection with County Highway H, then westerly along County Highway H to its intersection with County Highway Y, then southerly along County Highway Y to its intersection with County Highway AY, then easterly and southerly along County Highway AY to its intersection with Highway 28, then easterly along Highway 28 to its intersection with Highway 175, then southerly along Highway 175 to its intersection with Highway 33, then easterly along Highway 33 to its intersection with Highway 45, then northerly along Highway 45 to its intersection with Highway 67.

Exterior Zone:

Mississippi River Subzone: That portion of the State encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County, then extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: The area encompassed by a border commencing at the intersection of County Highway A and Highway 12, then westerly along County Highway A to its intersection with Interstate 90, then southerly along Interstate 90 to its intersection with the Illinois State line, then easterly along the Illinois State line to its intersection with Highway 120, then northerly along Highway 120 to its intersection with Highway 50, then easterly along Highway 50 to its intersection with Highway 12, then northerly along Highway 12 to its intersection with County Highway A.

Brown County Subzone: The area encompassed by a border commencing at the intersection of the Fox River with Green Bay in Brown County, then running southerly along the Fox River to its intersection with Highway 29, then northwesterly along Highway 29 to its intersection with the Brown County line, then counterclockwise along the Brown County line to its intersection with Green Bay, then directly east to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to its intersection with the Fox River.

Remainder of Exterior Zone: That portion of the State not included in the Horicon, Pine Island, Collins, or Theresa Zones; or Rock Prairie, Mississippi River, or Brown County Subzones.

Early Season Goose Subzone: That area bounded by a line beginning at Lake Michigan in Port Washington and extending west along Highway 33 to Highway 175, south along Highway 175 to Highway 83, south along Highway 83 to Highway 36, southwest along Highway 36 to Highway 120, south along Highway 120 to Highway 12, then southeast along Highway 12 to the Illinois State line.

Central Flyway

Colorado (Central Flyway Portion):

Northern Front Range Unit: All lands in Larimer, Gilpin, Adams, Clear Creek, Weld, Boulder, Denver and Jefferson Counties west of U.S. Interstate 25 from the Colorado-Wyoming State line south to U.S. Interstate 70; west on U.S. Interstate 70 to the Continental Divide; then north along the Continental Divide; to the Jackson-Larimer County line to the Colorado-Wyoming State line.

South Park Unit: Chaffee, Custer, Fremont, Lake, Park, and Teller Counties.

San Luis Valley Unit: Alamosa, Conejos, Costilla, and Rio Grande Counties and the portion of Saguache County east of the Continental Divide.

North Park Unit: Jackson County.

Arkansas Valley Unit: Baca, Bent, Crowley, Kiowa, Otero and Prowers Counties.

Remainder: Remainder of the Central Flyway portion of Colorado.

Kansas:

Light Geese:

Unit 1: That area east of US–75 and north of I–70.

Unit 2: The remainder of Kansas.

Dark Geese:

Marais des Cygne Valley Unit: The area is bounded by the Missouri State line to K–68, K–68 to U.S.–169, U.S.–169 to K–7, K-7 to K–31, K–31 to U.S.–69, U.S.–69 to K–239, K–239 to the Missouri State line.

South Flint Hills Unit: The area is bounded by Highways U.S. 50 to K–57, K–57 to U.S.–75, U.S.–75 to K–39, K–39 to U.S.–96, K–96 to U.S.–77, U.S.–77 to U.S.–50

Central Flint Hills Unit: That area southwest of Topeka bounded by Highways U.S.–75 to Interstate 35, Interstate 35 to U.S.–50, U.S.-50 to U.S.–77, U.S.–77 to Interstate 70, Interstate 70 to U.S.–75.

Strip Pits Unit: That area of southeast Kansas bounded by the Missouri State line to U.S.–160, U.S.–160 to U.S.–69, U.S.–69 to K–39, K–39 to U.S.–169, U.S.-169 to the Oklahoma State line, and the Oklahoma State line to the Missouri State line.

Montana (Central Flyway Portion):

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central Flyway portion of Montana.

Nebraska:

North Unit: Keya Paha County east of US–183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of US 81.

East Unit: The area east of a line beginning at U.S.–183 at the northern State line; south to N–2; east to U.S.–281; south to the southern State line, excluding the North Unit.

West Unit: All of Nebraska west of the East Unit.

New Mexico (Central Flyway Portion):

Light Geese:

Rio Grande Valley Unit: The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota:

Missouri River Zone: The dark goose late-season zone is that portion of North Dakota encompassed by a line starting at the South Dakota border, then north on U.S. 83 and I–94 to ND 41, then north to ND 53, then west to U.S. 83, then north to ND 23, then west to ND 37, then south to ND 1804, then south approximately 9 miles to Elbowoods Bay on Lake Sakakawea, then south and west across the lake to ND 8, then south to ND 200, then east to ND 31, then south to ND 25, then south to I–94, then east to ND 6, then south to the South Dakota border, and then east to the point of origin.

Statewide: All of North Dakota.

South Dakota:

Dark Geese:'

Missouri River Unit: The Counties of Bon Homme, Brule, Buffalo, Campbell, Charles Mix, Corson (east of highway SD–65), Dewey, Gregory, Haakon (north of Kirley Road and east of Plum Creek), Hughes, Hyde, Lyman (north and east of highways I–90 and US–183), Potter, Stanley, Sully, Tripp (east of highway US–183), Walworth, and Yankton (west of highway US–81).

Remainder: The remainder of South Dakota.

Texas:

West: West of U.S. 81.

East: East of U.S. 81.

Wyoming (Central Flyway Portion):

Zone 1: The Countries of Campbell, Sheridan, Johnson, Niobrara, Crook, Weston, Platte, Laramie, Albany, and Carbon east of the Continental Divide.

Zone 2: The Counties of Natrona and Converse.

Zone 3: The Counties of Bighorn, Park, Washakie, Hot Springs, and Fremont.

Zone 4: Goshen County

Pacific Flyway

Arizona:

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California:

Same zones as for ducks but in addition:

Southern Zone:

District 22: All of Imperial County, and those portions of Riverside and San Bernardino Counties lying south and east of the following line: Starting at the intersection of Highway 86 and the north boundary of Imperial County, north along Highway 86 to Highway 111; north along Highway 111 to its junction with Interstate 10 in the town of Indio, east on Interstate 10 to its junction with the Cottonwood Springs Road in Sec. 9, T6S, R11E; north along that road and the Mecca Dale Road to Amboy; east along Highway 66 to its intersection with Highway 95; north along Highway 95 to the California-Nevada boundary.

Balance-of-State Zone:

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Area: That area bounded by a line beginning at Willows in Glenn County proceeding south on Interstate Highway 5 to the injunction with Hahn Road north of Arbuckle in Colusa County; then easterly on Hahn Road and the Grimes Arbuckle Road to Grimes on the Sacramento River; then southerly on the Sacramento River to the Tisdale Bypass to where it meets O'Banion Road; then easterly on O'Banion Road to State Highway 99; then northerly on State Highway 99 to its junction with the Gridley-Colusa Highway in Gridley in Butte County; then westerly on the Gridley-Colusa Highway to its junction with the River Road; then northerly on the River Road to the Princeton Ferry; then westerly across the Sacramento River to State Highway 45; then northerly on State Highway 45 to its junction with State Highway 162; then continuing northerly on State Highway 45–162 to Glenn; then westerly on State Highway 162 to the point of beginning in Willows.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to State Highway 20; and westerly along State Highway 20 to the Sacramento River.

San Joaquin Valley Area: That area bounded by a line beginning at Modesto in Stanislaus County proceeding west on State Highway 132 to the junction of Interstate Highway 5; then southerly on Interstate Highway 5 to the junction of State Highway 152 in Merced County; then easterly on State Highway 152 to the junction of State Highway 165; then northerly on State Highway 165 to the junction of State Highway 99 at Merced; then northerly and westerly on State Highway 99 to the point of beginning.

Colorado (Pacific Flyway Portion):

Browns Park Zone: The Browns Park portion of Moffatt County.

Delta and Montrose Counties Zone: All of Delta and Montrose Counties.

Gunnison and Saguache Counties Zone (west of the Continental Divide): Gunnison County and that portion of Saguache County lying west of the Continental Divide.

Dolores, LaPlata, and Montezuma Counties Zone: All of Dolores, LaPlata, and Montezuma Counties.

Remainder-of-the-State in the Pacific Flyway Zone: The remainder of the Pacific Flyway Portion of Colorado.

Idaho:

Area 1 Zone:

Includes the following counties: Benewah; Bonner; Boundary; Kootenai; and Shoshone Counties.

Area 2 Zone:

Includes the following counties and portions of counties: Ada; Adams; Blaine north of U.S. Highway 20 and west of State Highway 75; Boise; Camas north of U.S. Highway 20 outside the Camas Creek drainage; Canyon; Clearwater; those portions of Custer west and north of State Highway 75 (Ketchum-Stanley-Challis highway), and west of U.S. Highway 93 from its junction with State Highway 75 near Challis north to the Custer-Lemhi County line; those portions of Elmore north and east of Interstate 84, and south and west of Interstate 84, west of State Highway 51, EXCEPT that portion within the Camas Creek drainage; Gem; Idaho, Latah; Lemhi west of U.S. Highway 93; Lewis; Nez Perce; Owyhee; and Washington Counties.

Area 3 Zone:

Includes the following counties and portions of counties: those portions of Blaine south and east of U.S. Highway 93, west of U.S. Highway 93 south of U.S. Highway 20, and between State Highway 75 and U.S. Highway 93 north of U.S. Highway 20 within the Silver Creek drainage; those portions of Camas south of U.S. Highway 20, and north of U.S. Highway 20 within the Camas

Creek drainage; Cassia; those portions of Elmore south of Interstate 84 east of State Highway 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of State highway 51, and Twin Falls Counties.

Area 4 Zone:

Includes the following counties and portions of counties: Bear Lake; Bingham within the Blackfoot Reservoir drainage; Blaine between State Highway 75 and U.S. Highway 93 north U.S. Highway 20 EXCEPT the Silver Creek drainage; Bonneville, Butte; Caribou EXCEPT the Fort Hall Indian Reservation; Clark; those portions of Custer east and south of State Highway 75 (Ketchum-Stanley-Challis highway), and east of U.S. Highway 93 from its junction with State Highway 75 near Challis north to the Custer-Lemhi County line; Franklin; Fremont; Jefferson; Lemhi east of U.S. Highway 93; Madison; Oneida; Power west of State Highway 37 and State Highway 39; and Teton Counties.

Area 5 Zone (Ft. Hall-American Falls Zone):

Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of State Highway 37 and State Highway 39.

In addition, goose frameworks are set by the following geographical areas:

10 Northern Counties Area: The Counties of Boundary, Bonner, Kootenai, Benewah, Shoshone, Latah, Nez Perce, Lewis, Clearwater, and Idaho.

Southwestern Area: That portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except the 10 Northern Counties Area).

Southeastern Area: That portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border.

Montana (Pacific Flyway Portion):

East of the Continental Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Continental Divide Zone: Includes the remainder of the Pacific Flyway portion of Montana.

Nevada:

Clark County Zone: Clark County.

Elko County and that portion of Ruby Lake National Wildlife Refuge within White Pine County Zone: All of Elko County and that portion of Ruby Lake National Wildlife Refuge within White Pine County.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion):

North of I–40 Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South of I–40 Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon:

Western Zone: Consists of all counties west of the summit of the Cascades, excluding Klamath and Hood River Counties.

Special Canada Goose Management Area: Consists of those portions of Coos, Curry, Douglas and Lane Counties lying west of U.S. Highway 101; and that portion of western Oregon west and north of a line starting at the Columbia River at Portland, south on Interstate 5 to Highway 22 at Salem, east on Highway 22 to the Stayton Cutoff, south on the Stayton Cutoff to Stayton and straight south to the Santiam River, west (downstream) along the north shore of the Santiam River to Interstate 5, south on Interstate 5 to its junction with Highway 126 at Eugene, and west on Highway 126 to Highway 36, north on Highway 36 to Forest Road 5070 at Brickerville, west and south on Forest Road 5070 to Highway 126, west on Highway 126 to the Oregon Coast.

Northwest Oregon Special Permit Goose Area: Includes Sauvie Island Wildlife Area, only in designated areas but excluding North Unit and Columbia River Beaches, private lands of Sauvie Island, and including Scappoose Flat and Deer Island, lower Columbia River Area, Ankeny National Wildlife Refuge, private lands adjacent to William L. Finley National Wildlife Refuge, and private lands adjacent to Baskett Slough National Wildlife Refuge.

Early-Season Canada Goose Area: Starting in Portland at the Interstate Highway 5 Bridge, south on I–5 to U.S. Highway 30, west on U.S. Highway 30 to the Astoria-Megler Bridge, from the Astoria-Megler Bridge along the Oregon-Washington State line to the point of beginning.

Eastern Zone: Consists of all counties east of the summit of the Cascades, including all of Klamath and Hood River Counties.

Columbia Basin Goose Area: Includes the Counties of Gilliam, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco.

Lake and Klamath Counties Zone: All of Lake and Klamath Counties.

Baker and Malheur Counties Zone: All of Baker and Malheur Counties.

Utah:

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Early-Season Canada Goose Area: Cache County.

Washington:

Eastern Washington Zone: Includes all areas lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Goose Area—Adams, Benton, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Counties and east of Satus Pass (U.S. Highway 97) in Klickitat County.

Western Washington Zone: Includes all areas lying to the west of Eastern Washington.

Lower Columbia River Special Goose Management Area—Clark, Cowlitz, Pacific and Wahkiakum Counties.

Skagit Special Goose Management Area—Island, Skagit, Snohomish, and Whatcom Counties.

Early-Season Canada Goose Area—Starting in Vancouver at the Interstate Highway 5 Bridge north on I–5 to Kelso, west on State Highway 4 from Kelso to State Highway 401, south and west on State Highway 401 to the Astoria-Megler Bridge, from the Astoria-Megler Bridge along the Washington-Oregon State line to the point of beginning.

Wyoming (Pacific Flyway Portion)—See State Regulations:

Salt River (Star Valley) Area in Lincoln County

Bear River Area in Lincoln County

Eden-Farson Irrigation Project Area in Sweetwater and Sublette Counties

[FR Doc. 91–23319 Filed 9–25–91; 8:45 am]

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Reader Aids

Federal Register

Vol. 56, No. 187

Thursday, September 26, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Data base and machine readable specifications	523-3447
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, SEPTEMBER

43547-43688.....3
43689-43860.....4
43861-43994.....5
43995-45880.....6
45881-46106.....9
46107-46220.....10
46221-46364.....11
46365-46522.....12
46523-46718.....13
46719-46976.....16
46977-47122.....17
47123-47350.....18
47351-47670.....19
47671-47898.....20
47899-48094.....23
48095-48414.....24
48415-48722.....25
48723-49130.....26

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6329.....43991
6330.....45879
6331.....45881
6332.....46221
6333.....46365
6334.....46719
6335.....46721
6336.....47123
6337.....48413
6338.....48417
6339.....48419

Administrative Orders:
Presidential Determinations:
No. 90-38 of September 5, 1990 (Extended by Presidential Determination No. 91-52 of September 13, 1991).....48415
No. 91-48 of August 17, 1991.....43861
No. 91-49 of August 24, 1991.....46977
No. 91-50 of August 24, 1991.....46979
No. 91-51 of August 29, 1991.....46981
No. 91-52 of September 13, 1991.....48415

5 CFR

351.....43995
831.....43863, 43865, 43866, 45883
842.....43865, 43866
890.....47899

Proposed Rules:
410.....44012
430.....48444
771.....48757

7 CFR

2.....43689, 48723
301.....46107
354.....46721
701.....46367
910.....46223
915.....46224
916.....45884
917.....46368, 46983
920.....48725
926.....48725
929.....46984
955.....46724
967.....48726
981.....48727-48729
993.....43547
1007.....43690
1124.....46226
1405.....47125
1421.....46369, 47125
1435.....47125, 47351
1485.....46108
1712.....47832
1739.....47832
1901.....48095
1930.....47375
1944.....47375
3403.....47882

Proposed Rules:
51.....47832
180.....43558
273.....46127
277.....46127
301.....46737, 48611
354.....48270
916.....46739
917.....46739
920.....48762
959.....43559
966.....48764
981.....46242, 48765
987.....46243
1413.....46574
1755.....46132, 46575
1940.....46576
1980.....48116

8 CFR

217.....46716
243.....48730
280.....45885

Proposed Rules:
287.....48766

9 CFR

78.....46108

Proposed Rules:
130.....48270
308.....46354
318.....48131
381.....48131

10 CFR

13.....47132
73.....47671
1048.....48096
1705.....47144

Proposed Rules:
2.....46739
30.....48445
40.....46739, 48445
50.....46739, 48445
51.....46739, 47016
70.....46739, 48445
72.....48445
75.....46739
110.....46739
140.....46739
150.....46739
170.....46739

12 CFR

19.....46667
201.....48730
207.....46109, 46110, 46227
220.....46109
221.....46110, 46227
611.....46111
612.....48097
620.....46111
621.....46111
701.....48421
741.....44128
1507.....43997

Proposed Rules:

203.....47703
323.....47035
584.....47919
613.....45902
618.....45902
1608.....47164

13 CFR

108.....43867
121.....43869

Proposed Rules:

121.....43891, 47920

14 CFR

21.....45886, 45888, 47900, 48097
23.....47900
25.....45886, 45888, 48097
39.....43548–43550, 45891–45893, 46112, 46228–46233, 46725, 46985, 47376–47378, 47671, 47672, 47901
61.....43970, 47833
71.....43691, 46113, 46523, 46727, 47902, 47903, 48427, 48428
73.....46523
75.....46113
91.....48088, 48628
93.....43692, 43965, 46235, 48092
97.....48100–48101
108.....48370
121.....43974
129.....48370
135.....43974
161.....48661
221.....44000
1214.....47146–47148
1217.....47148
1266.....48429

Proposed Rules:

Ch. I.....46585
39.....45904, 46587, 46588
71.....45906, 47036, 48768, 48769
75.....46747
93.....46674

15 CFR

Proposed Rules:

925.....47836

16 CFR

305.....43693, 46524, 46728
1000.....46235
1501.....46986

Proposed Rules:

Ch. II.....47166
435.....46133, 48270

17 CFR

5.....43694
15.....43694
33.....43694
229.....48103
230.....48103
249.....45894

Proposed Rules:

5.....43726
32.....43560
240.....44014, 46748
249.....44014, 44029

18 CFR

Proposed Rules:

1312.....46259, 46261

19 CFR

Ch. I.....46114, 47268
10.....48823
146.....46371
171.....48823
172.....48823
177.....46372

Proposed Rules:

4.....48448
10.....48448
102.....48448
134.....48448
177.....46134, 48448

20 CFR

10.....47674
367.....46374

Proposed Rules:

10.....47713
255.....47426
335.....47430

21 CFR

14.....48103
172.....46667
173.....46667
178.....43697
310.....46823
510.....43698
520.....43698
529.....43698
558.....48732
878.....47150
1310.....48732

Proposed Rules:

101.....43964
356.....48302
369.....48302

22 CFR

40.....43551
41.....46716
43.....46904
302.....43699

Proposed Rules:

41.....43565
120.....43894
121.....43894, 43896, 46753, 46754

24 CFR

203.....46964
291.....46952–46964
577.....46952
578.....46952
888.....49024
905.....46356, 47852
906.....47852
965.....46356
990.....46356

Proposed Rules:

905.....45814
963.....48453
990.....45814

25 CFR

Proposed Rules:

83.....47320
101.....48082
103.....48082

26 CFR

1.....47379, 47524–47659, 47904, 48443, 48733
35a.....47904
602.....47379

Proposed Rules:

1.....43571, 47921–47928, 48457–48465
20.....46244, 46245
25.....46244, 46245
31.....47929
53.....43571
602.....47928

27 CFR

178.....43649

Proposed Rules:

4.....46393
5.....46393
9.....46135, 47039, 47044

28 CFR

0.....48734

Proposed Rules:

16.....44049, 48469
76.....45907

29 CFR

92.....46116
541.....45824
1910.....43699
1926.....43699
2619.....46525
2676.....46526

Proposed Rules:

541.....45828
1910.....47348, 47892, 48133
1926.....47348

30 CFR

56.....46500
57.....46500
206.....46527
705.....46987
706.....46987
916.....46531
917.....47907

Proposed Rules:

Ch. II.....47049
46.....48720
48.....48376
56.....48720
57.....48720
75.....48376
77.....48376, 48720
218.....46396
230.....46396
701.....44049, 45780, 48714
724.....48924
740.....46396
761.....46396
772.....46396
773.....45780
778.....45780
780.....44049
784.....44049
785.....48714
816.....44049
817.....44049
840.....45780
843.....45780
846.....48924
901.....44050
914.....47051
934.....47929
935.....46588, 48470

31 CFR

505.....45894
520.....45894
575.....48104

32 CFR

163.....43871
199.....44001
518.....48932
619.....45895
706.....47151–47153

Proposed Rules:

199.....48134, 48135
229.....46259, 46261
312.....46137

33 CFR

1.....43700
100.....46376, 47911, 48105, 48735
117.....43649, 43871
165.....43701, 48105

Proposed Rules:

64.....47930
117.....47932, 48770
130.....49006
131.....49006
132.....49006
137.....49006
157.....44051
161.....48771
162.....48773
330.....48136
402.....47431

34 CFR

668.....43701
682.....43701, 48990

Proposed Rules:

222.....46670
652.....48400
682.....43978

36 CFR

211.....46549
217.....46549
242.....43552
1191.....45500
1192.....45530

Proposed Rules:

13.....46589
296.....46259, 46261

37 CFR

1.....46823
2.....46376
202.....47402

Proposed Rules:

202.....48137

38 CFR

21 44007
36 48735

Proposed Rules:

21 46140

39 CFR

111 ..... 46551, 48437

Proposed Rules:

265 43736

40 CFR

35 47403
52 ..... 45896, 46116, 46555
61 ..... 46380, 47404
80 46119
81 ..... 43872, 46116
136 43702
228 ..... 47410, 48106
248 43702
252 43702
253 43702
262 43704
265 47912
266 43874
271 ..... 43704, 47153, 47675
300 ..... 46121, 48438
721 ..... 43877, 46728, 47677
799 ..... 43878, 47912

Proposed Rules:

Ch. I 46756
52 ..... 46590, 48472
60 46396
61 46252
80 ..... 43682, 48140
82 ..... 43842, 46041
85 ..... 45866, 48350
86 ..... 43682, 48140, 48272, 48350
88 48614
141 43573
142 43573
180 ..... 43737, 46257
186 46257
228 ..... 47173, 47432
260 46396
261 48000
264 ..... 43574, 46396
265 ..... 43574, 46396
266 48000
270 46396
271 46396
281 46756
300 46142
372 ..... 48474, 48475
280 43574
600 ..... 43682, 48140
721 47714
744 47717
761 43574
795 43574
798 43574
799 ..... 43574, 43897

41 CFR

51-1 48974
51-2 48974
51-3 48974
51-4 48974
51-5 48974
51-6 48974
51-7 48974
51-8 48974
51-9 48974
51-10 48974
302-1 46988
302-3 46988
302-7 46988

42 CFR

57 43648
405 ..... 43706, 46559
408 48110
410 43706
413 43706
414 43706
417 46562
431 48880
433 ..... 46380, 48880
441 48112
442 48826
447 48826
483 ..... 48826, 48880
488 48826
489 48826
498 48826

Proposed Rules:

405 45926

43 CFR

12 45897
426 43553
5400 47915
5420 47915
5450 47915
5460 47915
9230 47915

Public Land Orders:

3776 (Revoked in Part by PLO 6882) 47677
6868 43648
6869 43648
6871 46354
6873 ..... 46354, 47832
6876 46122
6877 46123
6878 46123
6879 46123
6881 47414
6882 47677

Proposed Rules:

Ch. II 47049
4 45806
7 ..... 46259, 46260
3400 45939
3410 45939
3420 45939
3440 45939
3450 45939
3460 45939
3470 45939
3480 45939

44 CFR

59 46758
61 46758
62 ..... 43881, 46758
64 ..... 46990, 47916
65 ..... 46992, 46993
67 46995
75 46758

Proposed Rules:

67 47052

45 CFR

612 47415
613 47415
801 47678
1228 47157
1801 48076

Proposed Rules:

Ch. XXIV 46263

46 CFR

28 47679
56 48736
91 46354
189 46354
221 ..... 46387, 47158
502 46998
560 46388
572 46388
586 44008

Proposed Rules:

68 46268
514 46044
540 47434

47 CFR

0 43648
1 44008
15 46442
73 ..... 43555, 43556, 43884, 43885, 44009, 44010, 46123, 46126, 46729-46732, 47158, 47680, 48736
76 48736
90 ..... 43964, 48443
94 48443
97 ..... 43886, 43964

Proposed Rules:

15 48502
63 48504
69 44053
73 ..... 43575, 43576, 43900, 44054, 46143, 46145, 46761-46763, 47177, 47178, 47717

48 CFR

215 43986
225 46520
231 46520
233 45832
237 43986
242 46520
252 43986
302 47001
304 47001
306 47001
307 47001
313 47001
315 47001
333 47001
352 47001
501 47003
502 47003
504 47003
509 47003
513 47003
514 47003
515 ..... 47003, 47006
519 47006
524 47003
533 47006
547 47006
552 47006
819 44010
852 44010
1516 43710
1552 43710
1801 48737
1804 48737
1806 48737
1807 48737
1810 48737
1812 48737
1815 48737
1817 48737
1819 48737
1825 48737
1827 48737
1832 48737
1837 48737
1842 48737
1852 48737
1853 48737

Proposed Rules:

Ch. 14, App. A 46468
31 43739
519 46271
552 46271
970 43576

49 CFR

1 47007
27 45584
37 45584
38 45584
171 47158
178 46354
240 46126
541 43711
571 ..... 43556, 47007
572 47007
575 47011
580 47681
586 47007
587 47007
663 48384
665 46572
1002 46667
1011 ..... 46732, 46734
1121 46390
1152 46390
1160 ..... 46732, 46734
1181 ..... 46732, 46734
1186 ..... 46732, 46734

Proposed Rules:

192 48505
552 47434
571 ..... 47436, 48140
Ch. X 46145
1053 46397
1180 48510
1201 46272

50 CFR

17 ..... 46235, 47686, 47695, 48748-48752
20 ..... 46239, 49104
100 43552
204 47163
216 ..... 43887, 47418, 48115
217 43713
227 43713
247 47418
253 46823
285 ..... 46239, 47918
642 45898
661 ..... 43888, 43889, 46735, 47014
663 ..... 43718, 46240
669 48755
672 ..... 47425, 47700
675 ..... 43964, 45901, 46392, 47425, 47700
685 ..... 47163, 47701

Proposed Rules:

17 ..... 46145, 46273-46277, 46397-46400, 47053, 47060, 47718, 47732
20 43740

23.....48512
611.....47439
649.....47061
655.....47439
663.....46401, 47441
685.....47268

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 22, 1991

Would you like to know...

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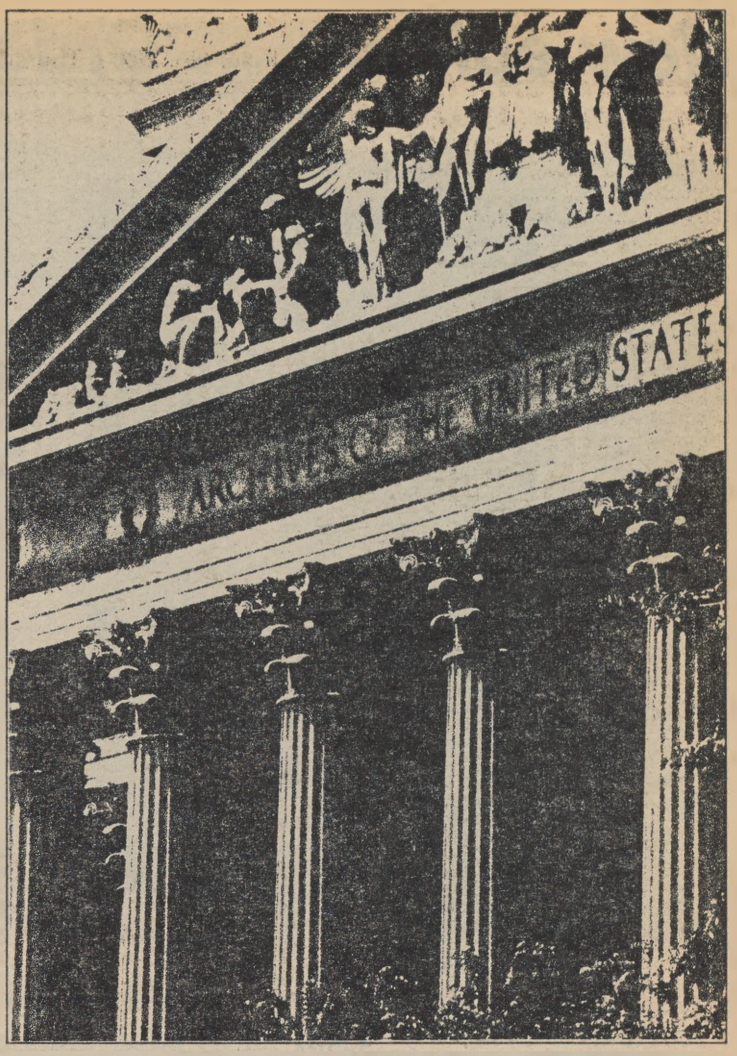

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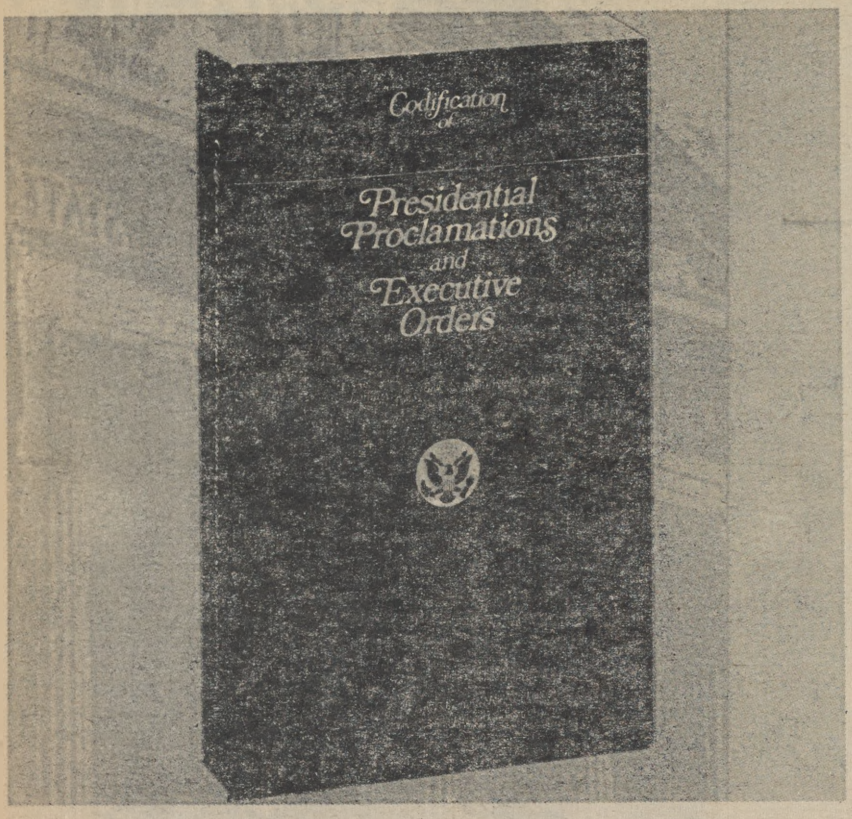

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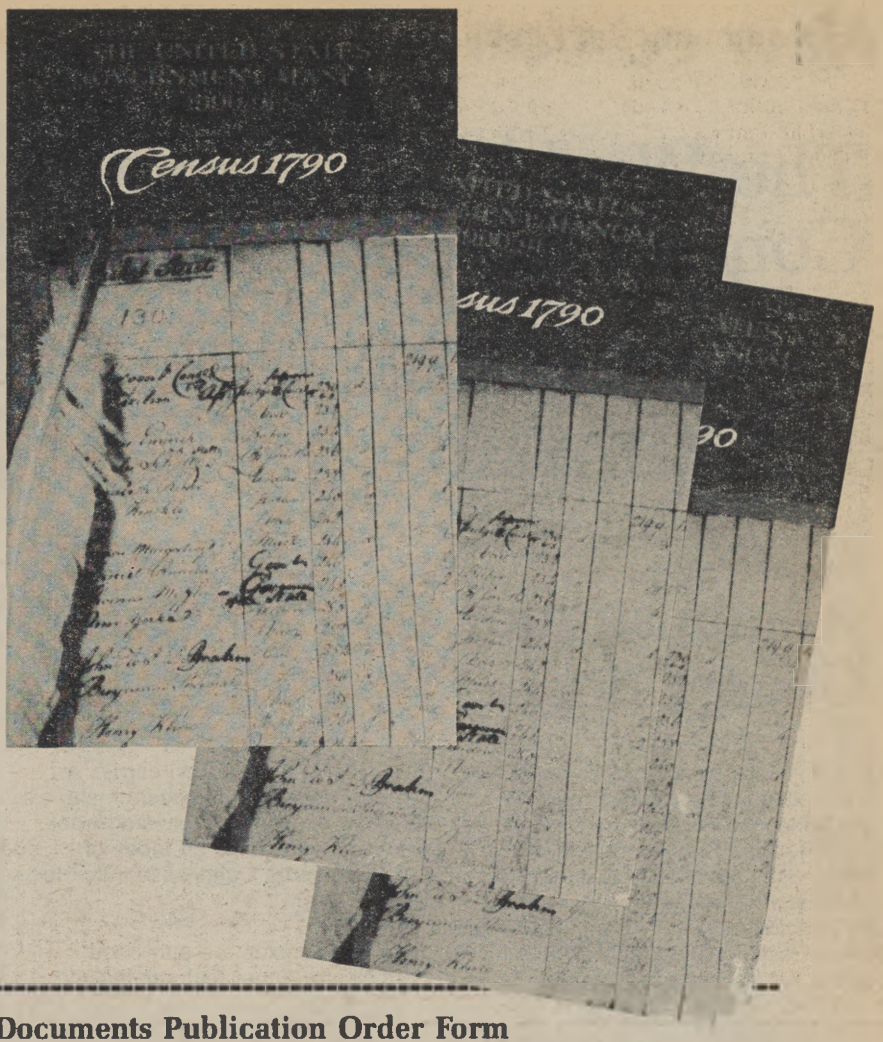

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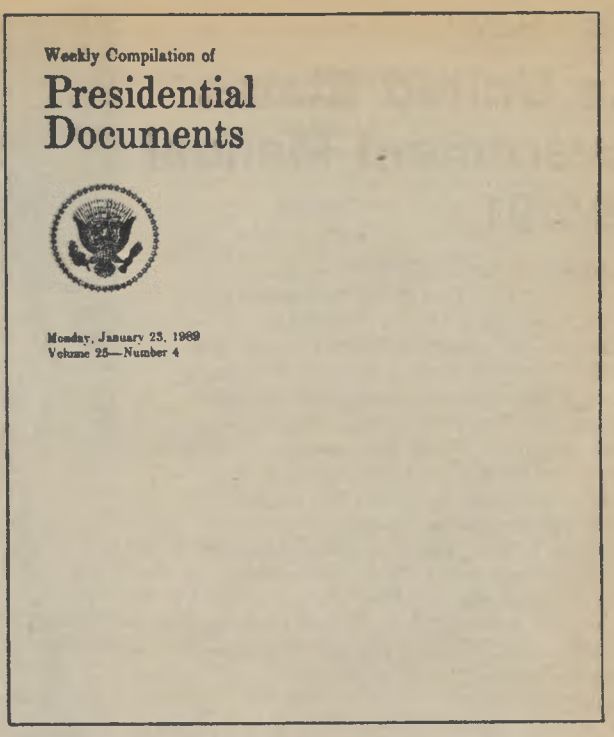

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